

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

### **Decision notice**

**Date:** 29 November 2022

**Public Authority:** Chief Constable of Humberside Police  
**Address:** Humberside Police HQ  
Priory Road  
Hull  
HU5 5SF

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

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1. The complainant has requested information about any predictive policing programmes that Humberside Police is currently using or trialling. Humberside Police confirmed that it was trialling a predictive algorithm but it refused to disclose any information about it, citing sections 31(1)(a) and (b) (Law enforcement) of FOIA. During the Commissioner's investigation it agreed to withdraw its application of section 31 to all but one part of the request.
2. The Commissioner's decision is that Humberside Police has not demonstrated that either section 31(1)(a) or (b) is engaged in respect of the remaining part of the request. He also finds that Humberside Police breached sections 10(1) and 17 of FOIA by failing to state why the exemption applied within the statutory time for compliance.
3. The Commissioner requires Humberside Police to take the following steps to ensure compliance with the legislation.

Issue a fresh response to parts (2) – (7) of the request, stating, for each part, whether recorded information is held, and if it is held, disclosing it.
4. Humberside Police must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 2 December 2021, the complainant wrote to Humberside Police and requested information in the following terms:

"By predictive policing programmes, we mean any police programme that involves the inputting of data and production of outputs that are used to predict where and when crime will happen, usually either by identifying areas of 'high crime' or individuals who are likely to commit or be victims of crime. Usually but not always predictive policing programmes use algorithms or artificial intelligence to evaluate police data and make productive decisions. In addition to 'predictive policing programmes' you may refer to these programmes as 'individual risk assessment programmes', etc...

Please answer the following questions.

1. Is Humberside Police currently trialling/using, or does it have plans to trial/use, any predictive policing programme?

If the answer to question 1 is yes, please answer questions 2 to 7 in respect of each programme trialled/used or for which there are plans to trial/use.

2. What is the name given to this programme?
3. When was the programme first used/trialled?
4. How does this programme work? Specifically:
  - a. Please explain the purpose of the programme.
  - b. Please provide any documents that outline the scope and operation of the programme.
5. Please provide any guidance/policies governing Humberside Police's use of this programme.
6. Please provide any Privacy Impact Assessment, Data Protection Impact Assessment and/or Equality Impact Assessment conducted in relation to this programme. Please provide the dates when these assessments were conducted. If no such assessments were conducted, please state as such.
7. What testing and/or research has been conducted in order to investigate the potential for bias within the programme, in order to comply with Humberside police's Public Sector Equality Duty under s149 Equality Act 2010?

6. On 4 January 2022, Humberside Police responded. It stated:

“As part of a predictive policing programme Humberside Police is currently trialling a predictive algorithm. Therefore we currently cannot provide any further information.”
7. The complainant requested an internal review, asking Humberside Police to specify its grounds under FOIA for refusing the request. On 31 January 2022, Humberside Police confirmed it was relying on sections 31(1)(a) and (b) of FOIA to refuse the request. The complainant expressed further dissatisfaction with this, but Humberside Police maintained that the exemption had been applied correctly.

### **Reasons for decision**

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8. The Commissioner considers that Humberside Police has answered part (1) of the request, as it confirmed to the complainant that it is trialling a predictive algorithm.
9. During the Commissioner’s investigation, Humberside Police said that it was no longer relying on sections 31(1)(a) and (b) in respect of points (2), (3), (5), (6) and (7) of the request and that it could respond to those questions. It should now take the action set out in paragraph 3, above.
10. The Commissioner has therefore considered the application of sections 31(1)(a) and (b) to withhold the information requested at point (4) of the request.
11. Sections 31(1)(a) and (b) of FOIA state that information is exempt from disclosure if its disclosure would, or would be likely to, prejudice:
  - the prevention or detection of crime; or
  - the apprehension or prosecution of offenders.
12. These exemptions are subject to a prejudice test, which involves a number of steps:
  - One of the law enforcement interests protected by sections 31(1)(a) and (b) must be shown to be harmed by the disclosure.
  - The prejudice claimed must be real, actual or of substance. Therefore, if the harm was only trivial, the exemption would not be engaged.

- The public authority must be able to demonstrate a causal link between the disclosure and the harm claimed.
  - The public authority must then decide what the likelihood of the harm actually occurring is, ie would it occur, or is it only likely to occur?
13. It is a public authority's responsibility to show the Commissioner why it should be allowed to refuse a request. It is not for the Commissioner to provide a public authority with arguments in support of withholding information.
  14. Although the Commissioner asked Humberside Police for a copy of the withheld information and an explanation as to why sections 31(a) and (b) were engaged, Humberside Police did not furnish him with this information. Instead, it merely re-stated that section 31 was engaged. In terms of the further analysis of section 31 that the Commissioner had asked for, it simply said that it was "unknown what harm/risk" disclosure would pose.
  15. The Commissioner has considered whether Humberside Police's response to the complainant offers additional clarity. In its internal review, it argued that disclosure of the requested information "would" prejudice the prevention or detection of crime and the apprehension or prosecution of offenders, for the following reasons:

"Disclosure of the considerations documented in the early stages of a potentially new aspect to policing in Humberside...would undermine the positive impact any proof of concept may have...To disclose publicly all the options Humberside Police explored and considerations around each of these would undermine the final decision and the policing purpose."
  16. From the information provided to him, the Commissioner is not satisfied that Humberside Police has demonstrated that either the prevention or detection of crime, or the apprehension or prosecution of offenders, would be harmed by the disclosure of the withheld information. Beyond asserting that prejudice to its law enforcement functions "would" occur as a result of disclosure, it has not identified what that harm is, or whether it is real, actual or of substance. Mindful of Humberside Police's comment that it did not know what harm disclosure would pose, the Commissioner considers that he has not been presented with any cogent or credible evidence which would lead him to conclude that prejudice "would" occur or even that it "would be likely to" occur.

17. His decision is therefore that Humberside Police has not shown that section 31(1)(a) or (b) of FOIA is engaged in respect of the information requested in part (4) of the request. In view of this decision, it is not necessary to consider the public interest test.
18. Humberside Police should therefore take the action set out in paragraph 3, above.

### **Procedural matters**

19. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them. Where a public authority considers the information is exempt from disclosure, section 17 of FOIA requires it to issue a refusal notice, identifying the applicable exemption.
20. Section 10(1) of FOIA requires these actions to be taken within 20 working days of receipt of the request.
21. In this case, Humberside Police confirmed that it held the information and refused to disclose it, within 20 working days. However, it did not identify the applicable FOIA exemption until 31 January 2022, 39 working days after it received the request. It therefore breached sections 10(1) and 17 of FOIA.
22. The Commissioner has made a note of the delay for monitoring purposes.

## Right of appeal

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

24. 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.
25. 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**