

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2024

Public Authority: Chief Constable of North Yorkshire Police
Address: Police Headquarters
Alverton Court
Crosby Road
Northallerton
North Yorkshire
DL6 1BF

Decision (including any steps ordered)

1. The complainant has requested information about the policing of a hunt, from North Yorkshire Police (NYP). NYP refused to provide the requested information, citing sections 31(1)(a) and (b) (Law enforcement) of FOIA. During the Commissioner's investigation, NYP determined that the total cost of policing these events was not held, although it did hold some overtime costs which have been disclosed in this notice.
2. The Commissioner's decision is that, on the balance of probabilities, the costing information is not held. He has also determined that NYP was entitled to rely on section 31 of FOIA to withhold the rest of the information requested. No steps are required.

Request and response

3. On 13 August 2023, the complainant wrote to NYP and requested the following information:

"There are numerous report [sic] on social media that hunt saboteurs targeted their protests towards shoots taking place on the 12th August 2023. It is also reported there was a large police presence.

Please can you can confirm:

- 1) How many police officer [sic] and other police staff were deployed to police these events. If possible please state rank of officers deployed.
 - 2) How many police vehicles were deployed.
 - 3) How many of these vehicle [sic] were unmarked.
 - 4) The total cost of policing these events".
4. On 14 September 2023, NYP responded. It refused to provide the requested information citing sections 31(1)(a) and (b) of FOIA.
 5. The complainant requested an internal review on 15 September 2023.
 6. NYP provided an internal review on 6 December 2023. It maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 6 December 2023 to complain about the way her request for information had been handled. She disagreed that an adequate prejudice test had been conducted and thought that the public interest test had failed to:

"explain how the risk is greater than someone at the scene counting the vehicle [sic], or reviewing the pictures online after the event".
8. She added that:

"...part [4] of the request could be answered, regarding my question about cost. There is no overall harm in answering: the total cost of policing these events. I don't believe there would be any harm in providing a single monetary figure. Section 31 can not be applied to this part of my request".
9. In response to his enquiries, NYP revised its position regarding part (4) of the request. It said:

"... the Force does not record overall expenditure against specific events, as Officers police these events as part of their normal duties. However, the costs that are separately recorded relate to overtime. We could therefore confirm the total cost of overtime for Officers policing the event but again, this cost is funded by normal policing budgets".
10. When asked to do so, NYP subsequently provided the Commissioner with the figure that it does hold in respect of overtime costs. It advised that

it was happy for this figure to be disclosed in this decision notice so, for expediency, the Commissioner can confirm the following:

“Although most officers did attend as part of their regular duties, overtime payments were made totalling £245.79”.

11. The Commissioner will consider whether or not any further information is held in respect of part (4) of the request. He will also consider the application of section 31 of FOIA to the remainder of the request.
12. The Commissioner has viewed the withheld information.

Reasons for decision

Section 1 – General right of access to information

13. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
14. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant’s request.
15. Although the revised position regarding this part of the request has not been relayed to the complainant, for expediency the Commissioner does not consider it necessary to consult her on this point as he is making a decision based on the balance of probabilities.
16. Based on the explanation provided in paragraph 9 above, and also his experience of dealing with cost and time related information held by police forces, the Commissioner accepts that this type of information would not be recorded in these circumstances. In his experience, police forces do not hold budgetary information in the level of granular detail requested by the complainant. He is therefore satisfied that, on the balance of probabilities, no further recorded information within the scope of part (4) of the request is held.

Section 31 – Law enforcement

17. Section 31 of FOIA allows a public authority to withhold information which, if disclosed, could harm its own, or another public authority’s, ability to enforce the law.

18. Sections 31(1)(a) and (b) of FOIA apply where disclosure would, or would be likely to, prejudice:

- (a) the prevention or detection of crime; and
- (b) the apprehension or prosecution of offenders.

19. In order for the exemption to apply, it must be the case that if the withheld information was disclosed, it would, or would be likely to, cause prejudice (ie harm) to the matters referred to in subsections (a) and (b). Three criteria must be met:

- the prejudice which NYP envisages as a result of disclosure, must relate to the prevention or detection of crime and the apprehension or prosecution of offenders;
- there must be a causal relationship between disclosure and prejudice to those matters. This prejudice must be real, actual or of substance; and
- NYP must show that the level of prejudice it envisages is met – ie it must demonstrate why disclosure 'would be likely' to result in prejudice or, alternatively, why disclosure 'would' result in prejudice.

20. NYP applied sections 31(1)(a) and (b) to cover the remaining withheld information. In its refusal notice it explained to the complainant:

"...releasing any information held regarding the number of officers and vehicles deployed to certain events, it would allow criminals to note what capacity and tactical capabilities the force had, allowing them to target specific areas of the UK to conduct their criminal / terrorist activities. This would lead to an increase in harm of attacks and compromise Law Enforcement. This would be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public.

Furthermore, the Police are there to support the public and deliver effective law enforcement. Releasing the details of marked and unmarked vehicles at events could provide intelligence when read in conjunction with other data in the public domain into what the vehicles were used for and how many are held across the force. This information could then be used by criminals and allow them to target specific vehicles or avoid vehicles to prevent them from being detected.

The threat from terrorism cannot be ignored. It is generally recognised that the international security landscape is increasingly complex and unpredictable. Releasing information on vehicles would hinder operational capabilities as criminals/terrorists would gain a greater understanding of the police's resources, enabling them to

take steps to counter them. It may also suggest the limitations of police capabilities in across [sic] the county, which may further encourage criminal/terrorist activity by exposing potential vulnerabilities. This detrimental effect is increased if the request is made to several different law enforcement bodies. Information that undermines the operational integrity of the police will adversely affect public safety and have a negative impact on both national security and law enforcement”.

21. It also explained:

“It has been recorded that FOIA releases are monitored by criminals and terrorists and so releasing information held relating to unmarked vehicles would undermine and compromise law enforcement and it would also hinder any local, regional or national operations”.

22. In response to the Commissioner’s enquiries, NYP also drew attention to two previous decisions where the Commissioner has found that disclosure of the type of information requested, ie numbers of police officers deployed, would be likely to prejudice these exemptions^{1, 2}. Although the Commissioner considers each case on its own merits, he accepts that these decisions still reflect his views in general.

Is the exemption engaged?

23. The withheld information in this case relates to the resources deployed when policing a hunting event. NYP’s arguments above clearly reflect matters that relate to the prevention or detection of crime and the apprehension or prosecution of offenders.

24. As regards a causal relationship between disclosure and prejudice to the above matters, and having viewed the withheld information, the Commissioner is satisfied that its disclosure would allow interested parties to build up a picture of law enforcement practices, capabilities and tactics. He is satisfied that this is information that would assist those planning to protest. Furthermore, it could also reveal information which could have a wider law enforcement impact because revealing

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4027174/ic-247265-c318.pdf>

² <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&query=IC%E2%80%909067158%E2%80%9090W4Y6&profile=default>

how many police attend such an event could reveal that they have a reduced capacity to attend something elsewhere.

25. NYP has confirmed that it is relying on the lower likelihood, ie that prejudice "would be likely" to occur.
26. Having considered the arguments put forward by NYP, the Commissioner is satisfied that the lower level of "would be likely to occur" is met in this case. As the three criteria set out above are satisfied, the Commissioner considers that sections 31(1)(a) and (b) of FOIA are engaged

Public interest test

27. Sections 31(1)(a) and (b) are qualified exemptions and are subject to the public interest test set out in section 2 of FOIA. The Commissioner has considered whether, in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information. In doing so, he has borne in mind that the higher level of 'would' prejudice applies (ie that the harm envisaged would be more likely than not, to occur).

Public interest arguments in favour of disclosure

28. The complainant's views are included in the "Scope" section above. She also argued that:

"Confirming the amount officer [sic] and police vehicles in attendance would show how public funds are being spent".

29. In its response to the Commissioner, NYP has argued:

"Releasing information held relating to officer numbers and vehicle attendance at events would provide an insight into police resources and enable the public to have a better understanding of the effectiveness of the police.

It would show how public funds are being spent in relation to protecting the public.

Information would ensure transparency and accountability and enable the public to see what tactics are deployed by the Police Service to tackle/assist in fighting crime".

Public interest arguments in favour of maintaining the exemption

30. NYP argued:

"It can be argued that there are significant risks associated with providing information in relation to any aspects that can assist criminal planning and that any nation's security arrangements, by releasing the information, may reveal the relative vulnerability of what we may be trying to protect.

The Police Service would not wish to reveal resource information that would undermine the law enforcement operations and would impact on police resources, as more crime would be committed because criminals/terrorists would know which forces had less/more capability. This in turn would place the public at a greater risk and a fear of crime would be realised, especially for more vulnerable areas".

Balance of the public interest

31. When requesting an internal review the complainant said:

"this request was made after reviewing various reports on social media and in the press. Where it was reported numerous police vehicles were in attendance. There is also a picture of 2 officers in an unmarked police car. These events and protest [sic] take place in public. Although public interest test has been conducted [sic] it fails to explain how the risk is greater than someone at the scene counting the vehicle [sic], or reviewing the pictures online after the event. The ICO state in Investigations and proceedings... 'where the same or similar information is already known, it is more difficult to argue that there could be any great harm in releasing the disputed information'."

32. The Commissioner notes that it will always be obvious to some extent, particularly to those in attendance, what resources are present at a public event. However, it is also clear that the actual resources deployed remain unknown. Therefore, "the same or similar information" is not known in this instance, so the complainant's argument does not hold weight. It may be feasible for those at the event to "best guess" the figures, but that is all. If it were otherwise, then the requested information would already be public knowledge for this event which, evidently, it is not.

33. NYP argued:

"The security of the public and the country is of paramount importance and the Police service will not divulge the resources, if to do so would place the safety of individuals at risk, due to providing freely available (single point) information under such requests and which in turn would undermine National Security or compromise law enforcement.

Whilst there is a public interest in the transparency of policing resources and providing assurance that the police service is appropriately prepared and effectively engaging with the threat posed by various groups or individuals, there is a very strong public interest in safeguarding the integrity of police resources and operations in the highly sensitive areas such as extremism, crime prevention, public disorder and terrorism prevention.

As much as there is public interest in knowing that policing activity is appropriate and balanced this will only be overridden in exceptional circumstances. It is our opinion that for these issues the balancing test for exempting your request for planning information is not made out".

34. The Commissioner recognises the public interest in transparency. With regard to the policing of protests, he accepts the strong public interest in knowing whether policing activity is efficient, productive and proportionate, particularly in light of the significant disruption that some protests involve. He also recognises that hunting generally is an emotive subject and there is a lot of general public interest in this area.
35. However, in carrying out the statutory balancing exercise, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption. In this case he has considered the public interest in avoiding likely prejudice to law enforcement matters, specifically in avoiding prejudice to the prevention or detection of crime and the apprehension of prosecution of offenders.
36. Clearly, it is not in the public interest to disclose information that may compromise the Constabulary's ability to accomplish its core function of law enforcement.
37. The Commissioner has had regard to the very strong public interest in ensuring that the disclosure of information does not materially impede the prevention and detection of crime or the apprehension or prosecution of offenders. He has also taken into account that disclosure under FOIA to the applicant is effectively disclosure to 'the world at large', with no onward restrictions on how the information may be used.
38. On balance, the Commissioner is satisfied that, in the circumstances of this case, the public interest in maintaining the exemption outweighs that in disclosing the requested information.
39. His decision, therefore, is that NYP was entitled to rely on sections 31(1)(a) and (b) to withhold the information.

Right of appeal

40. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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