

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 April 2018

Public Authority: Chief Constable of Hertfordshire Constabulary
Address: Hertfordshire Constabulary Headquarters
Stanborough Road
Welwyn Garden City
Hertfordshire
AL8 6XF

Decision (including any steps ordered)

1. The complainant has requested information relating to the policing of two football matches between Grimsby Town FC and Stevenage FC. Hertfordshire Constabulary disclosed some information and withheld the remainder under the exemptions at section 31 (law enforcement) and section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that Hertfordshire Constabulary was entitled rely on section 31 to refuse the request.

Background

3. On 19 August 2017, Grimsby Town FC travelled to Stevenage FC to play a League Two fixture. Some Grimsby Town FC fans complained of being subjected to excessive and invasive security checks at Stevenage¹.

Request and response

4. On 24 August 2017 the complainant wrote to Hertfordshire Constabulary and requested information in the following terms:
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¹ <http://www.bbc.co.uk/news/uk-england-humber-40992174>

"Please take this email as a formal request for the following:

- [1] Information held in relation to Grimsby Town FC and their fans both pre and post match for 1st ever game game [sic] in Stevenage FC on the 28th January 2017.*
 - [2] Information received from Derbyshire Police on both Grimsby Town FC and their fans before the game against Stevenage FC on 19th August 2017.*
 - [3] information compiled from other sources in relation to Grimsby Town FC and their fans before the game against Stevenage FC on 19th August 2017.*
 - [4] Information passed to Stevenage FC that lead to the game against Grimsby Town FC on 19th August 2017 to be deemed high risk with extensive searches required.*
 - [5] information on number of officers/units deployed for this designated high risk game and the number of officers within the away section of the Lamex Stadium during the time the stadium was open.*
 - [6] information compiled post match in relation to Grimsby Town FC and their fans, including arrests and any note of disorder within the ground which will then be made available to other forces and used as intelligence when complying risk assessments and match categories."*
5. Hertfordshire Constabulary responded on 22 September 2017. It provided information in respect of question [6] but refused to answer the remaining questions, citing the exemptions at section 30 (investigations and proceedings), section 31 (law enforcement) and section 40 (personal information) of the FOIA.
 6. The complainant requested an internal review on 11 October 2017. Hertfordshire Constabulary responded on 5 February 2018 and revised its position. It disclosed information in response to points [1], [2] and [5]. It withheld information in respect of points [3] and [4] of the request, on the grounds that it was exempt under section 31(1)(a) and (b), and section 40(2) of the FOIA.

Scope of the case

7. The complainant initially contacted the Commissioner on 12 November 2017 about Hertfordshire Constabulary's failure to conduct an internal review. The Commissioner has commented on Hertfordshire

Constabulary's handling of the internal review in the "Other matters" section of this decision notice.

8. Having received the outcome of the internal review, the complainant indicated to the Commissioner that she wished to challenge Hertfordshire Constabulary's decision to withhold information in respect of questions [3] and [4] of the request.
9. The Commissioner has considered in this decision notice Hertfordshire Constabulary's application of section 31(1)(a) and (b) in respect of questions [3] and [4].
10. Given the Commissioner's decision that Hertfordshire Constabulary was entitled to rely on section 31 to withhold the requested information, it has not been necessary to consider the application of the exemption at section 40(2).

Reasons for decision

Section 31 – law enforcement

11. Hertfordshire Constabulary is relying on sections 31(1)(a) and (b) of the FOIA to withhold information. These 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..."*

12. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but also that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.
13. In order to be engaged, the following criteria must be met:
 - 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, the prevention or detection of crime and the apprehension or prosecution of offenders);
 - 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

- 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.
14. The complainant disputed that section 31 could be applied to withhold the information requested at questions [3] and [4], saying that her local police force had disclosed to her similar information, albeit with redactions made for personal data.
 15. Hertfordshire Constabulary explained that it has a duty to prevent crime and to apprehend those responsible for planning and committing crime. Policing, and in particular the policing of large scale public events such as football matches, is intelligence-led, with decisions as to the deployment of staff and operational tactics being made responsively, as intelligence or events unfold.
 16. The withheld information contains quite detailed intelligence about the fixtures specified in the request. Hertfordshire Constabulary said that its disclosure into the public domain would allow anyone intent on interfering with its ability to police future fixtures to take action to avoid detection or arrest. This would cause direct harm to the effective delivery of operational law enforcement by Hertfordshire Constabulary.
 17. Hertfordshire Constabulary also explained that intelligence is obtained from, and shared with, partner agencies. It said that the disclosure of detailed intelligence information would significantly compromise relationships with partner agencies, and the resultant flow of information from them.
 18. Furthermore, Hertfordshire Constabulary said that the disclosure of the withheld information would impact on the overall confidence of the communities Hertfordshire Constabulary serves if it was felt that disclosure had resulted in valuable intelligence information falling into criminals' hands.
 19. It therefore assessed the level of prejudice as being that prejudice "would" occur.
 20. The Commissioner has considered the applicability of the exemption at section 31 of the FOIA. With regard to the first criterion of the three limb prejudice test described above, the Commissioner accepts that potential prejudice to law enforcement activity relates to the applicable interests which sections 31(1)(a) and 31(1)(b) are designed to protect.

21. With regard to harm being caused by disclosure, having considered the withheld information the Commissioner is satisfied that its disclosure would have a detrimental effect on future law enforcement. It contains detailed and specific intelligence about known risk factors, and Hertfordshire Constabulary's proposed operational response, which, if disclosed, would undoubtedly assist any individuals intent on circumventing the law, at future fixtures. This would have a detrimental effect on law enforcement. The Commissioner is satisfied that the resultant prejudice which Hertfordshire Constabulary considers would occur can be correctly categorised as real and of substance.
22. As regards the third criterion, the likelihood of prejudice arising, Hertfordshire Constabulary was concerned about the likely impact of disclosure on future policing operations, the integrity of its investigations and on public order. Having considered the evidence it supplied, and in light of the very specific intelligence and operational information contained in the withheld information, the Commissioner is satisfied that it demonstrated that prejudice "would" occur.
23. The Commissioner is therefore satisfied that the exemptions at sections 31(1)(a) and (b) of the FOIA are engaged.

Public interest test

24. 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 the exemptions contained at sections 31(1)(a) and (b) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

25. The complainant argued that the public interest in openness tips the balance in favour of disclosure of the information.

"This football match and certain parts of the pre-match security operation were well publicised so I do feel that it is very much in the interest of the public to know what has happened, why it has happened and what improvements if any the involved agencies will look to implement going forward.

I have very grave concerns with regards to the football match and the data held as various agencies involved with this have reported different information as to what went into pre-match reports and it is in the public's interest for these matters to be confirmed.

The request relates to an historical matter as opposed to one on the horizon and so therefore will be limited in the impact it would have on anything forthcoming."

26. For its part, Hertfordshire Constabulary stated that disclosure would support its commitment to openness and transparency by giving the public information relating to law enforcement effectiveness and efficiency. It said that this may have the effect of encouraging the public to share more intelligence with it, with the potential to reduce crime.

Public interest arguments in favour of maintaining the exemption

27. Hertfordshire Constabulary argued that there is a clear public interest in preventing crime and in its policing tactics not being undermined by being placed in the public domain. It also emphasised the need to maintain the public's confidence in its ability to police effectively and efficiently. It considered that these interests would be served by not disclosing the withheld information.

Balance of the public interest

28. The Commissioner has weighed the public interest in avoiding prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders against the public interest in openness and transparency; she has also taken into account the arguments advanced by the complainant and by Hertfordshire Constabulary.
29. The Commissioner considers that it is important that the general public has confidence in the police service, which is responsible for enforcing the law. Confidence will be increased by allowing scrutiny of how the police execute their duties. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
30. The Commissioner also accepts the complainant's view that the subject matter of the request is of concern to the public. The media reported that prior to entering the ground at Stevenage, some female supporters were subject to invasive and humiliating searches. The Commissioner considers that it would be in the public interest to know whether Hertfordshire Constabulary had specific intelligence which rendered this level of security proportionate.
31. However, balanced against this, the Commissioner also recognises that there is a very strong public interest in protecting the law enforcement capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders.
32. With this in mind, the Commissioner believes that there is stronger public interest in ensuring that the overall effectiveness of the policing operations being undertaken by Hertfordshire Constabulary is not

undermined or compromised. Whilst there is a public interest in understanding Hertfordshire Constabulary's approach to an often volatile area of policing, the Commissioner considers that there is a stronger public interest in ensuring that the prevention of crime and the apprehension and prosecution of offenders are not prejudiced as a result of inappropriate disclosures. The public is entitled to expect that effective measures will be taken to try to frustrate those intent on breaking the law, and that those who do will be investigated and prosecuted. It would clearly not be in the public interest for information to be disclosed which undermined the ability of the police to prevent instances of disorder at football matches, or to successfully apprehend or prosecute those they suspect of being involved.

33. The Commissioner has concluded that, in all of the circumstances of this case, the public interest in maintaining the exemptions at sections 31(1)(a) and (b) outweighs the public interest in disclosing the withheld information.

Other matters

Section 45 – internal review

34. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the section 45 code of practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
35. Hertfordshire Constabulary's initial response to the complainant informed her that she was entitled to request an internal review, which she did on 11 October 2017. Having received no response, she referred the matter to the Information Commissioner, who, on 27 November 2017, wrote to Hertfordshire Constabulary and asked it to conduct the internal review by 11 December 2017.
36. The complainant contacted the Commissioner again on 15 December 2017, stating that no internal review had been received. The Commissioner wrote to Hertfordshire Constabulary on 19 December 2017, informing it that she was commencing her formal investigation into the matter. It seems that this prompted Hertfordshire Constabulary to conduct the internal review, which resulted in information being disclosed to the complainant on 5 February 2018.

Reference: FS50710695

37. The Commissioner considers that in failing to conduct an internal review within the timescales set out in paragraph 34, Hertfordshire Constabulary did not conform with the section 45 code.

Right of appeal

38. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.
40. 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

Samantha Bracegirdle
Senior Case Officer
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Wycliffe House
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