

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 November 2023

Public Authority: Chief Constable of Devon and Cornwall Police

Address: Police Headquarters
Middlemoor
Exeter
Devon
EX2 7HQ

Decision (including any steps ordered)

1. The complainant has requested, from Devon and Cornwall Police (DCP), information about the number of response and support officers on duty during a specified night shift (8 May 2023).
2. DCP refused to disclose the requested information, citing sections 31(1)(a) and (b) of FOIA (the law enforcement exemption).
3. The Commissioner's decision is that DCP was correct to rely on sections 31(1)(a) and (b) of FOIA and refuse disclosure.
4. The Commissioner does not require any further steps as a result of this decision notice.

Request and response

5. The complainant wrote to DCP and requested information in the below terms. According to DCP's response, DCP received the request on 3 July 2023. The request was an amended version of an earlier, wider request:

"... please can you provide data for the following amended request:

1. The total number of response officers on duty in Devon & Cornwall during the night shift of **May 8, 2023**.
 2. The total number of supporting officers (e.g. those in control rooms, custody suites and other facilities) on duty in Devon & Cornwall during the night shift of **May 8, 2023**".
6. DCP responded on 31 July 2023. It confirmed holding relevant information but refused disclosure, citing sections 31(1)(a) and (b) of FOIA.
7. Following an internal review, on 26 October 2023 DCP upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 20 November 2023 to complain about the way their request for information had been handled.
9. They challenged DCP's reliance on sections 31(1)(a) and (b) of FOIA.
10. They consider that section 31 is not engaged because DCP "did not show how the prejudice claimed is real, actual or of substance; or show that there is a causal link between the disclosure and the prejudice claimed".
11. They are not satisfied that disclosure would be likely to cause the harm either, and said "[DCP] has not provided any evidence or case studies to show ... a real and significant risk of harm".
12. They argued "any harm would be extremely minimal, and outweighed by the public interest in disclosure".

13. The Commissioner considers that the scope of this case is to consider whether DCP was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse the 3 July 2023 request.
14. The Commissioner has not asked DCP for any submissions or a copy of the withheld information. He considers that in this instance he is able to make his decision without those things.

Reasons for decision

15. Sections 31(1)(a) and (b) of FOIA respectively provide that information is exempt if its disclosure would, or would be likely to, prejudice (harm) the prevention or detection of crime, or the apprehension or prosecution of offenders.
16. The exemptions, if engaged, are subject to the public interest test.
17. First the Commissioner is satisfied that the envisaged harm relates to the law enforcement interests protected by sections 31(1)(a) and (b), stated at paragraph 15 above. DCP expressed concerns about revealing officer numbers at specific times, thereby enabling criminals to “target their offending”, identify perceived weaknesses in terms of police resources and use such information to their advantage in furthering their criminal activity. Clearly this relates to the prevention or detection of crime, or the apprehension of offenders.
18. Whilst the complainant argued DCP “did not show how the prejudice claimed is real, actual or of substance”, the Commissioner is satisfied that it is. Crime is a serious matter and as DCP noted, criminal activity risks the safety of the public. It is important that crime is detected and that offenders are apprehended.
19. He is also satisfied (even if the complainant isn't) that there is a causal link between disclosure and the harm, and disclosure ‘would be likely to’ cause the harm, as he explains below.
20. DCP's responses indicate that it is claiming the lower level of likelihood, namely that disclosure ‘would be likely to’ harm the interests in question. For example, it used words like “could” and “likely” several times, when discussing the link between disclosure and harm. At internal review it said disclosure “could cause” harm. This means there

must be a real and significant risk of the harm occurring, even if the risk is less than 50%.

21. As the Commissioner's section 31 guidance¹ explains, when considering the prejudice test, account should be taken of any 'mosaic effect'.
22. The prejudice test is not limited to the harm that could be caused by the requested information on its own. Public authorities can take account of any harm likely to arise if someone pieced together the requested information with other information to form a broader picture.
23. Complying with one request can make it more difficult to refuse requests for similar information in the future. Public authorities are therefore entitled to consider any harm that could be caused by combining the requested information with the information a public authority could subsequently be required to provide, if the current request was complied with.
24. Such points are clearly relevant to this case, concerning a request for the number of officers on duty during a specified night shift.
25. Whilst the complainant's request relates to a single shift only, the Commissioner would point out that other similar requests for different shifts or locations, if successful, would likely enable a wider picture to be built.
26. DCP alluded to the mosaic effect in its responses. DCP originally explained that patterns could be drawn, enabling criminals to plan offences. At internal review stage, DCP further noted that whilst the information could be considered a "snapshot in time", it could also form part of a wider picture.
27. The Commissioner notes the complainant explained to DCP that they had previously requested the same information from other police forces.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/>

28. The Commissioner also notes that the shift that is the focus of these requests from the complainant is the night shift of 8 May 2023, the bank holiday for the coronation of King Charles III.
29. The Commissioner would remind the complainant that disclosure under FOIA is 'to the world', and not just to the complainant themselves.
30. The Commissioner considers that there is a real and significant risk of disclosure causing harm to the prevention or detection of crime and the apprehension or prosecution of offenders. It is not difficult to imagine criminals using information about the number of police officers on duty at different times or locations to plan their criminal activities and evade apprehension, or try to.
31. Whilst the complainant wants "case studies" from DCP to support its position that the exemptions are engaged, the Commissioner is satisfied they are engaged based on the comments DCP has already made in its existing responses to the complainant and in light of the above analysis.

Public interest test

32. DCP acknowledged considerations in favour of disclosure, such as general transparency. It said that disclosure would "better inform the public about how public funds are spent". It also mentioned "better awareness which may reduce crime or lead to more information from the public".
33. However against disclosure, DCP expressed concern about disclosure undermining law enforcement and "more crime being committed", impacting police resources and placing the public at risk. DCP emphasised the harm to its law enforcement interests, and concluded the weight of the public interest favours withholding the information.
34. The Commissioner recognises that there is a general public interest in promoting transparency and accountability, which must always be given some weight in the public interest test.

35. The Commissioner notes that there is already some official information publicly available on www.gov.uk regarding police workforce numbers².
36. He considers that those statistics already go some way to satisfying any public interest there may be in disclosure of the information requested by the complainant under FOIA, and transparency around police staffing.
37. Even if some police forces have disclosed the type of information requested from DCP in this case, it does not automatically follow that all police forces should disclose it.
38. The Commissioner highlights that there is a very strong public interest in protecting the ability of public authorities to enforce the law.
39. He disagrees with the complainant's position that "any harm would be extremely minimal".
40. The Commissioner considers that on balance, the factors against disclosure have greater weight and the public interest lies in maintaining the exemptions.

² <https://www.gov.uk/government/collections/police-workforce-england-and-wales>

Right of appeal

41. 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

42. 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.
43. 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

Daniel Kennedy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF