

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2023

Public Authority: Chief Constable of Northamptonshire Police
Address: Wooton Hall
Northampton
NN4 0JQ

Decision (including any steps ordered)

1. The complainant has requested information from Northamptonshire Police regarding specified misconduct proceedings. Northamptonshire Police withheld the requested information citing section 31 of FOIA (law enforcement), section 32 of FOIA (court records), section 38 of FOIA (health and safety) and section 40 of FOIA (personal information).
2. The Commissioner's decision is that Northamptonshire Police was correct to rely on section 31 of FOIA to withhold the requested information. As this applies to all the withheld information, the Commissioner has not considered Northamptonshire Police's application of the exemptions at section 32, section 38, and section 40 of FOIA.
3. The Commissioner also considers that Northamptonshire Police breached section 10(1) of FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days. He does not require the public authority to take any further steps.

Request and response

4. On 8 June 2023, the complainant wrote to Northamptonshire Police and requested information in the following terms:

"This request relates to the misconduct hearing into [name redacted], which concluded this week. Please can you provide me with an electronic copy of the following:

A copy of the panel's bundle containing the documentary evidence that was before them.

A copy of the hearing transcript (or, if there is no transcript, a copy of the audio recording)"

5. Northamptonshire Police responded on 1 August 2023 and refused to provide the requested information citing sections 31(1)(a) and (b) of FOIA, section 32(1)(c) of FOIA and section 40(2) of FOIA.
6. Following an internal review, Northamptonshire Police revised its position to include sections 38(1)(a) and (b) of FOIA and section 31(1)(g) by virtue of section 31(2)(b) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 5 July 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether Northamptonshire Police are correct to withhold the requested information under sections 31(1)(a) and (b) and 31(1)(g) by virtue of section 31(2)(b) of FOIA.

Reasons for decision

Section 31- law enforcement

9. Section 31 provides a prejudice-based exemption which protects a variety of law enforcement interests. Consideration of this exemption is a two-stage process. Firstly, for the exemption to be engaged it must be at least likely that disclosure would prejudice one of the law enforcement interests protected by section 31 of FOIA. Secondly, the exemption is subject to a public interest balancing test. The effect of this is that the information should be disclosed if the public interest favours this, even though the exemption is engaged.
10. Northamptonshire Police has applied sections 31(1)(a), (b) and (g) together with section 31(2)(b) to withhold all the requested information.
11. The relevant parts of section 31 of FOIA provide that:

12. "(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 and detection of crime
 - (b) the apprehension or prosecution of offenders... and
 - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)
- (2) The purposes referred to in subsection (1)(g) to (i) are –
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.
13. The Commissioner will therefore consider whether Northamptonshire Police exercises a relevant function for the purposes specified in subsection (g) above. He will also consider the nature and likelihood of prejudice to the functions as set out in sections 31(1)(a) and (b) and the functions as set out in section 31(1)(g) by virtue of section 31(2)(b) if the withheld information were to be disclosed and whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Northamptonshire Police's functions under section 31(1)(g) for the purposes of section 31(2)(b)

14. For the exemption to be engaged, the Commissioner requires the function identified by the public authority in relation to section 31(1)(g) to be a function which is specifically entrusted to that public authority to fulfil.
15. Northamptonshire Police has stated that it has the power to conduct misconduct investigations and/or institute criminal proceedings. In this case, Northamptonshire Police say that the withheld information was obtained for the purposes of its investigations into whether the officer concerned had committed misconduct in public office. The Commissioner is aware of the function imposed by the Police (Conduct) Regulations 2020, and he is satisfied that this is a relevant function which falls under section 31(1)(g) for the purposes of 31(2)(b) of FOIA and is one which is specifically entrusted to police forces including Northamptonshire Police to fulfil.

Is the exemption engaged?

16. In order to be engaged, the following criteria must be met:

- a. first, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, to the prevention or detection of crime, the apprehension or prosecution of offenders and the function for the purpose of ascertaining whether any person is responsible for any conduct which is improper).
 - b. secondly the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the withheld information and the prejudice which the exemption is designed to protect. Furthermore, the alleged prejudice must be real, actual or of substance; and,
 - c. thirdly 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 or would be likely to result in prejudice.
17. In relation to the lower threshold, i.e., would be likely, the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility. Rather, there must be a real and significant risk. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.
18. The Commissioner has considered whether Northamptonshire Police has demonstrated a causal link between disclosure of the withheld information and the prejudice that section 31 and the relevant subsections are designed to protect against. In the Commissioner's view the disclosure must at least be capable of harming the purpose or function in some way, such as having damaging or detrimental effect on it.

The complainant's position.

19. The complainant does not consider section 31 to be applicable because they argue that Northamptonshire Police have already voluntarily put all the requested information into the public domain at the hearing. They contend that if any of it would result in harm to Northamptonshire Police's law enforcement abilities, it would have applied for a reporting restriction or a private hearing.

Northamptonshire Police's view

20. In line with its duty to enforce the law, prevent and detect crime as well as protect the community, Northamptonshire Police have argued that the information it holds has been obtained and created for policing purpose. It also argues that the withheld information was obtained for

the purposes of Northamptonshire Police's investigations into whether the officer concerned had committed misconduct in public office, which is consistent with its duty to conduct investigations and/or institute criminal proceedings.

21. It explained that it relies on witnesses to come forward to provide information, statements of fact and potentially attend misconduct hearings. It argues that potential witnesses may be discouraged from coming forward with information if they knew that their evidence would not only be used for the proceedings but also disclosed to the world at large where it will remain in perpetuity. Whilst it agrees that misconduct hearings are held in public, it contends that giving evidence in public cannot be equated to disclosure under FOIA to the world at large. Northamptonshire Police argue that disclosing the requested information could risk prejudicing or undermine any ongoing and/or future investigations as well as legal proceedings linked to these matters.
22. Northamptonshire Police have stated that an appeal has been launched against the misconduct panel's findings. It maintains that to disclose the information relating to ongoing matters would likely hinder investigations, prejudice the process and any decisions that are to be made. It also argues that disclosure could impact future complaint investigations as well as the public's cooperation in reporting offences to the Northamptonshire Police. It contends that this will in turn prejudice the Northamptonshire Police's ability to prevent and detect crime and apprehend and prosecute offenders. Northamptonshire Police maintain that this will also affect its ability to protect the community.

Likelihood of prejudice

23. The Commissioner considers that it is not enough for information to relate to the interests protected by section 31(1)(a)(b) and (g), however its disclosure must also at least be likely to prejudice those interests. The burden is on the public authority to explain how the prejudice would arise and why it would occur. The Commissioner considers that the prejudice test is not a weak test, and a public authority must be able to point to the prejudice which is 'real, actual or of substance'.
24. The information that has been withheld by virtue of this exemption comprises the panel's bundle containing the documentary evidence that was before them and a transcript of the disciplinary proceedings that was held in public. The Commissioner has considered the arguments put forward by Northamptonshire Police in respect of the occurrence of the alleged prejudice.
25. Based on the above arguments the Commissioner is satisfied that Northamptonshire Police has demonstrated a real and significant risk of the prejudice occurring. The Commissioner is satisfied that the potential

prejudice that Northamptonshire Police has stated would be likely to occur, if the withheld information were disclosed, is real, actual and of substance and that there is a causal link between the disclosure of the withheld information and the prejudice against which section 31(1)(a), (b) and (g) are designed to protect.

26. The Commissioner is satisfied that disclosure of the withheld information would likely cause prejudice to Northamptonshire Police's ability to carry out its functions under 31(1)(a), (b) and (g) for the purposes as set out in section 31(2)(b) of FOIA and hence he is satisfied that the exemption is engaged.

Public interest test

27. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at sections 31(1)(a) and (b) of FOIA outweighs the public interest in disclosing the information requested by the complainant.
28. Northamptonshire Police agrees that disclosure would provide transparency and accountability in police activities in order to maintain confidence and trust with the public. It also recognises that the public interest in transparency and accountability is strengthened by the fact that police misconduct is a topic of particular public interest.
29. Northamptonshire Police considers that there is an obvious and weighty public interest in an effective and efficient police misconduct regime. It maintains that disclosure would cause real, actual, or substantial prejudice to the effective and efficient operation of that system and the public interest in its disclosure would need to be extremely compelling to outweigh it. It states that releasing information relating to tactics or capabilities about ongoing policing operation, would enable potential predators to know how police forces operate. It argues that this would jeopardise the ability of the police to carry out its duty and negatively affect the Northamptonshire Police's ability to prevent and detect crime or apprehend and prosecute offenders.
30. Northamptonshire Police recognises that whilst it is widely known that police forces use covert tactics as part of their delivery of effective operational law enforcement, it argues that, to reveal tactical resources available to the force would likely undermine policing. It contends that if this request was submitted nationally and the information disclosed, this awareness would provide a geographical picture of the tactical capabilities of each individual force. In addition, Northamptonshire Police argue that offenders would likely be aware of tactics and capabilities used and could take evasive action to avoid detection.

31. When balancing the public interest, Northamptonshire Police acknowledges the public interest in transparency and openness however it also argues that there is a greater public interest in ensuring that the public are protected, and the enforcement of law is upheld.

Commissioner's conclusion

32. The Commissioner recognises that police misconduct hearings are of particular interest to the public as it gives the public confidence and trust that police forces are carrying out their responsibilities effectively. However, he also recognises that there is a greater public interest in avoiding prejudice to the prevention or detection of crime, the apprehension or prosecution of offenders and other functions as set out in section 31(1)(g) by virtue of section 31(2)(b). The Commissioner is mindful that the information also relates to an ongoing police operation and considers that the disclosure of information could potentially impact such operation by revealing police tactical processes and capabilities.
33. The Commissioner is satisfied that there is greater, wider public interest in Northamptonshire Police being able to conduct its current and future enforcement operations without the potential risk that such operations could be compromised by the disclosure of information into the public domain. It must be noted that the Commissioner is in no way dismissive of the public interest in disclosing information for the purposes of transparency and accountability. However, in the circumstance, he considers that there is significant public interest in withholding the information, which outweighs that in disclosure.
34. Therefore, the Commissioner concludes that sections 31(1)(a) and (b) and section 31(1)(g) by virtue of section 31(2)(b) of FOIA are engaged and the public interest favours maintaining the exemptions in this case.

Other matters

35. The Commissioner expects a public authority to engage effectively with his case officers and to duly provide relevant information in a timely manner and at first time of asking. When the Commissioner asks for withheld information to be provided it is a public authority's duty to do so. Case Officers determine whether they need the withheld information, and a public authority should not refuse or delay to send the information in order to help resolve the complaint more quickly.

Right of appeal

36. 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

37. 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.

38. 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

**Esi Mensah
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