

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2023

Public Authority: Chief Constable of Lincolnshire Police
Address: Information Management Unit
Police Headquarters
PO Box 999
Lincoln
LN5 7PH

Decision (including any steps ordered)

1. The complainant submitted a request to the Chief Constable of Lincolnshire Police ("Lincolnshire Police") for information and correspondence between the Chief Constable and the Police and Crime Commissioner in relation to the reduction of the number of PCSOs.
2. The Commissioner's decision is that Lincolnshire Police was entitled to rely on sections 31(1)(a) and (b) of FOIA to withhold information in relation to questions one and three of the request, but that Lincolnshire Police incorrectly applied section 21(1) of FOIA to question three. He also considers that on the balance of probabilities, Lincolnshire Police does not hold any information within the scope of question two of the request. However, he finds that by failing to confirm this, Lincolnshire Police breached section 1(1) of FOIA.
3. The Commissioner does not require further steps, as a result of this decision notice.

Request and response

4. On 5 March 2023, the complainant wrote to Lincolnshire Police and requested information in the following terms:
 - “1. The “Plan” which the Chief Constable (CC) put forward to the Police and Crime Commissioner (PCC) that resulted in this January 2023 BBC Look North programme.
 2. Any correspondence between the CC and the PCC since the time that the “Plan” was submitted.
 3. Any explanation where the CC or the PCC demonstrated that there was ‘no other option’ than to cut PCSO numbers; whilst at the same time proposing the employment of 41 others.”
5. On 30 March 2023, Lincolnshire Police responded, confirming that it held the information but that it was exempt from disclosure under sections 40(2), 31(1), 21 and 22 of FOIA.
6. Upon receiving this response, the complainant submitted an internal review on 31 March 2023 and on 11 April 2023, Lincolnshire Police provided its internal review response and maintained its reliance on sections 40(2), 31(1)(a) and (b) and 21(1) of FOIA. It also disclosed a redacted copy of the Priority Based Budgets document.

Scope of the case

7. The complainant contacted the Commissioner on 5 May 2023 to complain about the way their request for information had been handled.
8. During the Commissioner’s investigation, Lincolnshire Police claimed that it did not hold any information within the scope of question two of the request.
9. The Commissioner, therefore, considers the scope of this case to be to establish whether on the balance of probabilities, Lincolnshire Police holds any information within the scope of question two, and to examine its application of sections 31(1)(a) and 31(1)(b) to questions one and three, and section 21(1) to question three of the request.
10. Should sections 31(1)(a) and 31(1)(b) not apply to questions one and three of the request, the Commissioner will go on to consider the application of section 40(2) to the withheld information.

Reasons for decision

Section 1 (Held/Not Held)

11. Section 1(1) of FOIA states that:

Any person making a request for information to a public authority is entitled-

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

12. When a public authority receives a request for information it has two obligations under section 1(1) of FOIA. Firstly, it must explicitly confirm or deny whether it holds the information in question. Secondly, if it does hold that information, it must either provide a copy to the requester or issue a refusal notice. If it receives a request that contains multiple elements, its response must be clear about which information it holds and which it does not.

13. In submissions to the Commissioner, Lincolnshire Police described the searches it had carried out for the requested information. These included "searching all incoming and outgoing mail between the CC and the PCC". It further explained that this search was performed by the CC's Executive Assistant who has full knowledge of all correspondence.

14. Lincolnshire Police used search terms of "PBB" (Priority Based Budgeting) and "PCSO". It also explained that it searched relevant folders on hard drives and the personal computer of the CC's Executive Assistant which includes "networked resources and emails".

The Commissioner's decision

15. On the balance of probabilities, the Commissioner is satisfied that Lincolnshire Police does not hold any information with regards to question two of the complainant's request. However, the Commissioner finds that by failing to confirm that it does not hold information within the scope of question two, Lincolnshire Police breached section 1(1) of FOIA.

Section 31-law enforcement

16. Sections 31(a) and section 31(b) of FOIA allows a public authority to withhold information if its disclosure under the Act would, or would be likely to, prejudice the prevention or detection of crime and the apprehension or prosecution of offenders.
17. In order for section 31 to be engaged, the following criteria must be met:
 - the actual harm which the public authority claims would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemptions (in this case, the prevention or detection of crime and the apprehension or prosecution of offenders);
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
 - it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
18. Lincolnshire Police has stated that disclosing the requested information would reveal areas and roles within the force which are potentially vulnerable and "disclose exactly where there are operational fragilities".
19. It further explains that releasing information, in relation to the 'Plan' would "allow those with malicious intent to undermine the force's position and to target weaker areas now or in the future."
20. Furthermore, in disclosing the requested information, Lincolnshire Police explains that it "risks individuals in targeted roles becoming aware of this and then pre-emptively moving to alternate roles or potentially leaving the force all together". This would then lead to an unplanned reduction in operational capacity in certain roles.
21. Lincolnshire Police explained that all of this could then lead to a lack of confidence in the force by both its staff and members of the public, which could further jeopardise its law enforcement processes.
22. The Commissioner accepts that disclosure of the requested information 'would be likely' to have a prejudicial effect on Lincolnshire Police's law enforcement activities, for the reasons given above.

23. Having viewed the withheld information, the Commissioner is also satisfied that the prejudice being claimed is "real, actual or of substance" and that there is a causal link between disclosure and the prejudice claimed.
24. Having considered all the circumstances in this case, the Commissioner has therefore decided that sections 31(1)(a) and 31(1)(b) are engaged. He has therefore gone on to consider the public interest.

Public interest test

25. Sections 31(1)(a) and (b) are qualified exemptions and are subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosure.
26. In balancing the public interest arguments, the Commissioner accepts that there is a public interest in how police forces are funded. He also considers that there is a public interest in Lincolnshire Police being transparent around its decision making, in order to maintain confidence in its ability to provide an appropriate level of protection.
27. However, he also accepts that to disclose the information requested would risk revealing potential vulnerabilities and areas of weakness, within the organisation of Lincolnshire Police. This could then jeopardise its law enforcement capability, and compromise public safety if it were to be used by criminals or potential criminals.
28. Furthermore, the Commissioner is aware that there has been information released into the public domain, regarding the reasoning behind the reduction of PCSO numbers¹.
29. The Commissioner is sympathetic to the complainant's concerns about the staffing levels of PCSOs and their value to communities, however he considers that disclosing information in this case would negatively impact Lincolnshire Police's primary role of law enforcement for the reasons set above.

¹ <https://www.lincolnshirelive.co.uk/news/lincoln-news/lincolnshire-police-crime-commissioner-proposes-8085177>
<https://thelincolnite.co.uk/2023/01/lincolnshire-police-to-cut-psco-numbers-by-almost-half/>

30. The Commissioner concludes that the public interest in maintaining the exemption outweighs the public interest in disclosure, and therefore Lincolnshire Police was entitled to rely on sections 31(1)(a) and (b) to withhold the information in relation to questions one and three of the request.
31. As the Commissioner has considered that sections 31(1)(a) and (b) applies to the withheld information, in relation to questions one and three of the request, he has not gone onto consider the application of section 40(2).

Section 21

32. Section 21 of FOIA provides that information which is reasonably accessible to the applicant is exempt information.
33. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test, if the requested information is exempt.
34. In its initial response and internal review, Lincolnshire Police explained that some information, relating to the topic of PCSO cuts was already in the public domain and it provided a link² to it.
35. Having viewed the information provided in the link, whilst relating to the topic, the Commissioner does not consider this falls within the scope of the request. In any event, in the Commissioner's guidance³, on section 21, it states that if information is held, but is covered by another exemption, then section 21 cannot apply because for that very reason, the information is not readily accessible to the requester.

The Commissioner's decision

36. The Commissioner's decision is that Lincolnshire Police has incorrectly applied section 21 of FOIA to question three of the request as the information in the link is not within scope. If it were, section 21 could not be applied as the information is exempt from disclosure under sections 31(1)(a) and (b).

² <https://www.bbc.co.uk/news/uk-england-lincolnshire-65055769>

³ <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

Right of appeal

37. 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

38. 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.
39. 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...

Joanna Marshall
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Wycliffe House
Water Lane
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