

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2020

Public Authority: Commissioner of the City of London Police
Address: PO Box 36451
182 Bishopsgate
London
EC2M 4WN

Decision (including any steps ordered)

1. The complainant has requested information about a scoring system applied by Action Fraud to alleged crimes, from City of London Police ("COLP"). COLP advised that some of the information was not held, which was not challenged by the complainant. In respect of the information that was held, it advised that it was exempt from disclosure by virtue of the exemption at sections 31(1)(a) and (b) (law enforcement) of the FOIA.
2. The Commissioner's decision is that section 31(1) was properly cited and that the public interest favours maintaining the exemption. No steps are required.

Background

3. By way of background, COLP has explained to the Commissioner:

"The National Fraud Intelligence Bureau (NFIB) is responsible for gathering and analysing intelligence relating to fraud and cyber crime. The NFIB was created as part of the recommendations of the 2006 National Fraud Review, which also saw the formation of the National Fraud Authority (NFA). The NFIB was developed and is overseen by the City of London Police as part of its role as a national lead for economic crime investigation."

The NFA (initially known as the National Strategic Fraud Authority) was an executive agency of the Home Office responsible for increasing protection for the UK economy from the harm caused by fraud and was created in 2008.

The review also recommended that fraud reporting was centralised and that the data from confirmed frauds be held on one database. Consequently Action Fraud was launched in 2009 to make fraud reporting easier and the 'Know Fraud' database of confirmed fraud created.

In 2014, the NFA was dissolved and Action Fraud was transferred to the City of London Police (CoLP), working closely with the NFIB, within the Economic Crime Directorate. Action Fraud is funded by the Home Office and is a largely autonomous unit. However, the Data Controller is the Commissioner for the CoLP and the information compliance function is managed by Information Management Services, situated within the Intelligence and Information Directorate.

Action Fraud receives fraud and cyber-crime reports by either telephone, via a call centre situated in Scotland and managed by Concentrix, or direct input via the Action Fraud web site.

In excess of 30,000 reports are received each month and these are reviewed and prioritised by NFIB where the capability exists to investigate further. The 'matrix' subject of the request is part of the process of review and prioritisation".

4. It also explained that:

"Action Fraud (AF) is a national reporting facility for offences of Fraud. It has no remit to investigate and reports are passed to the NFIB for further assessment and dissemination to local Forces and other statutory bodies with a power to investigate. Demand currently exceeds resources and details of the process used to manage demand have never been disclosed to the public domain. Corporate Communications make the following statement when asked:

With over 30,000 reports of fraud recorded each month, and limited resources, we have to prioritise those cases we have the capability to investigate further. This prioritisation is done on the basis of several factors, which include but are not limited to vulnerability of the victim and the ability to prevent further frauds. Other factors we consider are not made public. Fraud is the most prevalent crime in the UK currently and we work tirelessly to make fraud awareness and prevention integral to policing's approach to this crime".

5. The complainant drew attention to an online publication¹ by the Home Affairs Select Committee which outlines concerns about Action Fraud.
6. COLP advised the Commissioner that, in October 2018, the "Know Fraud" crime recording system was replaced by a new bespoke system provided by IBM and known as "SAIP" ("Strategic Analysis Intelligence Platform"). It said that this new system was in place at the time of this request and added that:

"The October 2018 Home Affairs Select Committee report to which [the complainant] refers uses data (and terminology) compiled from the previous Know Fraud system".

7. The Home Office counting rules for recording fraud are available on line².
8. COLP recently published (January 2020) a review into fraud³ entitled: *"Fraud - a review of the national 'lead force' responsibilities of the City of London Police and the effectiveness of investigations in the UK"*.

Request and response

9. On 4 March 2019 the complainant wrote to COLP and requested information in the following terms:

"[Name removed] in his email of 28.2.19 also refers to a scoring system applied by Action Fraud ('scored too low'). I question whether the Home Office and City of London Police legally are entitled to apply a scoring system and I would kindly invite the provision of details of the precise legal basis for the same...

Even if a scoring system is legally justifiable, contrary to what [name removed] says in his email of 28.2.19 about not revealing these factors for 'operational reasons', I would maintain that this information is legally accessible under the Freedom of Information Act 2000, not being exempt thereunder and I hereby make such a

¹https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/515/51507.htm#_idTextAnchor024

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/796319/count-fraud-apr-2019.pdf

³ <https://www.cityoflondon.gov.uk/about-the-city/about-us/Documents/action-fraud-report.pdf>

request for the supply of the same. People reasonably should be entitled to know whether in making a report themselves using Action Fraud's online tool or asking the Police to do so, they are wasting their time".

10. On 16 September 2019, following a Decision Notice issued on 14 June 2019⁴, COLP responded. In respect of the 'legal position' element of the request it denied holding the requested information. In respect of the 'scoring' element it refused to provide this, citing the following exemptions as its basis for doing so: 31(1)(a) and (b) (law enforcement) of the FOIA.
11. Following an internal review, COLP wrote to the complainant on 2 October 2019. It maintained its position.

Scope of the case

12. The complainant contacted the Commissioner on 3 October 2019 to complain about the way his request for information had been handled. This included issues about how COLP deals with the handling of matters which are reported to Action Fraud ("AF"), concerns about automated processing under the provisions of the Data Protection Act 2018 (the "DPA") and dissatisfaction with how his internal review was dealt with.
13. The Commissioner advised the complainant that, under the terms of the FOIA, she is not able to consider the adequacy or suitability of any system being used by AF as this is outside of her remit. Some further comments are in "Other matters" at the end of this notice.
14. She further advised that she was not able to consider automated processing issues under the FOIA. However, she explained that she may be able to address concerns raised under the DPA, but that this would be dealt with by the appropriate data protection staff rather than via a decision made under the FOIA.
15. The Commissioner has commented on the handling of the internal review in the "Other matters" section at the end of this notice.
16. The complainant did not make any reference to COLP advising that it did not hold some of the requested information, so this matter has not been further considered.

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2615149/fs50840643.pdf>

17. The Commissioner will therefore consider below whether COLP is entitled to rely on section 31 of the FOIA as a basis for refusing to provide the withheld information in the latter part of his request.
18. The Commissioner has viewed all the withheld information in this case. She notes that this includes some documentation which is not currently used due to issues within SAIP, albeit she understands that this may be used in the future. She was advised by COLP that: "*The scoring criteria contained in the three attached documents still operate within SAIP but no use is made of the scores that SAIP generates*"; she nevertheless considers that it would still fall within the scope of the request as it is recorded information.
19. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 31 – law enforcement

20. COLP has cited sections 31(1)(a), and (b) of FOIA in relation to the withheld 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".

21. 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.
22. 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.
23. The withheld information in this case consists of four documents, all of which have been provided to the Commissioner for her consideration.

The applicable interests

24. The first point for the Commissioner to consider is whether the arguments provided by COLP relate to the relevant applicable interests, namely the prevention or detection of crime and the apprehension or prosecution of offenders.
25. COLP provided evidence in support of its view that disclosure would be likely to prejudice the prevention or detection of crime and the apprehension or prosecution of offenders. It advised:

"The City of London Police is tasked with enforcing the law, preventing and detecting crime and protecting the public in the City of London. Action Fraud, is a dedicated unit with the City of London Police, working in collaboration with government and industry to tackle fraud and cybercrime.

In the case of the scoring in use for cases submitted to Action Fraud, this document is part of the Action Fraud tactical assessment and triage process. The scoring forms part of the overall risk assessment process for Action Fraud investigation and is not the entirety of the assessment process.

Disclosure of this information will reveal details as to the prioritisation of specific threats in the investigating process. The potential harm in disclosure is the possibility that this could provide information to organised fraudsters that would be advantageous in terms of focusing their efforts on those fraud areas where there is less priority.

... it has additionally been identified that disclosure of the scoring matrix would result in a loss of intelligence which would further prejudice law enforcement. This is because where victims of fraud believe that no investigation will take place, they are less likely to

report an incident. Given the volume of incidents reported, the loss of intelligence could be significant”.

26. In disagreeing with the engaging of this exemption, the complainant argued:

“... the disclosure of the information sought is not going to or would be likely to prejudice the prevention of crime. The information sought has nothing to do with the prevention of crime in as much as deciding which reported matters are to be investigated will not have any impact upon preventing crime. Crimes will be committed irrespective of the disclosure of this information and by definition will have occurred before this information and its use comes into play.

Disclosure of the information sought also will not prejudice or be likely to prejudice the detection of crime. Purposively, the information sought is used to exclude matters from detection.

For the same reasons, disclosure of the information sought will not prejudice or be likely to prejudice the apprehension or prosecution of offenders or the administration of justice, neither of which have any relevance to matters where there is to be no investigation.

... I am unaware of any lawful entitlement of Police to limit crimes that will be investigated by recourse to value ...”.

27. Having considered the above arguments provided by COLP, the Commissioner is satisfied that they properly relate to the exemptions cited, ie the prevention or detection of crime and the apprehension or prosecution of offenders. Whilst the complainant is of the view that the withheld information is used to “*exclude matters from detection*” and that “*there will be no investigation*” the Commissioner does not agree. This is because disclosure would reveal methodology and thresholds which would be likely to be advantageous to those seeking to commit crime and avoid detection. Therefore the first limb of the three part test, outlined above, is met.

The nature of the prejudice

28. The Commissioner next considered whether COLP demonstrated a causal relationship between the disclosure of the requested information and the prejudice that sections 31(1)(a) and (b) of the FOIA are designed to protect. In her view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.

29. As explained above, COLP applied sections 31(1)(a) and (b) to withhold the requested information as it considers its disclosure would reveal methodology and thresholds which would be likely to be advantageous to those seeking to commit crime and avoid detection. It explained that: *"the potential harm in disclosure is the possibility that this could provide information to organised fraudsters that would be advantageous in terms of focusing their efforts on those fraud areas where there is less priority"*, adding that those areas given a "high priority" could be avoided. COLP also explained that this would, in turn, make the wider public more vulnerable to falling victim to fraud schemes.
30. The Commissioner is satisfied that this prejudice is real and of substance, and that there is a causal relationship between the disclosure of the requested information and the prejudice which the exemptions are designed to protect.

Likelihood of prejudice

31. COLP did not specify the level of likelihood being relied on so the Commissioner has considered the lower level of prejudice, ie that prejudice *"would be likely to"* occur as a result of disclosure.

Is the exemption engaged?

32. In a case such as this, it is not sufficient for the information to merely relate to an interest protected by section 31(1)(a) and (b). Its disclosure must also at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it is likely to occur.
33. The Commissioner considers that the disclosure of the requested information, irrespective as to whether or not some of it is currently being relied on, clearly has the potential to give valuable insight into the system being used by AF. This would clearly be of genuine interest to any party who commits, or is considering committing, any type of fraudulent crime. Knowing how such a crime would be dealt with by AF, and how decisions are made, would be likely to be of considerable interest and may make the commission of one type of crime 'preferable' to another.
34. Furthermore, the thresholds applied to the various categories of crime may enable perpetrators to revise their actions to try and stay 'under the radar' in an effort to reduce the chance of their being caught.
35. For the above reasons, the Commissioner is satisfied that sections 31(1)(a) and (b) are engaged.

Public interest test

36. 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 exemptions at sections 31(1)(a) and(b) of the FOIA outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

37. The complainant has argued:

"... Reasonably the public should be entitled to know whether effectively they are wasting their time and effort in reporting matters to Action Fraud if such tests are being used and whether the Police are doing what they are supposed to do. The disclosure of the sought information may act as an imperative for improvements to be made in the investigation of such matters and indeed, it could even be used by the Police to secure greater resources with which to do so".

38. COLP has argued:

"Disclosure of information under FOIA increases openness and transparency which is an essential component of the Act. Provision of this document will shed more light on the way Action Fraud performs its functions, as outlined in the paragraph above. This would lead to more accurate and fruitful public debate in relation to the way Action Fraud operates and where improvements could be made.

Action Fraud has been the subject of recent public interest and debate following the publication of a high profile newspaper report and disclosure of the requested information would assist the public in understanding how investigations are prioritised and how public resources are allocated".

Public interest arguments in favour of maintaining the exemptions

39. COLP has argued:

"If the Action Fraud scoring document were to be released, there is a considerable scope for potential fraudsters, involved in fraud and cybercrime schemes, to concentrate their efforts in certain types of scams in the knowledge that they will likely not be afforded the same level of investigative priority as other types of fraud. This would make it easier for them to perform their fraudulent activities and in turn compromise Action Fraud's ability to tackle them effectively.

Reports to Action Fraud are linked in order to form a national picture of threat, risk and harm. Whether or not a report is passed for investigation, the information forms intelligence which supports and develops leads into other policing and law enforcement activities in the disruption of criminal activity. The release of information related to the scoring of information may discourage members of the public from reporting, as articulated in the applicant's request, and therefore affect the ability of UK law enforcement to investigate criminal activity and prevent victims of crime.

Disclosure of the requested information would harm law enforcement ... in terms of providing valuable intelligence to the Police Service".

Balance of the public interest

40. When balancing the opposing public interests in a case, the Commissioner must decide whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
41. The Commissioner accepts that there is a presumption running through the FOIA that openness is, in itself, to be regarded as something which is in the public interest.
42. The Commissioner also recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. Public confidence will be increased by openness and transparency with regard to actions taken by the police, and this may involve allowing the public access to information about controversial matters. In this case, the withheld information would give out details of how AF deals with certain types of crimes and the methodology used in prioritising such crimes. The Commissioner considers that there is a clear public interest in the public being provided with details to assist in managing expectations and giving confidence that the matter they are reporting will be dealt with appropriately.
43. The Commissioner also notes that a significant amount of information about AF is already in the public domain, including concerns about shortfalls, resources and system issues. Such publications indicate that some of the complainant's concerns are already noted and the appropriate authorities are therefore currently aware. The Commissioner considers that the available information goes some considerable way

towards satisfying the public interest in scrutinising how fraud is being investigated and recommendations as to how any shortfalls should be addressed. Whilst she recognises that the complainant has his own concerns about the processes being adopted in the investigation of fraud, she does not consider that provision of the requested information would add any particular value to these concerns, which are already known.

44. The Commissioner does, however, consider it would be counter to the public interest for fraudsters to be given further material which could potentially assist in the furtherance of the commission of crime – both reducing the likelihood of detection and increasing the likelihood of subsequent evasion. She considers this argument to be of considerable weight in favour of maintaining the exemption.
45. The Commissioner also considers that disclosure could have a wider impact on the policing of fraudulent crime. This is because people may be deterred from reporting fraud if they believe that 'their' crime may not be investigated as it does not meet the relevant threshold criteria. Any such loss of intelligence would clearly be likely to have a significant impact on law enforcement, as wider patterns of criminal behaviour could potentially be lost if related crimes are not all taken into account.
46. COLP also advised the Commissioner that:

"Irrespective of whether or not a case is formally disseminated, summaries of all cases are forwarded to home forces weekly, so that they are able to pick up any case, even if it is not formally disseminated".

Therefore, local police forces are also given the opportunity to investigate cases, or build up their own intelligence from the data that is recorded. Again, any loss of such data would not be in the public interest.

47. Having given due consideration to all the arguments set out above, the Commissioner has decided that the public interest in maintaining the exemptions outweighs the public interest in disclosure, and therefore that sections 31(1)(a) and (b) have been applied appropriately in this case.

Other matters

48. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

49. The complainant expressed dissatisfaction with the seniority / competence of the person who conducted the internal review. He was also of the view that there was no evidence to support that his concerns had been properly addressed saying:

"If full and proper consideration has been had of a person's arguments, it is reasonable to expect at the very least that the principal important and controversial issues raised thereby are demonstrably addressed in writing with adequate reasons if disagreement is had with the same. This clearly has not been done and is unacceptable".

50. The Commissioner has no authority to specify who should undertake an internal review within a public authority. However, it is her view that, ideally, it should be carried out by someone senior to the person who dealt with the original request. Where this is not possible it should be undertaken by someone trained in, and who understands, the FOIA.

51. In respect of the undertaking of the internal review, the Commissioner was advised that:

"Unusually and due to a lack of resources, the original disclosure decision was made by the Head of Information Management Services (IMS) and there is no one within the organisation in a more senior position with experience of making disclosure decisions".

52. Whilst it is unfortunate that the more senior member of staff was involved at an earlier stage of the process, the Commissioner notes that the practice of having an independent review was adhered to and it was done so by someone with appropriate FOIA experience. Whilst it would have been preferable if these roles could have been reversed, she is satisfied that the approaches were independent. She would recommend that, where possible, the most senior manager does not deal with initial responses.

53. Regarding the other concerns raised by the complainant about the internal review process, COLP advised the Commissioner that its objective had been to: *"... conduct a simple and straightforward review of all of the information available rather than the original decision itself"*. In doing so it advised her that it had liaised directly with the Head of the National Fraud Intelligence Bureau.

54. COLP advised the Commissioner that it had taken account of *"... the 51 points made by the applicant in his IR [Internal Review] request and confirmed this to him"*, adding that:

"Many of the points made by the applicant related to his specific fraud report and subsequent complaint to the Professional Standards Directorate. Addressing each point individually would ... have complicated the response unnecessarily and created additional work".

55. The Commissioner therefore accepts that COLP did consider the complainant's concerns whilst undertaking its internal review, albeit that each point may not have been itemised as part of the response. She also agrees that many of the matters raised are not issues which fall to be considered under the remit of the FOIA, which concerns the disclosure of recorded information rather than the adequacy and justification of systems / processes with which the complainant has concerns in this case. Such matters fall outside the remit of the FOIA.

Other grounds of complaint

56. The complainant also raised the following concerns:

"I know of no law which says that the police need only investigate certain types of crime e.g. offences against the person as opposed to say, financial crime, or crimes only above a certain value. Equally, I know of no law which says that the Police's investigatory duty is dependent upon resources e.g. because resources may have been reduced, crimes of burglary say need not be investigated. In any of these cases, if that were right, it is reasonable to expect, consistent with other areas of the law, that exceptions to what may be seen as a general rule are clearly set out somewhere. If you disagree and believe there is such law, you are kindly invited to direct me to it. To the extent that you cannot, this makes my point here.

If there are resourcing issues, it is for the police's senior management to make the case for more to Government and if need be, the wider public who put the former in office. What they do not do is lessen the overriding duties on the police, which would then arguably yo-yo depending on allocations.

*Obviously and sensibly, however, the above general investigatory duty has to be caveated i.e. if investigations are **not to be made at all** or once commenced are **not to be pursued**, this must be for reasons that can be properly justified and are reasonable".*

57. Whilst she understands the complainant's genuine concerns, the Commissioner has no jurisdiction over policing matters. She is therefore unable to further comment on the legitimacy of any related practices or resourcing issues. She does however note that some related concerns

Reference: FS50879757

have been raised and the review referred to in paragraph 8 above does touch on some of these.

Right of appeal

58. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

59. 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.

60. 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

Carolyn Howes
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Wycliffe House
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