

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 November 2023

Public Authority: Chief Constable of Cambridgeshire Constabulary

Address: Constabulary Headquarters
Hinchingsbrooke Park
Huntingdon
Cambridgeshire
PE29 6NP

Decision (including any steps ordered)

1. The complainant requested information relating to police vehicles. Cambridgeshire Constabulary provided some information but refused to provide the remainder, citing section 31(1)(a)(b) (law enforcement) of FOIA.
2. The Commissioner's decision is that Cambridgeshire Constabulary failed to demonstrate that section 31 is engaged.
3. The Commissioner requires Cambridgeshire Constabulary to take the following step to ensure compliance with the legislation:
 - disclose to the complainant the information it identified as falling within the scope of Q3 and Q4 of the request, details of which were provided to the Commissioner in the course of his investigation.
4. Cambridgeshire Constabulary must take this step 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 March 2023, the complainant wrote to Cambridgeshire Constabulary and requested information in the following terms (numbering added for reference):

“Please could you supply me with the following information:

- Q1) How many BMW vehicles with an N57 engine the does the [sic] force have and use? These will include, but not be limited to, such models as the 330, 330d, 530d, 5 series etc. (All forces have been issued with guidance about cars with this engine, so the force will know which cars have it).
- Q2) For what purpose are these cars used?
- Q3) What restrictions, if any, has the force imposed on usage of these cars? Eg, including, but not limited to, setting an upper speed limit or advising drivers not to sit with the engine idling.
- Q4) What special maintenance of these cars, if any, has been implemented? Eg, including, but not limited to, more frequent oil changes or inspections”.

6. Cambridgeshire Constabulary responded on 9 March 2023. It cited section 12 (cost of compliance) of FOIA.
7. Following an internal review, Cambridgeshire Constabulary wrote to the complainant on 24 April 2023 revising its position. While it confirmed that it would exceed the cost limit to provide all the requested information, it provided some information in scope of the request. It also advised that it holds further information in relation to the request, but refused to provide it, citing section 31(1)(a)(b) (law enforcement) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way their request for information had been handled. They considered that the responses they had received were contradictory.
9. Specifically, they asked the Commissioner to consider the response to those parts of the request relating to what usage restrictions, if any, the force imposes and what extra maintenance they carry out. The Commissioner notes that this is in line with their request for an internal

review when they asked whether they could be provided with details of the guidance issued to drivers and any enhanced maintenance within the appropriate limit.

10. The Commissioner is mindful that in this case, the requester received a response covering information relating to three police forces. In its submission to the Commissioner, Cambridgeshire Constabulary confirmed what the requester had explained – namely that the request has been sent to more than one police force. It said that it had provided a collaborated response relating to information held by Bedfordshire, Cambridgeshire and Hertfordshire police forces.
11. For the purposes of this decision notice, Cambridgeshire Constabulary is the public authority.
12. During the course of the Commissioner's investigation, Cambridgeshire Constabulary clarified its response, explaining that it was no longer relying on section 12 and confirming its application of section 31 to the withheld information.
13. It accepted that the reference to section 12 should have been removed from the internal review correspondence sent to the complainant.
14. In correspondence dated 1 November 2023, it provided the Commissioner with the additional information it holds that falls within the scope of Q3 and Q4 of the request, information that it considers is exempt by virtue of section 31(1).
15. The analysis below considers whether Cambridgeshire Constabulary is entitled to rely on section 31(1) to withhold that information.

Reasons for decision

Section 31 law enforcement

16. Section 31(1) of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
17. In this case, Cambridgeshire Constabulary is relying on subsections (1)(a) and (b):

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,”

18. Section 31 is a prejudice-based exemption. This means a public authority can only rely on it where disclosing the information (or confirming or denying that it holds the information) could cause harm. To demonstrate the harm, it must satisfy a prejudice test.
19. In a case such as this, where section 31 is relied on, the Commissioner expects a public authority to answer the following three questions:
 - “Which law enforcement interest(s), protected by section 31, could be harmed by the disclosure?
 - Is the harm you have identified real, actual or of substance and is there a causal link between disclosure and that harm?
 - What is the likelihood of that harm actually occurring: would it occur, or is it only likely to occur?”
20. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

Cambridgeshire Constabulary’s position

21. In its submission to the Commissioner, Cambridgeshire Constabulary said:
 - “... there has still been risk identified in any additional information being released to that provided on the 24th April 2023”.
22. In support of its application of section 31, Cambridgeshire Constabulary put forward arguments that apply where disclosure could prejudice the prevention or detection of crime or the apprehension or prosecution of offenders. For example, it argued that disclosure would harm the force’s operational ability and assist those intent on committing crime to avoid detection.

The Commissioner’s view

23. The Commissioner accepts that a public authority can rely on more than one sub-section of the section 31 exemption. However, he expects the public authority to be clear on which sub-section(s) it is relying on and why each sub-section applies.
24. The Commissioner has considered the arguments put forward by Cambridgeshire Constabulary, both in its correspondence with the complainant and in its submission to the Commissioner.

25. He accepts that its arguments relate to the prevention or detection of crime and to the apprehension or prosecution of offenders – the law enforcement interests protected by section 31(1)(a) and (b).
26. With respect to the likelihood of harm occurring, he accepts that Cambridgeshire Constabulary considers that harm would occur as a result of disclosure.
27. However, the Commissioner is not satisfied that Cambridgeshire Constabulary has demonstrated a causal link between disclosure of the information it confirmed it holds and the harm it has identified.
28. In other words, he is not satisfied that it has demonstrated that disclosing the withheld information relating to Q3 and Q4 of the request could harm efforts to prevent or detect crime or to apprehend or prosecute offenders.
29. The Commissioner recognises the importance of protecting information which, if disclosed, is capable of undermining either civil or criminal law enforcement.
30. However, on the evidence provided, and taking the wording of Q3 and Q4 of the request into account, the Commissioner is not satisfied that Cambridgeshire Constabulary has demonstrated that the exemption provided by sections 31(1)(a) or (b) is engaged.
31. Having reached this conclusion, it has not been necessary to go on to consider where the balance of the public interest lies.

Right of appeal

32. 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

33. 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.
34. 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

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF