

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 November 2013

**Public Authority:** The Chief Constable of Gloucestershire Constabulary

**Address:** Gloucestershire Constabulary  
No 1 Waterwells  
Waterwells Drive  
Quedgeley  
Gloucester  
GL2 2AN

### **Decision (including any steps ordered)**

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1. The complainant asked Gloucestershire Constabulary (the Constabulary) to clarify whether the assessments it held about the badger cull consisted of assessments for individual properties or whether they were general assessments that did not evaluate specific locations. The Constabulary refused to disclose the requested information on basis of the exemptions contained at sections 31(1)(a) to (c) (law enforcement) and section 38(1)(b) (health and safety). The Commissioner has concluded that the requested information is exempt from disclosure on the basis of sections 31(1)(a) and (b).

### **Request and response**

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2. Following the Constabulary's response to a previous request, the complainant submitted the following request to the Constabulary on 8 February 2013:

*'Thank you for your response to my FOI request. Are you able to clarify whether the NFU's assessment and/ or your assessment included assessments for individual properties or were they general assessments that did not evaluate specific locations - or will I need to submit another FOI request to be given that level of detail? Please note, I am not asking for any location specific*

*information as I understand that is not suitable for release, simply to know whether assessments have been conducted at that level.'*

3. The Constabulary responded on 8 March 2013 and explained that it considered the requested information to be exempt from disclosure on the basis of the following sections of FOIA: 31(1)(a), 31(1)(b), 31(1)(c) and 38(1)(b).
4. The complainant contacted the Constabulary on 9 March 2013 and asked for internal review of this decision to be undertaken.
5. The Constabulary contacted the complainant on 11 March 2013 in order to acknowledge receipt of his request for an internal review. It noted that it was best practice to respond to requests for internal reviews within 20 working days and therefore it aimed to respond by 9 April 2013.
6. The complainant contacted the Constabulary on 5 May 2013 in order to establish when a response would be sent to his internal review request.
7. The Constabulary informed him of the outcome of the review on 9 May 2013. The review upheld the application of the exemptions cited in the refusal notice.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 24 May 2013 to complain about the way his request for information had been handled. The complainant argued that the information he requested was not exempt because disclosing it would not, in his opinion, result in the prejudice which the Constabulary envisaged. In any event, the complainant argued that the public interest favoured disclosure of the requested information. The complainant provided the Commissioner with submissions to support his position and these are referred to below.
9. The complainant also complained about the Constabulary's delays in conducting the internal review.
10. With regard to the first point of complaint the Commissioner has considered whether the requested information is exempt from disclosure on the basis of sections 31(1)(a) to (c) or section 38(1)(b) of FOIA.
11. With regard to the second point of complaint, the Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a

formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA. Therefore the Commissioner cannot include in a decision notice a formal finding about the time taken to complete an internal review. However, the Commissioner has commented on the complainant's concerns regarding internal review delays in the Other Matters section at the end of this notice.

## Reasons for decision

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12. The relevant sub-sections of 31 which the Constabulary has relied on to withhold the requested information state:

*'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,*
- (c) the administration of justice'.*

13. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner considers that three criteria must be met:

- Firstly, 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;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold 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. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

### The Constabulary's position

14. The Constabulary argued that the requested information relates to a very sensitive subject, ie the badger cull, with strong feelings being held by those opposed to the cull and those in support of the cull. It argued that revealing local policing plans in relation to the cull could be used by individuals' intent on criminal activities. More specifically, it suggested that providing the requested information could infer to those intent on criminal activities what locations had been risk assessed or it would confirm that specific areas had not yet been considered. Either scenario would therefore provide those intent on criminal activities with an insight into the Constabulary's plans regarding policing of the cull thus rendering them ineffective. It emphasised that many criminals are constantly active and astute in their assessment of police capabilities and will capitalise on any information they can glean about policy and practice. For example, knowledge or awareness of the Constabulary's likely tactics could lead individuals intent on criminal activities to adopt counter measures.
15. Consequently, the Constabulary argued that disclosure of the requested information would undermine its effectiveness with regard to its role in policing matters associated with the pilot cull being carried out in Gloucestershire. Furthermore, in order to combat any advantage criminals may gain through use of the requested information, the Constabulary would be required to move resources and manpower from other policing areas in the county which would have the knock on effect of undermining its effectiveness in other areas. Moreover, the Constabulary argued that disclosure of this information could also undermine the effectiveness of future operations associated with further culls in the future both on a local and national level.
16. In order to support its contention that disclosure of location based information about the cull in any form could be used by those intent on criminal activities, the Constabulary explained that this subject has in the past given rise to criminal activities. The Constabulary referenced press stories which reported that animal rights extremists had threatened to damage the property of farmers who supported the cull and separate instances in which hate mail has been sent a TV presenter (and farmer) who had reported on the proposed cull.<sup>1</sup> The Constabulary

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<sup>1</sup> <http://www.farmersguardian.com/home/livestock/livestock-news/adam-henson-reveals-extremist-threats-over-badger-cull/38868.article>

argued that these articles highlighted the importance of safeguarding information that could be used by individuals' intent on committing offences.

17. The Constabulary also referred the Commissioner to a number of further press articles that demonstrated the challenges that activists are creating for the Constabulary.<sup>2</sup> The Constabulary explained that in considering whether to disclose information regarding the cull it had to consider other releases of information previously made in order to determine whether a mosaic effect could occur.
18. In addition, the Constabulary argued that local policing contacts may be less inclined to pass on information if they believed that it would be released. This would impact on its ability to prevent or detect crime and breakdown the maintenance of the ethos of confidentiality engaged with any member of the public that assists the police.

#### The complainant's position

19. In his submissions to the Commissioner the complainant emphasised that his request simply sought to establish whether risk assessments regarding the badger cull held by the Constabulary had been conducted at the level of individual locations or were only generic/non-location specific. Therefore, as he was not seeking access to information about or regarding specific locations, the complainant explained that he failed to see how disclosure of the requested information could be exempt from disclosure for the reasons advanced by the Constabulary.

#### The Commissioner's position

20. With regard to the first criterion of the three limb test described above, the Commissioner accepts that potential prejudice to an ongoing police operation (and similar operations in the future) clearly relates to the

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<http://www.thisisgloucestershire.co.uk/Extremists-threats-burn-star-s-children/story-11920521-detail/story.html>

<http://www.fwi.co.uk/articles/06/05/2011/126665/extremist-threats-over-badger-cull.htm>

<sup>2</sup> <http://www.thisissomerset.co.uk/Badger-cull-protesters-vow-shame-farmers/story-19249571-detail/story.html#axzz2bHb4wbcv>

<http://www.thisisgloucestershire.co.uk/Badger-campaign-hope-derailing-Gloucestershire/story-19624185-detail/story.html#axzz2bHbCSbpj>

<http://www.thisisgloucestershire.co.uk/Cull-opponents-blamed-tractor-blaze/story-19519861-detail/story.html#axzz2bHbCSbpj>

interests which the exemptions contained at sections 31(1)(a) and 31(1)(b) are designed to protect. With regard to section 31(1)(c), the Commissioner recognises that the administration of justice is a broad term and can cover prejudice to particular court cases, the operation of the judicial system as a whole and indeed anything that would make it harder for the public to access the justice system. However, the Commissioner is not persuaded that the nature of prejudice envisaged by the Constabulary if it released the requested information is one that is directly relevant to the interests which section 31(1)(c) is designed to protect. Consequently, the Commissioner has concluded that section 31(1)(c) is not engaged.

21. With regard to the second criterion, the Commissioner accepts the logic of the Constabulary's argument that providing the requested information could allow those intent on committing criminal activities to infer what locations had been risk assessed **or** it would confirm that specific areas had not yet been considered. However, the Commissioner also agrees with the complainant that for a causal relationship to exist between the requested information and these potentially prejudicial consequences then those intent on criminal activities actually have some knowledge of the location of the cull sites.
22. Nevertheless, although the Commissioner recognises that the complainant is not asking for information that would identify particular cull locations, he is conscious that details of the location of some of the cull sites are already effectively either in the public domain or are known to individuals who may intend to engage in criminal activity or may be prepared to share their knowledge with those that are. This point is arguably best illustrated by the quote from one anti-cull protester in one of the press articles referenced by the Constabulary who states '*We have surveyed every sett in West Gloucestershire cull zone. We know where they are*'.<sup>3</sup>
23. Consequently the Commissioner is satisfied that if the requested information was aligned with the information already available regarding the locations of some of the cull sites, then there is the potential for prejudice to occur to the ongoing policing operation surrounding the badger cull in Gloucestershire in the manner suggested by the Constabulary. As a consequence of this disruption the Commissioner also accepts that the Constabulary's ability to effectively police other operations in the county could be effected. This is because it is logical to

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<sup>3</sup> <http://www.thisissomerset.co.uk/Badger-cull-protesters-vow-shame-farmers/story-19249571-detail/story.html#axzz2bHb4wbcv>

assume that the Constabulary will have to re-distribute resources in order to address the challenges to its policing of the cull. The Commissioner therefore accepts that there is a causal link between disclosure of the requested information and the interests which the exemptions contained at sections 31(1)(a) and (b) are designed to protect. Moreover, given the potential consequences of disclosing the requested information, the Commissioner is satisfied that the resultant prejudice which the Constabulary believes would be likely to occur is one that can be correctly categorised as real and of substance.

24. With regard to the Constabulary's argument that disclosure of the requested information risks prejudicing the effectiveness of future culls both on a local and national level, the Commissioner accepts that disclosing the information would certainly provide an insight into how the future culls may be policed, ie whether or not individual cull sites are likely to be risk assessed. However, for the reasons noted above, in the Commissioner's opinion, in order for there to be some causal relationship between disclosure of the requested information and disruption to police operations, then somewhere in the public domain there has to be some knowledge or awareness of particular cull sites. Given that plans for future culls have yet to be announced then the Commissioner does not accept that there is a causal link between disclosure of the requested information and prejudice to the policing operation of future culls in different parts of the country.
25. With regard to the Constabulary's concerns that local policing contacts could be less inclined to pass on information, the Commissioner notes that this request seeks not only details of the Constabulary's assessment but also details of assessments it may have received from the National Farmers' Union (NFU). The Commissioner accepts that it is logical to argue that disclosure of information, provided to the police in confidence, under FOIA - such as that provided by the NFU - would be likely to impact on the flow of information to the police in the future from other contacts.
26. Turning to the third criterion, the Commissioner accepts that the likelihood of prejudice occurring to the Constabulary's policing operations around the existing cull is one that is more than hypothetical. He has reached this conclusion given that disclosure of requested information would allow something to be inferred about the nature of the policing operation, (ie whether or not some (or perhaps all) of the cull sites had been risk assessed; information about the location of at least some of the cull sites is the public domain, or available to those individuals who wish to acquire it; and there is clear evidence that some opponents of the cull are prepared to break the law. Furthermore, as a consequence of this likely prejudice to the Constabulary's policing operations on the cull the Commissioner accepts that its ability to

effectively police other areas of the county is also likely to be impacted. Moreover, the Commissioner also accepts that there is more than a hypothetical chance of the supply of information to the Constabulary being harmed if details of the information it received from the NFU were disclosed. Therefore the Commissioner is satisfied that the requested information is exempt from disclosure on the basis of sections 31(1)(a) and (b).

### **Public interest test**

27. Section 31 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining each exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosing the requested information**

28. The Constabulary acknowledged that when information is disclosed that relates directly to the efficiency and effectiveness of the force or its officers then this will make it more accountable. In this case disclosure of the information will enable the public to have a better understanding of the efficiency and effectiveness of how the Constabulary are policing this sensitive subject. The Constabulary noted that the more information that is released on the policing of this subject could lead to a more informed debate on the matter.
29. The complainant argued that there was a clear public interest in knowing whether the Constabulary has risk assessments that considered individual locations given that the cull involved the discharge of firearms at night.

### **Public interest arguments in favour of maintaining the exemptions**

30. The Constabulary argued that it was not in the public interest to disclose information that could be used by criminals to undermine policing tactics in relation to the cull as this would undermine the efficiency and effectiveness of Constabulary's ability to police not only this cull but also have a knock on effect on other operations.
31. The Constabulary explained that it relied on information from the public, local and national contacts in order to conduct its law enforcement duties. Disclosure of the requested information would be against the public interest as it would potentially act as deterrent to the public and those contacts to provide information in the future.
32. Finally, the Constabulary noted that although the request did not ask for personal data of third parties, ie police officers and contacts in roles



linked to this subject, they could still be jeopardised by the disclosure of information that could lead to their identification.

### **Balance of the public interest test**

33. The Commissioner does not consider that any weight should be attributed to the latter argument. This is because these considerations – disclosing the personal data of third parties – are simply not issues that sections 31(1)(a) and (b) are designed to protect and consequently such considerations are not inherent, or indeed relevant, to the consideration of the public interest test.
34. However, with regard to the Constabulary's first argument, the Commissioner agrees that there is a significant and weighty public interest in ensuring that the effectiveness of its policing operation concerning the cull is not compromised. Moreover, the Commissioner considers that the public interest in maintaining the exemptions attracts further weight given that if the Constabulary's policing of the cull is effected, then this is likely to have a negative impact on the effectiveness of the Constabulary's other operations. Furthermore, the Commissioner considers that there is a very weighty public interest in protecting the free flow of information to police forces from local contacts.
35. In terms of the public interest in favour of disclosing the requested information, the Commissioner recognises that the badger cull is a high profile issue that has evoked strong feelings on both a local and national level. The Commissioner therefore accepts that the public interest in ensuring that the Constabulary is transparent about how it polices the cull should not be dismissed lightly. Furthermore, the Commissioner recognises that the public safety concerns identified by the complainant are clearly not trivial ones. However, the Commissioner considers that disclosure of the requested information would only provide a relatively limited insight into how the cull is being policed, and by implication the degree to which the public safety concerns regarding the use of weapons at night has been considered, given that it only asks for confirmation as to the level at which assessments of the cull sites were carried out. In contrast, disclosure of the requested information risks having a significant and detrimental impact on how the Constabulary actually polices the cull; an impact on the effectiveness of operations the Constabulary is involved in at the time of the cull; and on the free flow of information from local contacts in the future. Consequently, the Commissioner considers that the public interest favours maintaining each exemption.
36. In light of this conclusion, the Commissioner has not gone on to consider the Constabulary's reliance on section 38(1)(b).

## **Other matters**

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37. As the Commissioner has explained in the main body of this notice, there is no statutory time limit for completing internal reviews. However, the Commissioner has issued guidance in which he has stated that in his view internal reviews should take no longer than 20 working days to complete and even in exceptional circumstances the total time taken should not exceed 40 working days.
38. In the circumstances of this case the Commissioner notes that in acknowledging the complainant's request for an internal review the Constabulary explained that it aimed to reply within 20 working days. Although it failed to meet this aim, it did reply within 40 working days. Given the nature of the request the Commissioner is prepared to accept that this was a complex case and merited the additional time allowed by his guidance for the completion of the internal review. However, as a matter of best practice the Commissioner would expect a public authority to proactively contact a requester if they were not going to meet a deadline that they had previously set.

**Right of appeal**

39. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

- 40. 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.
- 41. 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 .....**

**Gerrard Tracey  
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SK9 5AF**