

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2023

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
Weston Road
Stafford
ST18 0YY

Decision (including any steps ordered)

1. The complainant requested vehicle-related insurance details. Staffordshire Police provided some information, said some of it was not held and refused to provide the insurance costs, citing section 43(2) of FOIA – the exemption for commercial interests. The complainant was only concerned with the application of section 43(2) of FOIA.
2. The Commissioner's decision is that Staffordshire Police was entitled to reply on section 43(2) of FOIA in relation to the withheld insurance costs for the reasons set out in this notice.
3. No steps are required as a result of this decision.

Request and response

4. On 3 May 2023, the complainant wrote to Staffordshire Police and requested information in the following terms:
 - "1. I would like you to confirm how the Service indemnifies vehicles against third party risks, either by placing a bond or purchasing an insurance policy. Please also confirm if these vehicles are registered on the MID and how these are maintained (be it by insurance company, list submitted to court)
 2. If this is by bond, who holds the financial asset, what is the value of this bond, and how many vehicles does this cover (with a breakdown of car, van, truck etc.).

3. If this is by insurance, please provide a copy of the certificate of insurance and appropriate policy information, confirm how much this insurance costs, who the underwriter is, how many vehicles this covers and when the policy is up for renewal. Finally, please confirm how the Service tenders out its vehicle insurance requirements.”
5. Staffordshire Police responded on 24 May 2023 and provided the information for part 1 of the request. It said that no information was held for part 2. For part 3, Staffordshire Police provided some information within the scope of the request but refused to provide the remainder (insurance costs). It cited section 43(2) of FOIA – the exemption for commercial interests and said that the public interest test favoured maintaining the exemption.
6. The complainant requested an internal review on 28 May 2023, in relation to Staffordshire Police’s reliance on section 43(2) of FOIA only. He made reference to “the contract” and asked for all clauses to be released that were not caught by section 43 (see ‘Scope’ section below).
7. Staffordshire Police provided its internal review on 2 June 2023 in which it maintained its original position. No reference was made to the complainant’s point about “the contract”.

Scope of the case

8. The complainant contacted the Commissioner on 14 June 2023 to complain about the way his request for information had been handled, which mainly centred on the public interest test associated with section 43 of FOIA. However, he highlighted that Staffordshire Police had not consulted the supplier and said the “entire contract” had not been released (minus any section 43 redactions).
9. The Commissioner’s initial view, having considered the wording of this request, is that the complainant did not request a copy of “the contract”. However, he asked Staffordshire Police for its view.
10. On 8 August 2023, as part of its investigation response, Staffordshire Police advised the Commissioner that it had logged the contract related issue as a new request and would respond to that separately. The Commissioner supports this approach and so has disregarded the complainant’s concerns about “the contract” being withheld.
11. The Commissioner has considered whether Staffordshire Police was entitled to rely on section 43(2) of FOIA to refuse to disclose the remaining requested information, specifically the insurance costs requested at part 3 of his request.

Reasons for decision

Section 43 – commercial interests

12. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
13. Staffordshire Police has explained that disclosing the insurance costs would prejudice both its own commercial interests and those of the “agencies/companies involved”. It has explained that release of the insurance costs would be advantageous to other commercial competitors and could, in the future, drive the insurance premium higher.
14. First, the Commissioner is satisfied that the harm Staffordshire Police envisages relates to commercial interests; its own and those of the agencies/companies involved in the provision of insurance. Second, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice; that which Staffordshire Police has explained to the Commissioner.
15. However, the arguments presented do not persuade him that the level of harm demonstrated meets the higher threshold of ‘would’ prejudice, as argued by Staffordshire Police. He will therefore consider the lower level of ‘would be likely to’ prejudice through the public interest test.

Public interest test

Arguments in favour of disclosure

16. The complainant submitted the following in favour of disclosing the insurance cost:

“...the Force acknowledge that it is in the public interest for the taxpayer, to know how their money is spent. They go on to say that, in defence, it would impact their competitive bidding. Information itself being public would not harm commercial interests, but rather would make the market more competitive as others would know what the final bid chosen consisted of. Best value for money cannot be assessed by speculation”.

17. Staffordshire Police recognised that disclosure would allow the public to be aware of how public funds are spent and thereby provide transparency and accountability.

Arguments in favour of maintaining the exemption

18. Against disclosure, Staffordshire Police argued that its negotiating position “would be greatly impaired by releasing detail that would not

only be prejudicial to Staffordshire Police but also to the agencies/companies involved. Releasing this information would have a detrimental effect on their ability to be competitive in the future”.

Balance of the public interest

19. As stated above, the Commissioner does not accept that that the envisioned prejudice 'would' happen, and instead considers that 'would be likely' is relevant in this case..
20. The Commissioner acknowledges the need for openness, transparency and accountability particularly where public funds are being utilised.
21. However, the Commissioner also recognises the necessity for Staffordshire Police to protect its own commercial interests as well as those of the commercial businesses it deals with. The Commissioner accepts that those commercial interests must be protected so that the best possible value for money can be obtained through open competition in the procuring and provision of insurance.
22. The Commissioner recognises that disclosure of the requested insurance costs would be likely to impair Staffordshire Police's ability to negotiate future tendering to secure the best value for money and that it would not be in the public interest to impair business relationships and jeopardise this process.
23. Having considered the arguments of both parties, the Commissioner has decided that there is greater public interest in protecting Staffordshire Police's commercial interests and those of the agencies/companies involved in the provision of its insurance and that this will result in its using tax payer funding as efficiently as possible. On balance therefore, the Commissioner finds that the public interest favours maintaining the section 43 exemption in this case.

Right of appeal

24. 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

25. 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.

26. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**