

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 January 2023

**Public Authority:** Chief Constable of Wiltshire  
**Address:** Wiltshire Police Headquarters  
London Road  
Devizes  
Wiltshire  
SN10 2DN

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Wiltshire Police regarding any police operations relating to hunt and anti-hunt activities in Wiltshire. Wiltshire Police refused to confirm or deny whether relevant information is held, and applied sections 30(3) and 31(3) of FOIA.
2. The Commissioner's decision is that Wiltshire Police was correct to refuse to apply the exemptions in sections 30(3) and 31(3) of FOIA.
  - The Commissioner does not require Wiltshire Police to take any steps.

## Request and response

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3. On 9 April 2022 the complainant wrote to Wiltshire Police and requested information in the following terms:

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?

4. Wiltshire Police responded on 1 June 2022. It neither confirmed nor denied whether relevant information is held. It applied the following exemptions: 30(3) (Investigations), 31(3) (Law enforcement), and section 40(5) (Personal information).
5. Following an internal review, Wiltshire Police wrote to the complainant on 24 June 2022. It upheld its initial position.

## Reasons for decision

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### **Section 30(3)- Investigations and proceedings conducted by public authorities.**

6. The following analysis explains 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.

7. Section 30(1) of FOIA provides that:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-

1. whether a person should be charged with an offence, or
  2. whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”
3. Section 30(3) of FOIA provides that:

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).”
  4. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information requested. The effect of section 30(3) is therefore that the public authority is not required to confirm or deny whether relevant information is held where the exemption in section 30(3) is applicable.
  5. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
  6. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
  7. Given the nature of the information requested, the Commissioner is satisfied that if information falling within the scope of parts 1 and 2 of the complainant's request were held, it could fall within the scope of the exemption in section 30(1), but that that may not necessarily be the case.
  8. Section 30(1) relates to the investigation of crimes rather than actions taken with the intention of deterring or preventing crime. There is a difference between information being held as part of a specific investigation, which would be likely to fall within the scope of section 30, and a police operation to deter criminal activity, which would not. The

latter would, however, potentially fall within the scope of section 31(1)(a) - the prevention and detection of crime. The Commissioner has considered the application of section 31, below.

9. Dependent upon the nature of the any operation, the Commissioner notes that it is hypothetically possible that information would be held falling within the scope of the complainant's request for information. For instance, a police operation could potentially include surveillance on the actions of specific individuals who are currently under investigation. The Commissioner therefore accepts that the exception is engaged.
10. The exemption is subject to the public interest test set out in section 2(1)(b) of the Act. It can only be maintained if, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information.

#### The public interest test

11. The public interest in confirming or denying whether the information is held can be summarised as follows:
  - There is a public interest in the police being transparent about its decision making and in its spending of public money.
  - There is a public interest in the Wiltshire Police Force being open to scrutiny about its activities.
  - There is a public interest in the policing of hunts, especially in a force such as Wiltshire.
  - A disclosure of the requested information would lead to a better-informed general public. It would promote public trust in the police and provide greater transparency in its activities, demonstrating openness and accountability. This would enhance public confidence in the police service.
12. The public interest in the exemption being maintained can be summarised as follows:
  - Confirming that information is held would potentially undermine the investigation.
  - There is a strong public interest in allowing the police to carry out investigations without these being undermined by ongoing operational information being disclosed.

- Confirming or denying whether relevant information is held would disclose information which may allow individuals or groups to avoid discovery.
  - Confirming or denying information is held may disclose whether any intelligence is held about planned activities. This could undermine the source of that intelligence.
  - Confirming information is held in relation to this request could enable individuals to identify if specific people or groups have, or have not, been the subject of a police operation. This could harm the investigation or the subject(s) of it.
13. The Commissioner notes the complainant's counter argument that other forces have disclosed similar information in the past. The Commissioner considers that that is a choice made by those forces bearing in mind the risks such disclosures might give rise to as compared to the benefits of disclosure. For instance, informing members of the public that an investigation is ongoing may allow them to aid the police with their investigation. Alternatively, it may alert those under investigation of the likelihood of a police presence. The decision by Wiltshire Police must therefore be made on its own merits, based upon the individual circumstances of the case.
14. The Commissioner has considered the arguments submitted by the complainant and Wiltshire Police. He is satisfied that the public interest in neither confirming nor denying whether information is held outweighs that in responding to the requirements of section 1(1)(a) of FOIA.
15. The Commissioner's decision is that Wiltshire Police was therefore correct to rely upon Section 30(3) in this case.

### **Section 31(3) - Law enforcement**

16. The following analysis explains why the Commissioner has decided that Wiltshire Police was correct to rely upon section 31(3) to neither confirm nor deny whether relevant information is held falling within the scope of the complainants request.
17. As noted above, section 1(1)(a) of FOIA requires a public authority to confirm whether it holds information falling within the scope of the request for information.

18. Amongst other things, section 31(1)(a) of FOIA provides that:

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice - the prevention or detection of crime.”
19. Section 31(3) provides that:

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”
20. Given the nature of the request, the Commissioner is satisfied that if information were held it in relation to parts 1 and 2 of the complainant's request, it would fall within the scope the exemption in section 31(1)(a).
21. He is also satisfied that confirming or denying whether such information is held would in itself prejudice any police operation which was currently ongoing. The exemption in section 30(3) was therefore correctly engaged by Wiltshire Police.
22. He is also satisfied that it would also apply to parts 3 and 4 of the request. This is on the basis that disclosing that MOU's exist with particular land owners would indicate that an operation is in place, or is planned in the future in a particular area.
23. Again section 31(3) is subject to the public interest test set out in section 2(1)(b) of FOIA.

The public interest test

24. The public interest in confirming or denying whether the information is held are the same as that explained in the analysis for section 30, above, in relation to operations carried out by the police.
25. The public interest in the exemption being maintained can be summarised as follows:
  - There is a strong public interest in allowing the police to carry out operations without being hindered or undermined by ongoing operational information being disclosed.
  - Confirming that information is held would undermine the operation if criminals were made aware of increased police activity in the area.
  - Confirming that no information is held may inadvertently increase the likelihood of unlawful or illegal activities being carried out in the area.

- Confirming or denying information is held may disclose intelligence about planned activities. This could undermine the source of that intelligence.
  - Confirming that information is held would disclose that there is likelihood of an increased police presence in that area. As such, those wishing to carry out unlawful or illegal activities may take steps to avoid this, such as moving their activities to other areas. On the counter side, if the force confirmed that no information is held, this might lead to them having increased confidence that they are less likely to be caught in that area.
  - Confirming or denying whether there are any MOU's with particular land owners, would identify relevant areas which police may be working within. This would undermine the police activity in those areas, and undermine the application of section 30(3) to parts 1 and 2 of the request.
26. The Commissioner notes, again, the complainant's counter argument that other forces have disclosed similar information in the past. For the same reason, he considers that the decision of Wiltshire Police must be made on its own merits and based on the individual circumstances of the case.
27. The Commissioner has considered the arguments submitted by both parties. Having considered the public interest factors, the Commissioner is satisfied that the public interest in Wiltshire Police neither confirming nor denying whether relevant information is held outweighs that in meeting the requirements of section 1(1)(a) of FOIA.
28. The Commissioner's decision is therefore that Wiltshire Police was correct to rely upon section 31(3) to withhold the information from disclosure in this case.

## Right of appeal

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

30. 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.
31. 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 .....**

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**