

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 July 2024

**Public Authority:** Chief Constable of Warwickshire Police  
**Address:** Police Headquarters  
Leek  
Wootton  
Warwick  
CV35 7QA

#### Decision (including any steps ordered)

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1. The complainant requested a Memorandum of Understanding (or protocol) relating to Warwickshire Hunt. Warwickshire Police refused to provide the requested information citing section 32 of FOIA – the exemption for court records etc.
2. The Commissioner's decision is that Warwickshire Police was entitled to rely on section 32(1)(b) of FOIA to refuse this request.
3. No steps are required as a result of this decision.

#### Background

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4. The Commissioner has considered a similar request recently, resulting in a decision notice<sup>1</sup> issued on 10 July 2024 (at the time of issuing the notice in the current case, the 10 July 2024 decision was awaiting publication on the Commissioner's website). Section 32 of FOIA was applied to part of that request which relates to the requested protocol in this case. The Commissioner upheld Warwickshire Police's reliance on

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<sup>1</sup> IC-270328-D0F8 to be published on <https://icosearch.ico.org.uk/s/search.html?collection=ico-meta&profile=decisions&query>

section 32(1)(b) of FOIA. Whilst this decision is not legally binding, and the Commissioner will consider each complaint on its merits, the Commissioner has taken his findings into account in reaching his decision in the case under consideration here.

5. Warwickshire Police previously had a statement on its website, which has since been removed. The Commissioner is advised that this statement was as follows:

'A spokesperson for Warwickshire Police said:

"Earlier this year we took civil action following concerns raised by the community over road safety while hunt activity took place.

This came in the form of a Community Protection Notice ['CPN'], which we issued.

The CPN outlined several steps that Warwickshire Hunt must take to ensure that both they and any members of the public using the roads are safe.

This civil order concerned only safety around the roads. It had no bearing on the hunt's legal right to trail hunt.

Warwickshire Hunt exercised their right to appeal the CPN and this meant the CPN was suspended awaiting appeal. During this process we met with them to discuss a proposal for a different agreement.

During these discussions, the Hunt agreed to a protocol that will see the introduction of safety and monitoring measures that are far wider-reaching than anything the CPN originally stipulated.

Given that this is a civil matter, and Warwickshire Hunt have accepted and understood the community's concerns over road safety and are keen to work with all parties to manage this going forward, we have taken the decision to withdraw the CPN".'

6. In the earlier related case (see 'Background section above), Warwickshire Police also provided the following explanation to the Commissioner, which he has replicated here as it provides useful context:

"The decision to enter into the Protocol was a different decision to withdrawing the court proceedings; this is because the Court proceedings were not instigated by Warwickshire Police and therefore were not ours to withdraw. The position is, as was

explained in our statement issued by the Force in August 2023 to which a link was provided in response to this question, –

- In December 2022 Warwickshire Police issued a Community Protection Notice (CPN) against Warwickshire Hunt which sought to address concerns raised in relation to road safety.
- Warwickshire Hunt lodged an appeal against the CPN through the courts. The effect of lodging the appeal was to suspend the CPN whilst the appeal was determined.
- The Protocol was explored as a resolution of those court proceedings and was entered into in order to settle and resolve those proceedings – it was, in effect, a settlement agreement.
- As a result of the Protocol being agreed, the Warwickshire Hunt withdrew their appeal and the Police withdrew the CPN.

Therefore, it is correct and consistent to advise that a Chief Officer signed the Protocol but that it was not our decision to withdraw the court proceedings – that decision was exercised by Warwickshire Hunt.”

## Request and response

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7. On 6 March 2024, the complainant wrote to Warwickshire Police and requested information in the following terms:

“Please, can you confirm:

- (1) Whether Warwickshire Police has entered into any memorandum of understanding (MOU) or written agreement with the Warwickshire hunt?
- (2) If such an MOU or agreement exists, whether Warwickshire Police can provide a copy?”

8. Warwickshire Police responded on 13 March 2024. It advised that it had interpreted the request as being for “the protocol between Warwickshire Police and the Warwickshire Hunt”, which the complainant did not dispute.

9. Warwickshire Police refused to provide the requested information citing section 32(1)(b) of FOIA – the exemption for any document served

upon, or by, a public authority for the purposes of proceedings in a particular cause or matter.

10. Following an internal review Warwickshire Police wrote to the complainant on 25 March 2024 and maintained its original position. A URL link was also provided to an updated public statement in respect of matters relating to Warwickshire Hunt.<sup>2</sup>

## Scope of the case

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11. The complainant contacted the Commissioner on 25 March 2024 to complain about the way her request for information had been handled. She submitted the following, which the Commissioner asked Warwickshire Police to consider:

“I don't believe the information is Section 32(1) exempt as the information is not held only by virtue.”

12. The Commissioner has considered whether Warwickshire Police was entitled to rely on section 32(1)(b) of FOIA to withhold the requested information in this case.

## Reasons for decision

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### Section 32 – Court records etc

13. Warwickshire Police have cited section 32(1)(b) of FOIA in respect of the requested protocol.
14. Section 32(1) of FOIA states that information is exempt from disclosure if it is held only by virtue of being contained in:

“(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter”.

15. Courts and inquiries are not subject to FOIA, so the public authorities most likely to use this exemption are those whose functions involve

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<sup>2</sup> <https://www.warwickshire.police.uk/news/warwickshire/news/2024/march/an-update-on-the-policing-of-hunt-activities-in-warwickshire>

regular interaction with the courts system, or who are party to court, inquiry or arbitration proceedings.

16. Section 32 is an absolute exemption and is therefore not subject to any public interest considerations.
17. The Commissioner has published guidance<sup>3</sup> which sets out his interpretation of the section 32 of FOIA exemption.
18. The Commissioner understands that section 32 of FOIA was drafted to allow the courts to maintain judicial control over access to information about court proceedings. This includes giving courts control to decide what information can be disclosed without prejudicing those proceedings. In effect, section 32 ensures that FOIA cannot be used to circumvent existing court access and discovery regimes. In addition, public authorities are not obliged to disclose any information in connection with court, inquiry or arbitration proceedings outside of those proceedings.
19. In its refusal notice, Warwickshire Police advised the complainant that:

“In this case, the exemption is engaged as the details of the protocol exist only by virtue of being created to resolve litigation proceedings of which Warwickshire Police were a party.”
20. In explaining its position to the Commissioner, Warwickshire Police said:

“The Protocol is an agreement which was entered into by the Warwickshire Hunt and Warwickshire Police – being the 2 parties to ongoing appeal proceedings – for the purpose of resolving those proceedings in a way which provided a workable framework between the parties. As was made clear in the Force’s statement at the time, its requirements go further than the terms of the CPN. As a result of agreeing the Protocol, the court proceedings were settled through the appeal being withdrawn and the CPN also being withdrawn”.
21. As explained in the Commissioner’s guidance:

“Section 32 covers information held ‘only by virtue’ of being contained in documents that are created or held for the purposes of court, inquiry or arbitration proceedings”.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf>

22. Having considered the arguments provided, and the associated legal correspondence, the Commissioner is satisfied that the protocol was originally created for the purposes of proceedings, and not acquired by any other route, therefore it is held 'only by virtue' of being for the purpose of proceedings in a particular cause or matter.
23. As the protocol engages the section 32(1)(b) exemption, it is exempt from disclosure under FOIA.

## **Right of appeal**

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

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