

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 1 September 2014

**Public Authority:** Chief Constable of Essex Police

**Address:** Essex Police Headquarters  
PO Box 2  
Springfield  
Chelmsford  
Essex  
CM2 6DA

### Decision (including any steps ordered)

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1. The complainant has requested information about numbers of police officers on duty at a specific time. Essex Police has refused to provide this citing the exemptions at sections 31(1)(a), (b) and (c) (law enforcement) and 38(1)(a) and (b) (health and safety). The Commissioner's decision is that neither exemption is engaged. He therefore requires Essex Police to disclose the requested information.
2. Essex Police must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### Background

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3. Essex Police has provided the following general background information regarding its policing:

*"One of the key changes introduced in March 2012 as part of the Essex Police operational policing model, known as "Blueprint", was the concept of borderless policing. As part of borderless policing, the Force Control Room will risk assess incidents and allocate the nearest available and appropriate police resource to respond. Essex Police will always ensure that officers are available to respond to emergency incidents in both urban and rural parts of the county, 24 hours a day, 7 days a week.*

*Details of "Blueprint" can be found at:*

*[http://www.essex.police.uk/PDF/blueprint\\_briefing\\_210711.pdf](http://www.essex.police.uk/PDF/blueprint_briefing_210711.pdf)*

*Details of Essex Police's Neighbourhood Policing structure including the Southend area can be found at:*

*[http://www.essex.police.uk/my\\_neighbourhood.aspx](http://www.essex.police.uk/my_neighbourhood.aspx)*

*but in addition there are other areas of the Force that (see [http://www.essex.police.uk/about/our\\_structure.aspx](http://www.essex.police.uk/about/our_structure.aspx) ) that operate county wide i.e. Response & Patrol teams (part of Operational Policing Command) who operate across all neighbourhood policing boundaries providing support as required to Neighbourhood Policing Teams".*

4. Essex Police has also provided the following information to the Commissioner:

*"Numbers on duty in Southend that weekend were low due to abstractions elsewhere, in particular the two high profile murders in Colchester. Essex Police however can, and does, move officers around the county to meet the demands made on it. The number of officers available at that time was unusually low due to the demands required by the murder investigations".*

5. It went on to explain to him that, although it envisaged that this would be rare, there was an option to obtain resources from outside of the usual Local Policing Area, and also added that armed response officers would be on duty overnight and that these could assist if necessary.
6. Essex Police also explained other reasons why duty numbers could be affected, such as shift patterns, leave, sickness, etc, but added: *"The Force Resource Management Unit is tasked with ensuring sufficient numbers are on duty to meet expected demand".*

## Request and response

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7. On 24 June 2014, the complainant wrote to Essex Police and requested information in the following terms:

*"Can you please advise how many police officers were on patrol between 02:00am - 06:00am on Sunday 22nd June in the borough of Southend? I understand the borough of Southend to be from Shoebury up to Tattersall Gardens, Leigh On Sea - please confirm.*

*By police officers on duty, I am referring to officers that were patrolling the streets and responding to calls, but excluding those that are office based".*

8. Essex Police responded on 2 July 2014. It confirmed that it holds the requested information but advised that it was exempt from disclosure, citing sections 31(1) and 38(1) of the FOIA.
9. Following an internal review Essex Police wrote to the complainant on 16 July 2014. It maintained its position.

## Scope of the case

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10. The complainant contacted the Commissioner on 19 July 2014 to complain about the way his request for information had been handled. He asked the Commissioner to consider the withholding of the information. He also explained to the Commissioner:

*"My FOI requested was for information on the number of officers able to respond to a call in a specific area, between a specific period of time and on a one-off date in the past. Since I have not requested current or future staffing levels, I disagree that my requested information will be detrimental to Essex Police or its current inquiries in anyway".*

11. Although not specifically raised by the complainant, the Commissioner noted that Essex Police had not responded to that part of the request concerning the boundary of the borough of Southend. He pointed this out to Essex Police and they advised the complainant accordingly.
12. The Commissioner has considered whether or not the exemptions were properly cited by Essex Police.

## Reasons for decision

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### Section 31(1) – law enforcement

13. Section 31(1) states that:

*"Information which is not exempt information by virtue of section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] is exempt information if its disclosure under this Act would, or would be likely to, prejudice*

- a) the prevention or detection of crime,*
- b) the apprehension or prosecution of offenders,*
- c) the administration of justice".*

14. The public authority's arguments are that disclosure *would be likely* to cause this prejudice.

### Would disclosure be likely to prejudice law enforcement?

15. In *Hogan v the ICO and Oxford City Council*<sup>1</sup> the Information Tribunal stated that:

*"The application of the "prejudice" test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption... Second, the nature of the 'prejudice' being claimed must be considered... A third step for the decision-making concerns the likelihood of occurrence of the prejudice".*

16. The relevant applicable interests cited in this exemption are the prevention or detection of crime, the apprehension or prosecution of offenders and the administration of justice. Essex Police has only provided limited details about its areas of concern, none of which the Commissioner considers to relate to the administration of justice, so he will not consider this element any further. However, he accepts that the arguments made by Essex Police relate to the other applicable interests cited.

17. In order to accept that the exemptions are engaged, the Commissioner must be persuaded that the nature of the prejudice and the likelihood of

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<sup>1</sup> Appeal numbers EA/2005/0026 and EA/2005/0030

it occurring as a result of disclosure of the information in question is "*real, actual and of substance*", rather than trivial or insignificant. As part of this he must be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.

18. One of the arguments presented to the Commissioner in engaging this exemption is that: "*Release of that information would be misleading as it suggests the Essex Police relies purely on those officers to carry out duties in that area but that is not the case*". The Commissioner notes that the complainant only asks for the number of officers actually on patrol in a particular area, not the number that could be called in to resource the area if needed (see "*Background*" above). The Commissioner does not therefore accept that being potentially 'misleading' demonstrates a causal link between disclosure and the prejudice envisaged. He does not consider that the harm can be argued to be real, actual or of substance on this ground as it relies on a narrow interpretation of the figure requested and any disclosure can be provided alongside an appropriate explanation.
19. Essex Police has also argued that: "*Those with criminal intent could use this information to evade police, cause disruption in the area and put officers and / or members of the public at risk whilst also undermining the law enforcement role of the police*". However, the figure concerned is a 'one off' which Essex Police has advised may be 'misleading' as it does not indicate the usual level of policing which is available, nor what could be made available if needed (see paragraph 4 above). Therefore, the Commissioner does not accept that it would be of any real value to those with criminal intent and he again finds no causal link between prejudice and disclosure.
20. Essex Police has added that: "*Disclosing numbers, especially when they are recent, could allow the pattern of routine deployments to be identified*". However, it has advised the Commissioner that the figure on this occasion is not 'routine' and that the circumstances at the time were not ordinary. Therefore, the Commissioner does not accept that disclosure of a figure for an apparently unusual situation would be likely to result in any real or actual harm.
21. Further arguments have been submitted saying that disclosure: "*...could allow those with criminal intent to create an incident which distracted those officers to one place. Criminals could calculate that backup could be some time in arriving leaving those officers vulnerable, or allow incidents to take place elsewhere knowing that all local resources were in use*". The Commissioner does not accept that there is a causal link between this possibility and disclosure of the information in question; it is something which criminals could already seek to do if they were so minded.

22. Having considered the circumstances in this case the Commissioner does not accept that Essex Police has been able to demonstrate that any prejudice that it has tried to evidence is either real, actual or of substance. The request is for a single figure, for one point in time, for a particular location, which covered an unusual set of circumstances. There is no attempt to uncover any patterns or further policing capacity and Essex Police has already explained that, were it deemed necessary, it is able to bring in further resources from elsewhere. Accordingly it follows that the Commissioner finds that these exemptions are not engaged.

### **Section 38 – health and safety**

23. Section 38(1) of the FOIA provides that:

*"Information is exempt information if its disclosure under this Act, would, or would be likely to –  
(a) endanger the physical or mental health of any individual, or  
(b) endanger the safety of any individual".*

24. For the exemption to be engaged it must be at least likely that the prejudice identified would occur. Even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

25. In this case, Essex Police told the Commissioner that it considers that both sections 38(1)(a) and (b) are engaged.

26. In its refusal Essex police advised:

*"The exemption at s38 applies to 'any individual'. This may be a police officer, a witness, a member of the public, the applicant, friends and relatives etc and the harm may be actual or perceived. It refers to physical, mental, emotional, psychological etc types of harm".*

27. It gave no further reasoning for engaging the exemption and did not add to this at its internal review.

28. In correspondence with the Commissioner it identified the following harm:

*"Those with criminal intent could use this information to evade police, cause disruption in the area and put officers and / or members of the public at risk whilst also undermining the law enforcement role of the police.*

*Disclosing numbers, especially when they are recent, could allow the pattern of routine deployments to be identified. The health & safety of officers and the public are of paramount importance and Essex Police would not wish to divulge any information which could put any individual at risk".*

29. Essex Police advised the Commissioner that it believes disclosure "would be likely" to result in endangerment to the health and safety of the individuals referred to above.

***Is the exemption engaged?***

30. The test to be applied here as to whether endangerment "would be likely to" result is the same as that set out above in relation to section 31; the nature and likelihood of endangerment must be real, actual and of substance.
31. In respect of the arguments provided by Essex Police above, the Commissioner notes that it generally refers to police officers and the public, and its concerns that revealing staffing numbers would be likely to put both its officers and the public at risk.
32. As mentioned in his analysis of section 31 above, the Commissioner does not accept that disclosure of the information in question would reveal anything substantive about available policing resources. He again notes that the requested information is about the level of policing on a single, unusual occasion. It is not part of a pattern of requests and is an historic event covering only four hours.
33. The Commissioner does not accept that disclosure of the information in question would reveal anything substantive about available policing resources and he therefore does not accept that endangerment to health and safety is likely to be a realistic result of disclosure. The Commissioner therefore concludes that Essex Police has failed to demonstrate any causal link and, accordingly, he finds that the section 38 exemption is not engaged in this case.

**Other matters**

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34. Within his complaint the complainant advised the Commissioner:

*"Had I of been [sic] asked why I was appealing the original decision by Essex Police, I would have advised them that during the request timeframe, I had dialled 999 and waited 3 hours and 40 minutes for them to respond to a category 3 call. I feel this is unacceptable and*

*consequently wish to ascertain whether this was solely due to a lack of available officers”.*

35. The Commissioner notes that Essex Police has since arranged to meet with the complainant to address his concerns.



## Right of appeal

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36. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**