

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 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 copies of complaints (and any associated records) made to Hertfordshire Constabulary in connection with local elections. Hertfordshire Constabulary disclosed two redacted crime report documents and applied the exemptions at section 31 (Law enforcement) and section 40 (Personal information) of FOIA to withhold information.
2. The Commissioner's decision is that Hertfordshire Constabulary was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse to disclose the withheld information.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 18 May 2022, the complainant wrote to Hertfordshire Constabulary and requested information in the following terms:

"I am writing to make an Open Government Request for all the information to which I am entitled under the Freedom of Information Act 2000.

During local elections and during the prior canvassing period it appears that complaints were made to Herts Police and / or the Election Single Point of Contact (SPOC) from individuals, local political parties or current councillors.

With the above in mind, please provide me with:

Copies of all complaints either written or verbal involving private individuals, local candidates or political parties within the areas covered by Three Rivers District Council whether successful or not.

I believe the timescales starting January 2021 to end of May 2022.

My request is specific to both district and parish elections.

Associated letters and documents and records of verbal conversations relating to the above.

If this request is too wide or unclear, I would be grateful if you could contact me, as I understand that under the Act, you are required to advise and assist requesters. If any of this information is already in the public domain, please can you direct me to it, with page references and URLs if necessary?

If the release of any of this information is prohibited on the grounds of breach of confidence, I ask that you supply me with copies of the confidentiality agreement and remind you that information should not be treated as confidential if such an agreement has not been signed."

5. Hertfordshire Constabulary responded on 17 June 2022. It disclosed two heavily redacted reports of alleged canvassing infringements, recorded as "non-crimes". It said that it was withholding information which was exempt from disclosure under section 40(2) of FOIA.
6. Following an internal review, Hertfordshire Constabulary maintained that section 40(2) had been correctly applied. It added that the withheld information was also exempt from disclosure under section 31(1)(g), by virtue of section 31(2)(b) (the purpose of ascertaining whether any person is responsible for any conduct which is improper).

Reasons for decision

7. Section 31 of FOIA provides a prejudice-based exemption which protects a variety of law enforcement interests. Hertfordshire Constabulary said that section 31(1)(g) was engaged by virtue of section 31(2)(b), which protects information which is held for the purpose of ascertaining whether any person is responsible for any conduct which is improper.
8. However, it was clear from the arguments that Hertfordshire Constabulary supplied that its main concern is that disclosure would be likely to undermine its future law enforcement capabilities. As such, Hertfordshire Constabulary's arguments lend themselves more directly to the application of sections 31(1)(a) and (b) of FOIA. These

subsections state that information is exempt if its disclosure would, or would be likely to, prejudice:

- the prevention or detection of crime; and
 - the apprehension or prosecution of offenders.
9. It is not for the Commissioner to provide a public authority with arguments in support of withholding information. However, where his experience suggests that the arguments that have been provided to him are more appropriate to an exemption other than the one that has been cited, he is entitled to intervene (and he considers it in the public interest to do so) to apply the correct exemption himself, to prevent the disclosure of information which he considers would otherwise be exempt.
 10. Therefore, the analysis below considers whether Hertfordshire Constabulary was entitled to apply sections 31(1)(a) and (b) of FOIA to refuse to disclose the remaining withheld information. The Commissioner recognises that there is some overlap between subsections 31(1)(a) and 31(1)(b) and he has therefore considered them together.
 11. The Commissioner has not viewed the withheld information but he understands that it concerns information about complaints made to Hertfordshire Constabulary in relation to local elections in 2021 and 2022. As a police force, Hertfordshire Constabulary has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. This can include offences under the Political Parties Elections and Referendums Act 2000 and the Representation of the People Act 1983.
 12. Consideration of sections 31(1)(a) and (b) is a two-stage process - even if the exemptions are engaged, the information must be disclosed unless the public interest in maintaining the exemptions outweighs the public interest in disclosure.
 13. In considering the first stage, the Commissioner accepts that the potential prejudice described by Hertfordshire Constabulary in its response to the complainant clearly relates to the interests which the exemptions at sections 31(1)(a) and (b) of FOIA are designed to protect. It argued that disclosure of the withheld information has the potential to undermine the future flow of information (intelligence) it receives from members of the public about improper conduct.
 14. The Commissioner is also satisfied that the prejudice being claimed by Hertfordshire Constabulary is "real, actual or of substance," and that there is a causal link between disclosure and the prejudice claimed. It is logical to argue that disclosing the information in question could create a

perception among victims and witnesses that, when dealing with the police, confidentiality cannot be guaranteed.

15. This would particularly be the case if they were aware that the information they provided (or, indirectly, information about an incident in which they were implicated) 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.
16. As such, the Commissioner considers that disclosure in this case would be likely to inhibit people from contacting Hertfordshire Constabulary (or any law enforcement body) to raise concerns, in the future. This could make it more difficult for the relevant agencies to gather evidence and intelligence in future criminal investigations, thereby prejudicing their success.
17. The Commissioner is therefore satisfied that there is a causal relationship between disclosure and likely prejudice to the functions at sections 31(1)(a) and (b) of FOIA. He is satisfied that the exemptions are engaged.
18. Next in the two-stage process, the Commissioner must consider whether the public interest in maintaining the exemptions at sections 31(1)(a) and (b) of FOIA outweighs the public interest in disclosing the information.
19. In balancing the public interest arguments, the Commissioner recognises the public interest in promoting transparency and public understanding with regard to decisions and actions taken by public authorities that are tasked with upholding the law. He therefore recognises the need for transparency and accountability on the part of the police.
20. However, appropriate weight must be afforded to the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that may compromise the police's ability to accomplish its core function of law enforcement.
21. In that respect, he recognises that there is a very strong public interest in protecting the law enforcement capabilities of a police force and he considers that appropriate weight must be afforded to the public interest inherent in the exemptions – that is, the public interest in avoiding prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders.
22. There is a clear public interest in protecting society from crime, and in ensuring investigative processes are not undermined or rendered less effective. Maintaining the confidentiality of communications between complainants and the police is an essential part of that process. The

Commissioner notes that those who contact Hertfordshire Constabulary to raise concerns would not expect their reasons for complaining, or their correspondence, to be published, which is, in effect, what disclosure under the FOIA amounts to. Similarly, someone implicated as a suspect would, rightly, not expect that information about them would be publicly shared by Hertfordshire Constabulary, for non-policing purposes.

23. Were witnesses, victims and suspects concerned that information they provide to the police could find its way into the public domain, it seems likely that this could deter them from coming forward with intelligence information or from cooperating with future investigations.
24. The Commissioner believes this to be a particularly strong argument in favour of maintaining the exemptions, as it could ultimately undermine the success of criminal proceedings if information and intelligence cannot be sought and given in full expectation of confidence.
25. The Commissioner has considered whether it would be possible for Hertfordshire Constabulary to disclose information with identities redacted. However, drawing on his previous experience of applying section 31 in a policing context, he understands that, in some cases, simply disclosing that particular criminal allegations have been received could allow inferences to be made about who they might be about or who might have made them. For the reasons set out above, he considers that this would result in a loss of confidence in the confidentiality of communications between complainants and the police, which is not in the public interest.
26. In the circumstances of this case, the Commissioner considers that the public interest in maintaining the exemptions outweighs the public interest in disclosing the information. It follows that Hertfordshire Constabulary was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse to disclose the withheld information.
27. In light of his findings, the Commissioner does not consider it necessary to consider the other exemption cited.

Right of appeal

28. 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

29. 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.

30. 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
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Wycliffe House
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Wilmslow
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SK9 5AF