



Neutral citation number: [2023] UKFTT 1077 (GRC)

Appeal Number: EA/2023/0102

**First-Tier Tribunal
(General Regulatory Chamber)
Information Rights Tribunal.**

Heard: On the papers by consent.

On 15 December 2023.

Decision given on: 05 January 2024

Between:

Charlotte Pearl

Appellant:

And

The Information Commissioner

Respondent:

Tribunal: Brian Kennedy KC, Kate Grimley Evans, and David Cook

Representation:

For the Appellant: Charlotte Pearl as a Litigant in person through the Grounds of Appeal (dated 23 February 2023), witness statements and written submissions dated 4 July 2023.

For the Respondent: Remi Reichold of Counsel. through written Response (dated 19 June 2023) to the Grounds of Appeal.

Decision: The appeal is dismissed.

REASONS

Introduction:

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 ("the FOIA"). The appeal is against the decision of the Information Commissioner ("the Commissioner") contained in a Decision Notice ("DN") dated 27 January 2023 (reference IC-191202-N5K4), which is a matter of public record.

Factual Background to this Appeal:

2. On 9 April 2022, the Appellant wrote to Wiltshire Police as follows:

"Please, can you confirm:

(1) whether there is any current operation related to the policing of hunting and to hunt protest activity in Wiltshire?

(2) if such an operation exists, when did it begin, what name does it operate under and what is its remit?

(3) whether Wiltshire Constabulary has entered into any memorandum of understanding (MOU) or written agreement with any landowners or hunt organisers?

(4) If such an MOU or agreement exists, whether Wiltshire Constabulary can provide a copy?"

3. On 1 June 2022, by way of assistance, Wiltshire Police wrote a comprehensive and important response to the Appellant and explained that:

"Wiltshire Police can neither confirm nor deny that information is held relevant to your request as the duty in Section(1)(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions:

- *30 (3) Investigations*
- *31 (3) Law Enforcement*
- *40 (5) Personal information*

Whilst not questioning the motives of the applicant by confirming information is held in relation to this request could allow those who seek to cause harm to disrupt such an event as it would by a process of elimination, enable individuals to identify if specific people or groups have or have not been subject of a police investigation or operation, leading to an increase of harm to either the investigation or operation itself or the subject(s) of it.

To confirm or deny that the requested information is held or provide details relating to any operation may 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. Therefore, confirmation or denial that information is held would compromise Wiltshire Police's ability to accomplish its core function of law enforcement.

Modern-day policing is intelligence led and information of the kind you are requesting, if held, needs to be treated with extreme sensitivity as it could have a detrimental effect on the operational effectiveness of Wiltshire Police. There are significant risks associated with the confirmation of such information in relation to any aspects of ongoing investigations or potential operations, as to provide such details would reveal which incidents or events have been of interest to the police, which would provide criminals of today with an insight into how the police operate, and people who wish to harm the citizens of Wiltshire with the opportunity of disrupting both future events of this type and also police activity. This could 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.”

4. Wiltshire Police's letter further set out the factors for and against confirming or denying whether the requested information is held, by reference to both s.30 (3) and s.31.(3) Wiltshire Police stated that the balance fell in favour of neither confirming, nor denying, that relevant information is held.
5. On 1 June 2022, the Appellant requested an internal review of Wiltshire Police's handling of her FOIA request. In her email to Wiltshire Police, the Appellant raised a number of issues which are repeated in her Grounds of Appeal to the Tribunal.

6. On 24 June 2022, Wiltshire Police wrote to the Appellant, maintaining its refusal following internal review.
7. On 12 September 2022, the Appellant made a complaint the Commissioner pursuant to s.50 with regard to the handling of her FOIA request by Wiltshire Police.
8. On 27 January 2023, upon completion of his investigation, the Commissioner issued the DN, which concluded that:
 - a. *Wiltshire Police was entitled to rely upon s.30(3) and s.31(3) to neither confirm nor deny whether the requested information is held; and*
 - b. *The public interest in neither confirming nor denying whether the requested information is held outweighs the public interest in disclosing whether Wiltshire Police holds the requested information.*
9. In the DN the Commissioner sets out clearly the public authority's reliance in this case on the qualified exemptions relied upon at s30(3) and s31(3) and provides detailed analysis explaining why the Commissioner has decided that Wiltshire Police was correct to rely upon section 30(3) to neither confirm nor deny (NCND) whether relevant information is held falling within the scope of the complainant's request.
10. The reasons for the decision and the careful application of the public interest test are set out at paragraphs 6 – 28 inclusive of the DN. The Tribunal accept and adopt that reasoning. We further accept the analysis explaining why the Commissioner has decided that Wiltshire Police was correct to rely upon section 30(3) to neither confirm nor deny (NCND) whether relevant information is held falling within the scope of the complainant's request.
11. Like the Commissioner, the Tribunal are unaware of any information within the scope of the request being held by the public authority but like the Commissioner we too accept that on the facts of this case the public authority

has acted appropriately. We too acknowledge the genuine interest and motive the Appellant has for seeking the information through the request. However, we agree with the Commissioner in their Response to the Grounds of Appeal that the appeal gives rise to three fundamental issues: i.e.

a. the applicability of s.30(3) and s.31(3);

b. the relevance of information already in the public domain; and

c. the balance of the public interest.

12. The Tribunal also accept and adopt the comprehensive reasoning as applied to the relevant Law and the public interest test in the circumstances pertaining to this appeal as set out in the Commissioners' Response to the Grounds of Appeal at paragraphs 24 – 40 inclusive.

13. For the avoidance of doubt, we are unanimous in our view that the DN contains no error of Law, nor any error in the exercise of discretion exercised by the Commissioner.

14. The Tribunal make some further comments which we hope may be of assistance to the Appellant;

a) Each case must be taken and considered on its merits. What one police force do in certain circumstances does not mean that all police forces will, or are bound to, adopt any such operational decisions or *modus operandi*.

b) Parliament introduced these important exemptions to protect criminal investigations and in doing so it must be recognised that the best placed individuals to recognise the import and applications of these exemptions are the public authorities implementing them. How could the Commissioner or this Tribunal be better placed to determine a reliance on these exemptions than a police force such as the public authority involved here with their vast experience in what are often complex criminal

investigations where secrecy can be paramount and accordingly in the public interest.

- c) As can be seen in this case, there is already much information in the public domain about the subject matter in general terms.
- d) When a live criminal investigation has been completed requests for information are no doubt treated differently and there are safeguards that will be available and will benefit the public interest where there is any evidence of malfeasance or inappropriate conduct on the part of any police force. See at paragraph 3 above in the letter dated 1 June 2022, the important and specific reasons why this police force engage the relevant exemptions.
- e) In the circumstances on the balance of probabilities in this case, the Tribunal accept the judgement of this public authority when it is so clearly argued. We gave considerable weight to the arguments from the police as to why they responded with NCND given the police expertise and the strong inherent public interest in the police being able to protect their investigations by issuing an NCND response. In all the circumstances and for the above reasons the Tribunal find no error of Law in the Commissioner's DN nor in the exercise of his discretion in arriving at his conclusions in the DN under appeal. Accordingly, we must refuse this appeal.

Conclusion:

15. In all the circumstances and for the above reasons the Tribunal must dismiss this appeal.

Brian Kennedy KC

15 December 2023.