

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

### **Decision notice**

**Date:** 5 October 2022

**Public Authority:** Chief Constable of Hertfordshire Constabulary  
**Address:** Hertfordshire Constabulary Headquarters  
Stanborough Road  
Welwyn Garden City  
Hertfordshire  
AL8 6XF

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

---

1. The complainant has requested to know the number of visa fraud or human trafficking complaints made about a particular set of companies, and, if appropriate, the number of criminal charges brought as a result. Hertfordshire Constabulary would neither confirm nor deny whether it held the requested information, citing sections 31(3) (Law enforcement) and 40(5) (Personal information) of FOIA.
2. The Commissioner's decision is that Hertfordshire Constabulary was entitled to rely on section 31 to issue an NCND response.
3. The Commissioner requires no steps as a result of this decision.

#### **Request and response**

---

4. On 14 August 2021, the complainant wrote to Hertfordshire Constabulary and requested information in the following terms:

"Request 1: For each year, beginning from 01 Jan 2014 to the present day, please provide the number of reports/complaints/enquiries about

a) visa fraud and

b) human trafficking/labour exploitation/modern day slavery

in relation to the company [redacted] Company number [redacted] or any of its subsidiaries, such as [redacted] Company number [redacted]. This includes [redacted] Company number [redacted].

Request 2: Please provide the number of individuals charged with offences in connection with the reports, if any, identified in Request 1."

5. Hertfordshire Constabulary responded on 16 September 2021. It would neither confirm nor deny ('NCND') whether it held the requested information, on the grounds that the following exemptions were engaged:
  - Section 31(3) – Law enforcement (with the public interest favouring maintaining the exemption)
  - Section 40(2) – Personal information
6. The complainant requested an internal review on 16 September 2021. He argued that he was asking for numerical information, the disclosure of which would not be in conflict with law enforcement or personal privacy.
7. Hertfordshire Constabulary provided an internal review on 15 October 2021. It maintained that the exemptions cited had been applied correctly.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 23 October 2021 to complain about the way his request for information had been handled. He disagreed with Hertfordshire Constabulary's decision to issue an NCND response to the request and maintained that the information could be disclosed.
9. Hertfordshire Constabulary was given the opportunity to supply further supporting arguments, but, at the time of writing, it has not done so. The Commissioner has therefore considered the complaint by reference to the request for information and the responses Hertfordshire Constabulary provided to the complainant. In view of the level of detail provided by Hertfordshire Constabulary in its initial response, and the Commissioner's extensive experience of applying section 31 in a law enforcement context, he has not deemed it necessary to delay his

decision by giving Hertfordshire Constabulary further time to respond; it would not affect his findings.

## **Reasons for decision**

---

### **Neither confirm nor deny**

10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in a request.
11. The decision to use an NCND response will not be affected by whether a public authority does or does not in fact hold the requested information.
12. 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.
13. 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 in a single case being taken by requesters as an indication of whether or not information is, in fact, held.
14. Hertfordshire Constabulary has taken the position of neither confirming nor denying whether it holds the requested information, citing sections 31(3) and 40(5) of FOIA. The issue for the Commissioner to consider is not the disclosure of any requested information that may be held, it is solely the issue of whether or not Hertfordshire Constabulary is entitled to NCND whether it holds any information of the type described in the request.
15. Put simply, in this case the Commissioner must consider whether or not Hertfordshire Constabulary is entitled to NCND whether it holds information about reports/complaints/enquiries about the companies identified in the request and visa fraud or human trafficking.
16. The Commissioner is unaware as to whether or not the information described in the request is actually held by Hertfordshire Constabulary. He does not consider this to be necessary for him to reach a decision in this particular case.

### **Section 31 – law enforcement**

17. Section 31(3) of FOIA excludes a public authority from complying with the duty at section 1(1)(a) if to do so would, or would be likely to, prejudice any of the functions in section 31(1).

18. In its refusal notice, Hertfordshire Constabulary advised the complainant that it was relying on sections 31(1)(a) (the prevention or detection of crime) and (b) (the apprehension or prosecution of offenders) to issue an NCND response to the request.
19. When considering a prejudice based exemption such as section 31, the Commissioner will:
  - identify the applicable interests within the relevant exemption;
  - examine the nature of the prejudice, the likelihood of it occurring and that the prejudice claimed is real, actual and of substance; and
  - examine whether there is a causal link between confirming / denying and any prejudice claimed.
20. Hertfordshire Constabulary has identified the applicable interests, namely that confirmation or denial would, or would be likely to, prejudice the prevention or detection of crime and the apprehension or prosecution of offenders.
21. As Hertfordshire Constabulary has not specified the level of prejudice it envisaged, the Commissioner has assumed it to be the lower level of "would be likely to prejudice".
22. As regards the nature of the prejudice (ie the harm envisaged) its refusal notice to the complainant stated:

"Every effort should be made to release information under FOI, however to provide specific details of 'human trafficking' in certain circumstances would potentially harm the individuals where incidents have occurred [sic] could potentially compromise the evidence gathering process. Such instances are sensitive and potentially high profile, and anything which could add to public speculation and rumour could further jeopardise any future trial proceedings and subsequently the prosecution of offenders and the administration of justice.

Law enforcement is of paramount importance and Hertfordshire Constabulary will not divulge information if to do so would place victims of crime and vulnerable people at risk of being identified. Whilst there is a public interest in the transparency of policing activity and operations, and providing assurance that the Police Service is appropriately and effectively engaging with the threat posed by offenders involved in committing offences, there is also a strong public interest in safeguarding our victims and vulnerable members of the community."

23. The issue for the Commissioner to consider is whether confirming or denying whether Hertfordshire Constabulary holds information about complaints or allegations against the companies named in the request, regarding visa fraud or human trafficking, would be likely to harm the aforementioned law enforcement functions.
24. Hertfordshire Constabulary has argued that, as a principle, publicly confirming or denying that it holds information on criminal allegations about a particular party would be likely to undermine any current or future investigations, either by Hertfordshire Constabulary or an external agency, and to jeopardise the success of any subsequent prosecution.
25. The Commissioner considers that the requested information would be of significant value to anyone who believed they might be implicated in allegations of the type specified. Confirming or denying whether relevant information was held by Hertfordshire Constabulary, and whether or not information on charging was held (confirmation would imply that at least one person had been charged, while denial would suggest no charges) would impart information which would help those concerned to gauge the extent to which they might have evaded detection, and would potentially assist them to continue doing so. This would clearly prejudice the functions in sections 31(1)(a) and (b) of FOIA.
26. Hertfordshire Constabulary has also argued that, if criminal offences of the type described have been reported, publicly confirming/denying that it holds information on them would be likely to place any individuals involved at increased risk of harm.
27. Although the exemption at section 31 is primarily concerned with protecting law enforcement functions, rather than with the welfare of individuals, the fact that section 31(1)(a) relates, in part, to the prevention of crime means that it may be engaged where disclosure (in this case, via confirming or denying) might make someone more vulnerable to crime<sup>1</sup>.
28. Drawing on his previous experience of applying section 31 in a policing context, the Commissioner understands that, in some cases, confirming whether particular criminal allegations have been received could place someone who may have had perceived grounds for making such

---

<sup>1</sup> See the Commissioner's guidance on section 31, paragraph 19, <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

allegations, at risk of reprisal, regardless of whether or not they actually had made the allegations.

29. The Commissioner therefore accepts Hertfordshire Constabulary's position that, if it were to confirm or deny that it holds information within scope of the first part of the request, it could potentially be providing information about anyone who might have reported a concern to it, which might place them at risk.
30. The Commissioner also considers that, for the reason outlined above, section 31 may be necessary for the protection of future investigations. Disclosing information (by way of confirming that information is held) which leads to someone being placed at risk in this way could create a perception among victims and witnesses, that, when dealing with the police, confidentiality could not be guaranteed.
31. This would particularly be the case if they were aware that the information they provided (or, indirectly, information about an incident that had been reported to which they were linked) could be disclosed to the world at large in response to an FOIA request, at some point in the future and in circumstances sitting outside of legislative criminal justice processes.
32. As such, the Commissioner considers that confirmation or denial in this case would be likely to inhibit people from contacting Hertfordshire Constabulary (or any law enforcement body) with similar concerns in the future. This could make it more difficult for the relevant agencies to gather evidence and intelligence in future investigations, thereby prejudicing their success.
33. On the evidence considered above, the Commissioner is satisfied that there is a causal relationship between confirming and denying and likely prejudice to the functions at section 31(1)(a) and (b) of FOIA. He considers that the prejudice envisaged is real, actual and of substance. Section 31(3) of FOIA is therefore engaged.

### **Public interest test**

34. Section 31 is subject to the public interest test, as set out in section 2 of FOIA. This means that although section 31 is engaged, confirmation or denial must still be provided unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying.

### **Public interest is confirming or denying**

35. Hertfordshire Constabulary has acknowledged that there is a general public interest in confirming or denying whether information is held. This is because it promotes accountability and transparency and helps to

maintain the public's confidence and trust in Hertfordshire Constabulary's execution of its duties, particularly as regards protecting particularly vulnerable members of society.

### **Public interest in maintaining the exemption**

36. Hertfordshire Constabulary's position is that confirmation or denial could discourage people from voluntarily providing information to it. The police service should not disclose information which could identify investigative activity, and subsequently undermine those processes. To do so would hinder the prevention or detection of crime and may hinder any court proceedings.
37. Hertfordshire Constabulary has a duty to protect vulnerable victims and witnesses. To protect them from possible further endangerment it is necessary to not disclose information which might be capable of exposing them to further risk.
38. To provide information in response to this request may open up to similar requests being submitted where minutia detail can be obtained which increases the chances of identification. There is significant harm in identifying someone as the victim of any crime.

### **Balance of the public interest**

39. The Commissioner recognises the public interest in promoting transparency and public understanding with regard to decisions made by public authorities.
40. The Commissioner notes from its annual report that the parent company identified in the request had consolidated revenues of £2.2 billion and a workforce of more than 38,000 people worldwide. It would be a very serious matter if a company of its size had been the subject of the types of allegations or complaints described in the request (although the Commissioner also recognises that whilst such claims may be made in good faith and require further investigation, equally, they may be totally unfounded).
41. While this is an argument in favour of transparency, the Commissioner also considers it to be a strong argument in favour of maintaining the exemption. There is a clear public interest in protecting the investigative and prosecution processes in such cases. Maintaining the confidentiality of communications between victims and witnesses, and the police, and other agencies, is an essential part of that process.
42. Were witnesses and victims concerned that information about the existence of any complaints they might make could find their way into the public domain, it seems likely that this would deter them from seeking help, and also that suspects may be deterred from cooperating.

The Commissioner believes this to be a particularly strong argument in favour of maintaining the exemption, as it could ultimately undermine the success of criminal proceedings if information and intelligence cannot be sought and given in full expectation of confidence.

43. The Commissioner also agrees that it is not in the public interest that, by seeking help, vulnerable victims and witnesses should be placed at further risk of harm.
44. Taking all the above into account, and bearing in mind that an NCND response needs to be applied consistently, across multiple requests, to prevent inferences being made from its application in a single case, the Commissioner has concluded that, in this case, the public interest in maintaining the exemption outweighs that in disclosure. His decision is therefore that Hertfordshire Constabulary was entitled to rely on section 31(3) to issue an NCND response.
45. As the exemption has been applied to the information in its entirety the Commissioner has not found it necessary to consider the other exemption cited.



## **Right of appeal**

---

46. 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)

47. 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.
48. 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 .....**

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