

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2020

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

Decision (including any steps ordered)

1. The complainant requested information relating to the yearly amounts Kent Police has paid informants and the upper limit payable.
2. Kent Police confirmed it held information within the scope of part (1) of the request for the yearly amounts paid but refused to provide it, citing sections 30(1) and (2) (investigations and proceedings) of the FOIA. It refused to confirm whether it holds information within the scope of part (2) of the request for the upper limit payable.
3. The Commissioner has investigated Kent Police's handling of part (1) of the request.
4. The Commissioner's decision is that Kent Police was entitled to rely on section 30(1) and (2) of the FOIA to withhold the requested information.
5. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

6. On 12 March 2020, the complainant wrote to Kent Police and requested information in the following terms:

"Please provide me with any information on

1.) *The yearly amounts Kent Police have paid Kent Informants for the period 2017/18, 2018/19 and 2019 to present.*

2.) *What is the upper limit Kent Police may pay an informant*

It is known that Kent Police has already released similar requested data as the BBC have reported that Kent Police paid - £1,029,145 between 2011 – 2016”.

7. Kent Police responded on 27 March 2020. It confirmed it held information within the scope of part (1) of the request but refused to provide it, citing sections 30(1) and (2) (investigations and proceedings) of the FOIA. In line with previous responses to similar requests, it did, however, provide the complainant with the *“median average spend on CHIS [Covert Human Intelligence Source] by Kent Police for the financial years 2001/02 to 2018/19”*.
8. Kent Police refused to confirm or deny whether it holds information within the scope of part (2) of the request, citing the following exemptions:
 - section 23(5) (Information supplied by or concerning certain security bodies);
 - section 24(2) (National security);
 - section 30(3) (Investigations and proceedings conducted by public authorities).
9. Following an internal review Kent Police wrote to the complainant on 27 April 2020. It maintained its original position, albeit citing a different subsection of section 30 in relation to part (1) of the request.

Scope of the case

10. The complainant contacted the Commissioner on 8 May 2020 to complain about the way part (1) of his request for information had been handled.
11. He disputed the information provided, arguing that “median average” is not a term used in statistics, and that “median” and “average” represent two different things.
12. He told the Commissioner:

“... the response by Kent Police is not satisfactory to the applicant. Disclosing the actual annual amounts paid would NOT the applicants believes [sic] prejudice any investigations or informants”.

13. As is her practice, the Commissioner wrote to the complainant setting out the scope of her investigation. She explained that the scope of her investigation is bound by the wording of the request. Accordingly, her investigation in this case relates to the timeframe specified, ie '*the period 2017/18, 2018/19 and 2019 to present*'.
14. While acknowledging the complainant's concerns about the 'median average spend' figure provided by Kent Police, the Commissioner reminded the complainant that such information was offered by Kent Police, in light of previous responses to similar requests, in order to assist.
15. In his response, the complainant confirmed his view that the figures provided by Kent Police are meaningless. He told the Commissioner:

"What is needed is the actual figures, releasing these would NOT prejudice Kent Police, nor would it reveal anything to place any organisation or person in danger".
16. The analysis below considers Kent Police's application of section 30 to the disputed information, namely information within the scope of part (1) of the request. During the course of her investigation, Kent Police confirmed its application of sections 30(1) and 30(2) to the information within the scope of that part of the request.

Reasons for decision

Section 30 investigations and proceedings

17. Section 30 of the 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,

(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 the power to conduct, or

(c) any criminal proceedings which the authority has power to conduct.

(2) Information held by a public authority is exempt information if-

(a) it was obtained or recorded by the authority for the purposes of its functions relating to-

(i) investigations falling within subsection (1)(a) or (b),

ii) criminal proceedings which the authority has power to conduct,

iii) investigations (other than investigations falling within subsection (1)(a) or (b) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or

iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and

(b) it relates to the obtaining of information from confidential sources".

18. Section 30 has two halves, subsection (1) concerns information held for particular investigations and proceedings which the public authority has the power or duty to conduct, while subsection (2) protects information relating to confidential sources.
19. In correspondence with the complainant, Kent Police told him:

"Whilst information for question 1 is held, it is exempt from release under FOIA as it is held for the purposes of specific criminal investigations conducted by the force and relates to confidential sources.... Kent Police considers that this information is exempt from disclosure by virtue of Section 30(1) and (2) – Investigations and Proceedings Conducted by Public Authorities".
20. During the course of the Commissioner's investigation, Kent Police confirmed that it considers that the withheld information is exempt under sections 30(1)(a) and (b) and 30(2).
21. As joint arguments were submitted in respect of both subsections, the Commissioner has considered these together.
22. Consideration of section 30 is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Is the exemption engaged?

23. Section 30 is a 'class based' exemption and as such it is not necessary to show that disclosure of the withheld information would, or would be likely to, result in any prejudice. It is enough that the information sought by the request should fall within the particular class of information described by the exemption.
24. The first step is to address whether the requested information falls within the class specified in sections 30(1) and 30(2) of the FOIA.
25. The request in this case relates to the yearly amounts Kent Police have paid Kent informants during a specified timeframe.
26. The Commissioner has issued guidance on section 30¹ which states:

"Section 30(1)(a) can only be claimed by a public authority that has a duty to investigate offences.

...

*Section 30(1)(b) also applies to investigations but the public authority only needs to have the **power** to conduct those investigations rather than a duty".*
27. In her guidance, she also accepts that, for information to be exempt under section 30(2), it must both relate to the public authority's investigations or proceedings **and** relate to confidential sources.
28. However, it does not have to be obtained or recorded as part of a particular investigation. It only has to be obtained or recorded by the public authority for the purposes of its functions relating to those investigations or proceedings.
29. The Commissioner recognises that confidential sources are an important means of gathering intelligence about criminals and other offenders. Section 30(2) exists to protect these sources and ensure they continue to provide information to the authorities.
30. The Commissioner acknowledges that Kent Police told the complainant:

¹ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

"The use of informants by the police service is well known".

31. During the course of her investigation, Kent Police provided the Commissioner with information in support of its view that the requested information is exempt from disclosure.

32. In its confidential submission, Kent Police acknowledged that payments of the type that are the subject of the request may not appear to constitute part of an investigation. However, it explained that such payments:

"... are very much part of the information held for the purposes of an investigation".

33. As a police force, Kent Police clearly has a duty to conduct criminal investigations by virtue of its core function of law enforcement. The Commissioner is also satisfied that it has the power to conduct investigations.

34. Although limited in what she is able to say due to the sensitive nature of the withheld information, the Commissioner is satisfied that Kent Police explained why it considers that payments to CHIS relate to its duty to investigate criminal offences.

35. With reference to the wording of the request, and mindful of the arguments provided by Kent Police, the Commissioner is satisfied that the requested payments are held in relation to investigations conducted by Kent Police of the type described in section 30(1)(a) and (b). She is therefore satisfied that the exemption provided by section 30(1) is engaged.

36. Taking into account the purpose and nature of informants, she is also satisfied that the information relates to the obtaining of information from confidential sources. It follows that she is satisfied that section 30(2) is also engaged.

The public interest test

37. Section 30 is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of the FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

38. In support of disclosure, the complainant told Kent Police:

"Disclosure of this information would inform members of the public as to how much Kent Police has paid to CHIS for information. This would promote awareness and accountability where expenditure of public funds is concerned and could lead to scrutiny of whether the expenditure is value for money in the circumstances. Release of this information would assist in any public debate on the police service's use of informants".

39. He told Kent Police that other police forces have put similar information into the public domain. He argued that such disclosures had not risked or prejudiced specific investigations, and that there was no risk to informants and confidential sources.

40. The complainant considered there was significant public interest in the topic of annual amounts paid to informants, and that this was:

"...reflected in the fact that so many press organisations have already run such articles".

41. Similarly, he argued that there has been "*widespread coverage*" of how much police forces have paid informants annually.

42. Kent Police acknowledged that other forces have disclosed information of the type under consideration in this case. However, it told the complainant:

"Whilst it is true that the police service nationally will usually adopt a common stance on issues, as a matter of law each force is a separate public authority for the purpose of the FOIA and is entitled to withhold information in accordance with the Act".

43. Kent Police recognised that disclosure of the requested information would promote awareness and accountability and could lead to scrutiny of whether the expenditure is value for money. It also recognised that:

"Release of this information would assist in any public debate on the police service's use of informants. Such debate may currently be based on a lack of information provision and could be subject to inaccurate rumour and speculation".

Public interest arguments in favour of maintaining the exemption

44. Arguing in favour of maintaining the exemption, Kent Police emphasised that CHIS is "*an extremely sensitive area of policing*".

45. Responding to the complainant's view that Kent Police "*would suffer no harm or prejudice by releasing the yearly figures requested*", Kent Police told him:

"CHIS are a unique and valuable resource in the prevention and detection of crime. The relationship between CHIS and their police handlers is based on trust and confidentiality. Whilst the data requested may appear to provide a basic level of information to members of the public, it is the view of Kent Police that releasing any information in relation to CHIS would be perceived as a breach of trust and confidentiality by CHIS".

46. In correspondence with the complainant, Kent Police addressed the issue of the impact of the disclosure of the requested information. It told him:

"It may be viewed by those not involved in the management of informants that a statistical number in itself is unlikely to cause any adverse effects. However, the subject has to be viewed more as a whole. Those determined to identify informants have the ability to use small pieces of information in order to build a more complete picture and it is the cumulative effect of information disclosures that the police service feels will lead to difficulties in recruiting and retaining informants".

47. It also told him:

"Disclosure of the totals paid to informants on an annual basis, and payment values, would have the capacity to reveal spikes in the information should a force need to mount a significant or large investigation. To demonstrate such a leap in payments may lead to criminals being able to associate the high figures in a given year to particular investigations, enabling them to identify CHIS, heightening suspicions around persons they suspect may be CHIS or even leading them to misidentify persons as covert sources.

Therefore the disclosure of this information may adversely affect public safety if the criminal fraternity are provided with a tactical advantage over the police. ...".

48. In correspondence with the Commissioner, Kent Police re-iterated what it had told the complainant, emphasising that disclosure of the annual CHIS spend would provide useful information to criminals regarding the extent of CHIS use. It explained that this would adversely affect the retention and recruitment of CHIS which would, in turn:

"... be extremely detrimental to police investigations".

49. It also confirmed that disclosure could undermine its ability to keep informants safe.
50. In favour of maintaining the exemption, Kent Police told the Commissioner that there is already spending oversight in this area of policing:

"Kent Police would strongly suggest that spending oversight in this area of policing is already undertaken by the Office for the Police and Crime Commissioner (OPCC). Any concerns could be readily raised with the OPCC for further action".

51. It also explained that an independent audit process, under the Audit Commission Act 1998, monitors all police expenditure.
52. Furthermore, Kent Police told both the complainant and the Commissioner:

"In addition, the Investigatory Powers Commissioner's Office (IPCO) scrutinises police activity in this area and reports to the prime minister on an annual basis. The IPCO chooses not to produce the requested information as part of its annual report, indicating the sensitivity it also considers in making such information widely available within the public domain. Such robust processes ensure that informants are not exploited or subject to inappropriate action".

Balance of the public interest

53. In accordance with her guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
54. In the circumstances of this case, she considers it important to recognise that the purpose of the section 30 exemption is both to protect the effective investigation and prosecution of offences and the protection of confidential sources.
55. In applying the public interest test in a case such as this, where this exemption is found to be engaged, the Commissioner must consider whether the disclosure of the requested information could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively, and in turn, increase the risk of harm to members of the public from offenders.
56. She also considers that there is a significant public interest in safeguarding the supply of information from confidential sources.

57. The Commissioner recognises that there is a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process. FOIA is a means of helping to meet that public interest, so it must always be given some weight in the public interest test.
58. The Commissioner acknowledges the importance of the public having confidence in those public authorities tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in respect of how public funds are spent.
59. She recognises that, in addition to the general public interest in transparency and accountability, and any public interest arising from the issue concerned, there may be a specific public interest in disclosing the information in question. The Commissioner accepts that the subject matter in this case – payments to informants - is a sensitive issue, and one that has received media attention.
60. The Commissioner is mindful of the role played by the IPCO and OPCC and the extent to which their functions address the public interest issues that arise in this case. Nevertheless, she acknowledges that disclosure of the requested information in this case would meet the public interest in transparency and accountability of Kent Police.
61. However, in the circumstances of this case, the Commissioner has given much greater weight to the arguments surrounding the public interest in protecting the ability of Kent Police to conduct effective investigations, and has taken into account that a vital element of many investigations and proceedings is the intelligence supplied by confidential sources.
62. She considers it important that section 30 serves to protect these sources so that they are not deterred from co-operating with public authorities, including the police.
63. Having considered the issues in this particular case, the Commissioner is satisfied that section 30(1) and (2) have been applied appropriately and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Right of appeal

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

65. 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.

66. 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

**Laura Tomkinson
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