

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 September 2022

Public Authority: Chief Constable of Cheshire Constabulary
Address: Police Headquarters
Clemonds Hey
Winsford
Cheshire
CW7 2UA

Decision (including any steps ordered)

1. The complainant has requested, from Cheshire Constabulary, information about the numbers of plants seized from a cannabis farm. Cheshire Constabulary refused to disclose the amount citing section 30(1)(a) (Investigations and proceedings) of FOIA.
2. The Commissioner's decision is that section 30 is properly engaged and that the balance of the public interest favours maintaining the exemption. No steps are required.

Request and response

3. Following an earlier related request, on 19 July 2021 the complainant wrote to Cheshire Constabulary and requested information in the following terms:

"Please can Cheshire police provide the number of cannabis plants found during the discovery of a cannabis farm(s) in adjoining units on Chadwick Road and Brindley Road in Astmoor, Runcorn, on April 15, 2021".
4. On 19 August 2021, Cheshire Constabulary responded. It refused to provide the requested information citing section 30(1)(a) (Investigations and proceedings) of FOIA.

5. The complainant requested an internal review on 19 August 2021.
6. Cheshire Constabulary provided an internal review on 8 October 2021 in which it maintained its original position, confirming reliance on section 30(1)(a)(i).

Scope of the case

7. The complainant contacted the Commissioner on 14 October 2021 to complain about the way his request for information had been handled. The Commissioner required further information from him which was provided on 22 October 2021.
8. The complainant asked the Commissioner to consider the application of an exemption to the request. He said:

"I'm a local journalist and, under FOIA, I asked Cheshire Constabulary to disclose the number of cannabis plants found at a cannabis farm discovered across two adjacent warehouse units at the junction of Brindley Road and Chadwick Road in Astmoor, Runcorn, on April 15.

... I would like to appeal this matter with the ICO, as Cheshire police's stance is not an appropriate use of Section 30(1)(a). It is also an implausible argument, given the ubiquity of general practice for police forces to reveal accurate estimates about the size of cannabis farms in terms of plant numbers. The FOI officer also cited an ICO finding that the exemption applies where disclosure would result in extra investigative pressure. Again I find this laughable. The force itself in one of its own neighbourhood newsletters published that the estimated worth was £2m. A press officer also said after the initial find that there were more than 1,000 plants. It's difficult for me to see how clarifying the figure can significantly add any pressure. To me it seems more like they're being difficult. This should really be a straightforward matter dealt with by the press office".

9. The Commissioner will consider the citing of section 30 below. He has viewed the withheld information.

Reasons for decision

Section 30 – investigations and proceedings

10. Section 30(1)(a)(i) of FOIA states:

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose 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...”

11. The Commissioner considers that the phrase “at any time” means that information can be exempt under section 30(1)(a) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
12. Consideration of section 30(1)(a)(i) 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?

13. The first step is to address whether the requested information falls within the class specified in section 30(1)(a)(i) of FOIA.
14. The Commissioner has issued guidance on section 30¹ which states that section 30(1)(a) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence.
15. The Commissioner’s guidance describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the guidance says:

“The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged. Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence...”.

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

16. Cheshire Constabulary has explained that it is: "... carrying out an investigation based on the discovery of cannabis plants, this is a criminal offence".
17. As a police force, Cheshire Constabulary has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. The Commissioner is therefore satisfied that it has the power to carry out investigations of the type described in section 30(1)(a)(i) of the FOIA.
18. The Commissioner is satisfied that the withheld information was held in relation to a specific investigation conducted by Cheshire Constabulary of the type described in section 30(1)(a)(i) of the FOIA. He is therefore satisfied that the exemption provided by section 30(1)(a)(i) is engaged.

The public interest test

19. Section 30(1)(a)(i) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
20. In accordance with his 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.
21. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is 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.

Public interest arguments in favour of disclosure

22. Whilst the complainant disagreed with Cheshire Constabulary's position he did not offer any public interest arguments to support disclosure. In his view, providing the requested figure would not "significantly add any pressure" to the force and he considered that it was "being difficult". He added that he thought: "This should really be a straightforward matter dealt with by the press office".
23. Cheshire Constabulary has argued that:

"Supplying the information held would allow the Police service to appear more open and transparent".

Public interest arguments in favour of maintaining the exemption

24. In its internal review, Cheshire Constabulary has relied partly on the 'safe space' argument contained in the Commissioner's guidance. It said that it needed to "fully explore all aspects of a case without fear that information will be reported in the press or enter the public domain. Such concerns would hinder the efficient running of an investigation if disclosed".
25. It said that it needed "space to investigate impartially and in accordance with conventional practices and principles ... and not the potential reaction to what they do and say if their analysis is published to the world at large". Whilst the request only seeks the number of cannabis plants seized, the Commissioner does understand that this disclosure in itself could raise further enquiries and be a distraction to those connected to the case.
26. Cheshire Constabulary was also concerned that, were it to disclose information which in turn gave rise to the investigation being prejudiced, then the public would lose confidence in it. This could result in a restriction to the flow of intelligence to the police as the public may be less inclined to provide information to not only Cheshire Constabulary but the police service in general.
27. Cheshire Constabulary also drew attention to its view that the general public's interest in the case appears to be "extremely minimal". It advised that the only media enquiries received by its Corporate Communications Team were by one journalist. It also said that there were only a small number of articles written about this investigation, all of which had zero comments on them. Whilst the Commissioner considers that this may reflect a lack of public interest, this may be because so little detail is publicly available at this time. He therefore affords this argument little weight.

Balance of the public interest

28. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in Cheshire Constabulary disclosing the requested information. The Commissioner has also considered whether disclosure would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.
29. As set out above, the purpose of section 30 is to protect the effective investigation and prosecution of offences. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.

30. Set against this, the Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases.
31. Cheshire Constabulary has provided the Commissioner with a more detailed submission explaining why it would not be in the public interest to disclose the requested information. The Commissioner is unable to reproduce that detail here as to do so would in itself be prejudicial. However, the requested information is of direct relevance and it is clear to the Commissioner why its disclosure would be prejudicial. Cheshire Constabulary has also confirmed: "This investigation was not complete at the time the freedom of information request was made".
32. In correspondence with the Commissioner, it added:

"The withheld information (the number of plants) is clearly an integral part of the investigation as it is the key evidence that the crime has taken place".
33. It explained that the specific number of plants would only be disclosed during a Police And Criminal Evidence Act (PACE) interview, or to a suspect's legal representative prior to an interview in a controlled custody environment. Were the specific number disclosed prior to this stage, it could impact on the Constabulary's ability to fulfil its investigatory functions. It explained:

"This is because if this information were known to the suspects outside of a controlled custody environment after an arrest had been made it would have given the suspects an "upper hand". It would allow the suspects to know the exact details Cheshire Constabulary knew regarding the plants and could allow the suspect to tailor an alibi based on knowing the exact number of plants that had been discovered".
34. Taking all the above into account and having given due consideration to the arguments put forward by both parties, while the Commissioner accepts that disclosing the withheld information would be likely to promote transparency, he considers that the public interest in disclosure is outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined.
35. The Commissioner is therefore satisfied that Cheshire Constabulary was entitled to rely on section 30(1)(a)(i) of FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Carolyn Howes
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