

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2013

Public Authority: The Chief Constable of Kent Police
Address: Kent Police Headquarters
Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant initially requested various categories of information from Kent Police regarding car crimes that had been committed in a particular ward. Kent Police refused this request on the basis of section 12 (cost limit) but invited the complainant to submit a refined request which he subsequently did. Kent Police provided the complainant with the information falling within a number of the categories of the refined request but withheld information within other categories on basis of section 40(2) (personal data) and section 30(1)(a) (investigations) of FOIA. The Commissioner is satisfied that all of the withheld information is exempt from disclosure on the basis of section 30(1)(a) of FOIA and furthermore that the public interest test favours maintaining the exemption. The Commissioner has also concluded that Kent Police provided the complainant with adequate advice and assistance in helping him to refine his initial request.

Request and response

2. On 16 October 2012, the complainant wrote to Kent Police (the Police) and requested information in the following terms:

'1) Provide details of all vehicle crime (vehicle interference, theft of, theft from, criminal damage etc) within the Crockenhill and Well Hill Ward for the last 5 calendar years (including 2012 to date figures) from Kent Police GENISIS crime database. Please can the information be provided in an excel format if possible (an excel spreadsheet has been provided with information required).

2) Provide the following general information regarding identified crime reports. URN for each record; date and times offence committed on from and to; venue of offence (address); venue type (driveway, road, garage etc) and venue X and Y co-ordinates.

3) Provide the following details of the vehicles involved in these crimes. Make; model; registration year; value if stolen; if stolen, was the vehicle recovered?; value of damage to the vehicle; details of damage to vehicle; were tools/weapons used?; details of tools/weapons used.

4) Is the victim of the offence a repeat victim of other vehicle crime?

5) Are there any named suspects/accused linked to the offences identified? If yes, is the suspect/accused linked to more than one of the identified offences and what offences are linked by suspect/accused.'

3. The Police contacted the complainant on 8 November 2012 and explained that his request was being refused on the basis of section 12 of FOIA because it estimated that the cost of complying with the request exceeded the appropriate cost limit of £450. As part of its duty to provide advice and assistance under section 16 of FOIA, the Police suggested removing the parts of the request that sought the following information: registration year; details of damage; whether a tool or weapon was used and if so what the type of tool or weapon used was. The Police explained that if these parts were removed the request could be fulfilled within the cost limit.
4. The complainant contacted the Police on the same day and asked it to respond to the refined request that had been suggested.
5. The Police responded on 13 November 2012 and provided the complainant with some of the information he had requested. This consisted of information falling within the following categories:

- Offence type;
 - Date committed on from;
 - Date committed to;
 - Venue type;
 - Vehicle make;
 - Vehicle colour; and
 - If stolen was vehicle recovered.
6. The Police withheld the information falling within the remaining categories on the basis of sections 30(1)(a) and 40(2) of FOIA. These categories were:
- Unique Reference Number (URN);
 - Time committed on from;
 - Time committed to;
 - Venue (address);
 - Venue X co-ordinates;
 - Venue Y co-ordinates;
 - Vehicle model;
 - Value (if stolen);
 - Value (damage);
 - Is the victim a repeat victim?;
 - Are there any names suspects/accused linked to the offence; and
 - Is the suspect/accused a repeat offender? If YES which offences have the same suspect?
7. The complainant contacted the Police on 13 November 2012 and asked for an internal review to be conducted. Although he accepted the decision to withhold the last three categories set out in the above list, and did not dispute the decision to withhold the URN, he did dispute the Police's decision to withhold the information falling within the scope of the remaining categories.
8. The Police informed the complainant of the outcome of the internal review on 5 December 2012. The review upheld the decision to withhold the information which the complainant still believed should be disclosed.

Scope of the case

9. The complainant contacted the Commissioner 11 February 2013 to complain about the way his request for information had been handled. The complainant argued that the information contained within the disputed categories of information could be disclosed without the individual victims of crime being identified, and thus the information was not exempt from disclosure on the basis of section 40(2), and that in

terms of section 30(1)(a) the public interest favoured disclosing the information.

10. For clarity, the disputed categories of information are:

- Time committed on from
- Time committed to;
- Venue (address);
- Venue X co-ordinates;
- Venue Y co-ordinates;
- Vehicle model;
- Value (if stolen); and
- Value (damage).

11. Furthermore, the complainant did not believe that the advice and assistance he was provided with was adequate because he was not informed that some of the information falling within the proposed refined request would be withheld.

Reasons for decision

Section 30 - investigations

12. The Police have argued that all of the information falling within the disputed categories is exempt from disclosure on the basis of section 30(1)(a).

13. Section 30(1)(a) of FOIA states that:

'(1) 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 –

(i) Whether a person should be charged with an offence, or

(ii) Whether a person charged with an offence is guilty of it'

14. Section 30(1) is a class based one; that is to say if information falls within the scope of any of the exemptions contained within section 30(1) then it is exempt from disclosure – there is no need for a public authority to demonstrate some level of prejudice in order for the exemption to be engaged.

15. The Police have explained that as all of the disputed information was clearly held for the purpose of investigating each of the individual crimes

the information clearly falls within the exemption provided by section 30(1)(a)(i).

16. The Commissioner does not contest this and accepts that all of the disputed information is exempt from disclosure of this exemption. However, section 30 is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining the exemption contained at section 30(1)(a)(i) outweighs the public interest in disclosing the information.

Public interest in disclosing the disputed information

17. As noted above, the complainant argued that disclosure of the information was in the public interest as analysis of this data, by the public, could identify a potential crime hotspot and reduce the burden placed on the Police of investigating such crimes in addition to reassuring local residents.
18. The Police accepted that disclosure of the disputed information would reflect its commitment to accountability and transparency. More specifically, the Police agreed that disclosure would allow the public to understand when property is most vulnerable to attack and to ensure that preventative measures are taken. The Police also accepted that by allowing the community to understand the problem of criminality they could take steps with the appropriate authorities, including the Police, to reduce crime in their area.

Public interest in maintaining the exemption

19. The Police argued that disclosure of the disputed information could prejudice both current and potentially future investigations into the offences in question whereby suspects may use the information to avoid self-incrimination during interview.
20. The Police also argued that the cumulative effect of disclosure under FOIA would erode the public's confidence in the police service's ability to protect information in accordance with legitimate expectations of confidence. This would lead to a reduction in information provided to the police service which would be to the detriment of police investigations, an outcome that was clearly not in the public interest.
21. Furthermore, the Police explained that it already undertakes detailed analysis of crime data and crime prevention strategies are formulated and communicated accordingly. Consequently, the Police argued that this negated the argument that there was a public interest in disclosure of the information to allow the public to undertake a similar analysis of this data.

Balance of the public interest test

22. In terms of attributing weight to the public interest arguments in favour of maintaining the exemption, in the Commissioner's view the Police's argument that disclosure of the withheld information risks undermining the public's confidence in how the police service will handle information provided to it is a compelling one and attracts significant weight. In reaching this view the Commissioner has taken into account the relatively small size of the ward in question – a population of approximately 1900 people; the specific nature of the withheld information; and, the specific nature of the information that has already been disclosed.¹ In light of these factors, the Commissioner accepts that the requested information, as a whole, could be used by those in the local community to identify *some* of the victims of car crime for the period covered by the request.
23. Furthermore, the Commissioner accepts that it is logical to argue that if particular victims of crime are identified by disclosures under FOIA by the Police the public's confidence in the police service as a whole would be undermined. The Commissioner accepts that this consequence creates a real risk of some sort of 'chilling effect' on the level and type of information the public will provide to the police service in the future. Such a consequence is clearly not in the public interest. The Commissioner does not believe that the likelihood of this consequence occurring is significantly undermined by the fact that only some, not all, of the victims are likely to be identified by disclosure of the withheld information in this particular case. This is because in the Commissioner's view the fact that even just some of the victims are likely to be identified is still sufficient to provide the public with reasonable and well-grounded concerns that information they provide in the future to the Police could lead to them being identified as victims of crime because of possible information disclosures under FOIA.
24. The Commissioner also accepts the logic of the Police's argument that disclosure of disputed information in all of the categories, with the exception of 'value (if stolen)' and 'value (damage)', risks undermining current or future investigations in the manner suggested. This is because the information in these categories would reveal a number of specific aspects and details of each of the individual crimes, e.g. approximate time of the crime, specific location and actual model of car which a suspect could use to avoid self-incrimination.

¹ <https://shareweb.kent.gov.uk/Documents/facts-and-figures/Population-and-Census/mye11-ward-level-population.pdf> – see page 13.

25. However, in terms of the information in the 'value (if stolen)' and 'value (damage)' categories, the Commissioner is not clear how this could be used to avoid self-incrimination in the manner suggested. With regard to these two categories, the Commissioner considers this argument to be somewhat speculative. Therefore, for the majority of the disputed information the Commissioner believes that there is a significant public interest in withholding the information in order to ensure that the effectiveness of investigations are not undermined. The only exception to this is the information contained with the categories of 'value (if stolen)' and 'value (damage)'; for these categories the Commissioner does not believe that the argument that disclosure would undermine the effectiveness of investigations should be accorded any particular weight.
26. In terms of the arguments in favour of disclosure, the Commissioner agrees that it would clearly be in the public interest for the local community to have a greater understanding as to the pattern of vehicle crime in their area so that they are in a stronger position to take preventive measures against such crimes. This argument should not be dismissed lightly. However, the Commissioner is not particularly persuaded that the public interest would be served to significant degree by the public being able to perform their own analysis of the disputed information. This is because, as the Police have explained, analysis of data such as this, along with other data, is already undertaken by the Police themselves. Whilst the Commissioner fully respects and recognises the complainant's own interest in performing his own analysis of this data, the value of this must be seen as limited in light of the Police's own work in this area, and in any event needs to be balanced against the public interest in maintaining the exemption.
27. In conclusion the Commissioner is satisfied that the public interest favours maintaining the exemption in relation to all of the withheld information. Disclosure of the information would no doubt provide the local community with information about crime in their areas, and moreover could assist individuals in taking preventative measures to guard against becoming victims of such crimes. However, there is a real risk that disclosure of this information could undermine the public's confidence in the how the Police would treat information provided to it and impact on the flow of information to the police service as whole in the future. Furthermore, for the majority of the Commissioner accepts that disclosure risks undermining the effectiveness of current and future investigations in relation to these particular crimes.
28. In light of his findings in relation to section 30(1)(a), the Commission has not gone on to consider whether the withheld information is also exempt from disclosure on the basis of section 40(2) of FOIA.

Section 16 – advice and assistance

29. Section 16(1) of FOIA requires public authorities to provide advice and assistance, as far as it would reasonable, to individuals who propose to make or have made requests for information. Section 16(2) explains that any public authority will have complied with the requirements of section 16(1) if it has conformed with the code of practice issued under section 45 of FOIA.

30. Paragraph 14 of the section 45 code of practice states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

'...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.'

31. In the Commissioner's opinion where a public authority has satisfied the requirements of the section 45 code of practice it will be deemed to have complied with section 16. The complainant has argued that although the Police provided him with advice and assistance so that his request could be answered within the cost limit, it failed to inform him that some of the requested data would actually be refused on the basis of a number of exemptions. The complainant therefore argued that the advice and assistance he was provided with was inadequate.

32. In submissions to the Commissioner the Police explained that the advice and assistance was provided in order to bring the scope of the request within the cost limit and no inference should have been drawn by the complainant that all of the information in the refined request would be disclosed. In the circumstances, the Police were of the view that the advice and assistance it provided was reasonable.

33. In the Commissioner's opinion it is clear that the Police met the requirements of paragraph 14 of the code of practice because it provided the complainant with adequate advice and assistance to allow him to submit a refined request that could be answered within the cost limit. With regard to the complainant's suggestion that the Police should have informed him that some of the information within the scope of his refined request may be withheld, the Commissioner notes that the code practice does not place any responsibility on a public authority to consider such issues. Rather, as discussed above, it simply requires a public authority to assist a complainant in bringing a request within the cost limit. Therefore, the Commissioner is satisfied that the Police also discharged its duty under section 16(1) of FOIA.

Other matters

34. Further to his finding in relation to section 16, the Commissioner notes that his guidance on this matter suggests that the wording of the code of practice should not be interpreted to mean that a public authority should not go beyond the provisions of the code as public authorities should try to be as helpful and flexible as possible.
35. Consequently, if when refusing a request on the basis of section 12 and assisting a requestor in refining their request, a public authority may wish to consider indicating, if possible, to a requestor whether the information falling within proposed refined request *may* be subject to exemptions. However, the Commissioner passes no comment as to whether the Police were in a position to provide such additional help to the complainant in this case, and in any event, for the reasons discussed in the main body of the decision notice, its 'omission' of such help does not mean that it failed to adequately advise and assist the complainant.

Right of appeal

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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

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