

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

### **Decision notice**

**Date:** 11 October 2022

**Public Authority:** Chief Constable of Merseyside Police  
**Address:** Merseyside Police Headquarters  
Rose Hill  
Cazneau Street  
Liverpool  
L3 3AN

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

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1. The complainant requested information relating to an arrest for drone use at Aintree racecourse, specifically the offence details and the amount of money seized. Merseyside Police initially refused the request citing various subsections of section 30 of FOIA, (the exemption for investigations and proceedings conducted by public authorities). Following an internal review, Merseyside Police maintained that section 30 applied, but also cited section 21 (information accessible to applicant by other means) and section 40 (personal information). Both sections 21 and 40 of FOIA were cited for part of the requested information, namely the specific offence the individuals were arrested for.
2. For the reasons set out in this notice, the Commissioner's decision is that neither section 21 nor section 40 is engaged. Of the subsections in section that were cited, only 30(1)(a)(i) was engaged. In that respect, the Commissioner considers, for the sum of money seized, that the balance of the public interest favours maintaining the exemption. However, in relation to the offence committed, the balance of the public interest favours disclosure of this part of the request.
3. The Commissioner requires Merseyside Police to take the following step to ensure compliance with the legislation:
  - Disclose the offence details for which the arrests were made.
4. Merseyside Police must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Background**

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5. The request below concerns drone use at Aintree racecourse relating to the resulting arrests and seizure of a large undisclosed sum of money.
6. The Commissioner notes that the complainant has made reference to two other FOIA requests he considers relevant to this investigation (see paragraph 18 below). Both requests are publicly available on the WhatDoTheyKnow.com website. The Commissioner has reviewed the content of these requests.
7. The Commissioner notes that further details of the offence are available in the Civil Aviation Authority's ('CAA') response of 28 April 2022<sup>1</sup>.
8. Merseyside Police has provided the Commissioner with additional details about the specific sections, which it has withheld from the complainant.
9. From his own online searches, the Commissioner has not located any publicly available information about the specific sum of money seized at Aintree racecourse.
10. It is against this background that the Commissioner has investigated the complainant's complaint.

## **Request and response**

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11. On 11 April 2021, the complainant wrote to Merseyside Police via WhatDoTheyKnow.com and requested information in the following terms:

"The police report about making an arrest for drone use at Aintree stated that a large quantity of cash was retrieved, how much was this?

What offence was the spotter arrested for?

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<sup>1</sup> <https://www.whatdotheyknow.com/r/3ae99811-37ad-4634-b9da-187525ed14b2>

<https://www.merseyside.police.uk/news/merseyside/news/2021/april/three-people-arrested-after-drone-spotted-being-flown-near-to-aintree-racecourse/>"

12. Merseyside Police responded on 10 May 2021. It refused to provide the requested information citing the following FOIA exemptions:
  - Sections 30(1) and (2) – investigations and proceedings conducted by public authorities.
13. The complainant requested an internal review on 24 May 2021 and, in the absence of any response, again on 20 July 2021.

### **Scope of the case**

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14. The complainant contacted the Commissioner on 4 October 2021 to complain about the way his request for information had been handled. His initial complaint concerned the then outstanding internal review.
15. The Commissioner wrote to Merseyside Police on 16 October 2021 asking it to carry out an internal review.
16. Merseyside Police provided its internal review outcome on 8 November 2021 in which it maintained its original position in relation to section 30. However, it now cited section 40(2) (personal information) in relation to the offence the individuals had been arrested for. In addition, Merseyside Police cited section 21 of FOIA (information accessible to applicant by other means) in relation to publicly available information which it said "states the legislation which led to the arrest" and provided a link to a news release on 10 April 2021<sup>2</sup>.
17. The Commissioner notes that the link quoted by the complainant in his request leads to information about the incident published on Merseyside Police's website on 9 April 2021. The link provided by Merseyside Police in its internal review outcome refers to an update, again on its website, published on 10 April 2021.
18. Following the Commissioner's initial investigation letters the complainant responded as follows:

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<sup>2</sup> <https://www.merseyside.police.uk/news/merseyside/news/2021/april/update-three-people-arrested-after-drone-spotted-being-flown-near-to--aintree-racecourse/>

'As you may know drones are tools used these days for video and photography among other tasks. There are laws around the use of these.

Something unusual happened at Aintree, unheard of ever, which was legally registered drone operators were arrested and even spotters, spotters are people employed for the pure purpose of safety, they've to look up at the sky watching the drone looking out for potential safety risks. There are no laws for arresting people for spotting and there's no good reason that anyone can think of for that occurring. So this has sent shockwaves across the UK drone community and made international news in the drone industry.

Even the CAA (who make the laws for airspace) have said on FOIA they were not consulted on the arrests.

[https://www.whatdotheyknow.com/request/aintree\\_spotter\\_arrests](https://www.whatdotheyknow.com/request/aintree_spotter_arrests)

"I have checked with the relevant teams and they have confirmed that no, the CAA was not consulted about these arrests, nor are we aware what offences may have been committed."

On the 30<sup>th</sup> May 2022, Merseyside Police in another FOIA have tried to blame the arrests on The Met police despite the fact Merseyside publicly took credit for the arrests:

<https://www.whatdotheyknow.com/r/ac8b1c98-1ca4-4ab0-9018-13af8b9df338>

"Merseyside Police holds no information in respect of the cost involved in relation to the use of a police drone, as it was not a Merseyside Police drone and the officers involved were not Merseyside Police officers. There were two police officers who attended with the drone and no cost have been request [sic] from Merseyside Police in relation to the deployment of those officers, transport or other costs in relation to the operation of the drone. The officers who attended were from the Metropolitan Police."

I hadn't even questioned about the operation of a police drone in that FOIA, I just wanted the cost that Merseyside Police incurred in making the arrests, but the fact they've replied in a manner to point a finger elsewhere is concerning.

On 28<sup>th</sup> April 2022, the CAA on FOIA revealed that they were contacted by Merseyside Police and not The Met, suggesting that

in fact Merseyside Police were actively involved in the arrest so will have knowledge of the facts:

<https://www.whatdotheyknow.com/r/3ae99811-37ad-4634-b9da-187525ed14b2>

"The CAA was contacted by Merseyside Police"

The entire UK drone industry now fears arrest because the reasons at Aintree are not being made public so there's a genuine public interest in knowing what the arrests were for. Mentioning there was a quantity of cash recovered, which is almost certainly completely legally held money is a concern too, as the phrase is used to infer organised crime or criminality and so it's unfair to use such wording then not even disclose what that sum was, as it could be relatively trivial compared to genuine criminal activity.'

19. The Commissioner initially notes that Merseyside Police has cited sections 30(1)(a)(i), 30(1)(b) and (c) and 30(2)(a)(i). His guidance states when each of these exemptions should be applied<sup>3</sup>.
20. Section 30(1)(b) applies where a public authority has a power to investigate a crime but not a duty. As a police force Merseyside Police clearly has a duty to investigate, hence its reliance on section 30(1)(a)(i), and the Commissioner therefore finds that reliance on this section is not appropriate.
21. Section 30(1)(c) is typically applied by those public authorities that have power to conduct criminal proceedings but do not have an investigative function. The Commissioner does not consider that this is a relevant exemption for Merseyside Police to rely on in these circumstances as it is clearly a police investigation for which it has an investigative function.
22. For information to be exempt under section 30(2) it must both relate to a public authority's investigations or proceedings **and** relate to confidential sources. Merseyside Police clearly advised the Commissioner "No, Merseyside Police does not consider that the information relates to the obtaining of information from confidential sources". The Commissioner therefore concludes that it has been cited incorrectly so it has not been further considered.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

23. The Commissioner has noted the above and has set out to consider Merseyside Police's reliance on sections 21, 30(1)(a)(i) and 40 of FOIA to withhold the requested information.

## **Reasons for decision**

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### **Section 21 – information accessible to applicant by other means**

24. Merseyside Police cited section 21 of FOIA in relation to the requested offence details.
25. Section 21(1) of FOIA provides:
- “(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”
26. Section 21 is an absolute exemption, which means there is no requirement to carry out a public interest test if the requested information is exempt.
27. The Commissioner considers that the purpose of the section 21 exemption is to protect the scarce resources of public authorities by shielding them from replying to requests for information which the requestor can access elsewhere. It also acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes. Finally, it protects the statutory right of public authorities to charge for certain information which they are bound by law to collect.
28. In the Commissioner's guidance for section 21<sup>4</sup> of FOIA, the Commissioner explains that subsection (1) describes the fundamental principle underlying this exemption; that is, in order to be exempt, the requested information must be reasonably accessible 'to the applicant'. Unlike consideration of most other exemptions in FOIA, this allows the public authority to take the individual circumstances of the applicant into account.
29. This means, in effect, a distinction is being made between information that is reasonably accessible to the particular applicant and the information that is available to the general public. In order for section 21 to apply, there should be another existing, clear mechanism by which

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<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1203/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf>

the particular applicant can reasonably access the information outside of FOIA.

30. Information is only reasonably accessible to the applicant if the public authority:
  - knows that the applicant has already found the information; or
  - is able to provide the applicant with precise directions to the information so that it can be found without difficulty.
31. When applying section 21 of FOIA in this context, the key point is that the authority must be able to provide directions to the information. Additionally, paragraph 23 of the Commissioner's guidance, following the case of *The London Borough of Bexley and Colin P England v Information Commissioner (EA/2006/0060 & 0066, 10 May 2007)*<sup>5</sup>, states that for section 21 to apply, it is necessary to consider whether all of the information is reasonably accessible to the complainant.
32. From the available correspondence it appears that the link<sup>6</sup> provided by Merseyside Police in its submissions to the Commissioner was not provided to the complainant. The complainant was given a link (see footnote 1 above) to an article published on 10 April 2021 on Merseyside Police's website; the article (at footnote 4 below) referenced in the submissions to the Commissioner appeared in the *Liverpool Echo* on 9 April 2021 and contains more details.
33. The Commissioner has taken a pragmatic approach in this case. Whilst the link at footnote 1 (which the complainant has been given) does contain some information on the subject matter of the complainant's request, it is clear that the link at footnote 4 (which the complainant does not appear to have been given) contains more information relevant to his request.
34. For expediency, the Commissioner has included both links in this notice, rather than include a step ordering Merseyside Police to provide the link to the more detailed article. He has also assessed the accessibility of the link at footnote 4.
35. Merseyside Police told the Commissioner:

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<sup>5</sup> <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i146/ENgland.pdf>

<sup>6</sup> <https://www.liverpoolecho.co.uk/news/liverpool-news/three-men-arrested-after-drone-20356750>

The press release produced by Merseyside Police, and made public on the 9<sup>th</sup> April 2021, provides all relevant and pertinent information in relation to the arrests of three people after a drone was spotted being flown near to Aintree racecourse.

It gives a brief summary that the three men; a pilot, and two spotters – aged 54, 52 and 35 were arrested on Red Rum Close in Aintree on suspicion of offences under the Air Navigation Order. A drone was also seized and following the search of a vehicle, linked to one of the men, a large quantity of cash also being seized. This information gives all pertinent information without disclosing any personally identifiable data or special category data of the three men involved.

More broadly, it provides background context and reassurance that Merseyside Police officers, over the three days of the Aintree Festival, worked with partners from Crowded Space Drones (Jockey Club contractors) and the NPCC Counter Drone Team to monitor and respond to drone detections around Aintree racecourse and its surrounding areas. It finishes with the closing statement by Chief Superintendent Paul White "Merseyside Police will continue to seek ways to combat the illegal use of drones to keep the communities of Merseyside safe."

36. Having reviewed the information available (via the link at footnote 4) the Commissioner notes that whilst there is a reference to offences being committed under the Air Navigation Order, the article does not specify which offence(s) the men were arrested for which was what was requested by the complainant.
37. Whilst the Commissioner is satisfied that this information is reasonably accessible to the complainant, given that he made his FOIA request online and included a weblink, he does not find that the requested information pertaining to the offence for which the individuals were arrested has been specifically addressed.
38. Taking the particular circumstances of this case into account, the Commissioner finds that Merseyside Police was not entitled to cite section 21(1) in response to this part of the request for the reasons set out above.
39. The Commissioner will next consider whether section 40 of FOIA applies to any of the requested information.

#### **Section 40 – personal information**

40. Merseyside Police has cited section 40 in relation to the offence committed.



41. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
42. In this case the relevant condition is contained in section 40(3A)(a)<sup>7</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
43. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
44. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

### **Is the information personal data?**

45. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

46. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
47. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
48. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
49. Merseyside Police has argued that the arrested individuals can be identified because their ages and the fact that they are male is already in the public domain, together with their attendance at Aintree racecourse and the details of the legislation they were alleged to have

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<sup>7</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

breached. It also argued that the pool of drone operators/spotters within the United Kingdom is still "relatively small".

50. However, the Commissioner considers that the likelihood of any person knowing the age of another person in these circumstances (unless they are related to or are personal friends of) is highly unlikely. In this case, it is even more unlikely given that the names of the arrested individuals are not publicly known. Although he accepts that the pool of drone operators/spotters is relatively small, the Commissioner considers that even furnished with the above publicly known details, it would be very unlikely that the arrested individuals could be identified from the disclosure of the specific offence, certainly no more so than they could be from what is already known. Further, there would have been thousands of males in attendance at Aintree and it would be highly unlikely that those arrested could be identified – to do so an individual would have to have prior knowledge of those who are drone operators/spotters and their exact ages in order to be able to identify them.
51. In the circumstances of this case, having considered the withheld information relating to the offence committed, the Commissioner is not satisfied that the information both relates to and identifies the data subjects concerned. This information therefore does not fall within the definition of 'personal data' in section 3(2) of the DPA.
52. Therefore, the Commissioner's conclusion is that the withheld information relating to the offence committed is not 'personal data' so section 40 is not engaged.

### **Section 30 - investigations and proceedings conducted by public authorities**

53. As set out in the 'Scope' section above, the Commissioner is only considering the application of section 30(1)(a)(i) to the request.
54. Section 30(1)(a)(i) of FOIA states:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –

  - (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –
  - (i) whether a person should be charged with an offence..."
55. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.

56. Consideration of section 30(1)(a)(i) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Is the exemption engaged?**

57. The first step is to address whether the requested information falls within the class specified in section 30(1)(a)(i) of FOIA.
58. The Commissioner has issued guidance on section 30<sup>8</sup> which states that section 30(1)(a) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence.
59. The Commissioner's guidance describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the guidance says:

"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged. Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence..."

60. Merseyside Police has explained that, at the time of the request, the investigation had not been completed.
61. As a police force, Merseyside Police has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. The Commissioner is therefore satisfied that it has the power to carry out investigations of the type described in section 30(1)(a)(i) of FOIA.
62. The Commissioner is satisfied that the withheld information was held in relation to a specific investigation conducted by Merseyside Police of the type described in section 30(1)(a)(i) of FOIA. He is therefore satisfied that the exemption provided by section 30(1)(a)(i) is engaged.

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<sup>8</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

## **The public interest test**

63. Section 30(1)(a)(i) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
64. In accordance with his guidance, when considering the public interest in maintaining exemptions the Commissioner considers that it is necessary to be clear what they are designed to protect.
65. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the disclosure of the requested information could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.

## **Public interest arguments in favour of disclosure**

66. As part of his internal review, the complainant submitted the following points to support disclosure:
  - “This was a 2 part question, the amount of cash and a request to know what offence the spotters (i.e. people employed just to watch a drone's flight were arrested with).
  - I have no issue if the amount of cash isn't revealed if there's good reason for that, it does however seem unusual to refuse to reveal what crime the spotters were charged with.
  - This arrest has alarmed the entire UK drone industry and has attracted both national and international interest. No one is aware of any provision in the Air Navigation Order Legislation for arresting spotters so this information is in the public interest to release.
  - There's genuine concern as the arrest was performed to support The Jockey Club which is a private company against other private companies engaged in filming using drones. Given the police are a public service and are not a private force to pursue The Jockey Club's interests alone, transparency is very important.”
67. Merseyside Police recognised the public interest in the transparency of policing operations and investigations, and in providing reassurance that the Police Service is appropriately and effectively engaging with the threat from criminals.

68. It also acknowledged that disclosure of details relating to a specific crime would give a greater understanding of the types of crimes which Merseyside Police investigate, thereby demonstrating how public funds are being spent.

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

69. In its response to the complainant's request, Merseyside Police set out the following factors in favour of maintaining the section 30 exemption:

- "Information recorded by the police in either incident records or crime reports is considered by the public to be of a class of information that should have a restricted circulation. The public has faith in Merseyside Police to treat information given to and recorded by the Force as for policing purposes, and not for general disclosure to the public. On those occasions when it is necessary to make disclosures to the public, using information about crime or incidents, it will only be made after careful consideration and where there is a clear policing purpose such as an appeal for witnesses.
- Information recorded by the police in either incident records or crime reports is considered by the public to be of a class of information that should have a restricted circulation. The public has faith in Merseyside Police to treat information given to and recorded by the Force as for policing purposes, and not for general disclosure to the public. On those occasions when it is necessary to make disclosures to the public, using information about crime or incidents, it will only be made after careful consideration and where there is a clear policing purpose such as an appeal for witnesses.
- Were there to be no regard to maintain such information or intelligence as confidential, then the public at large would lose faith in the Force and stop proactively assisting in law enforcement activities. The result would be that the public would become less safe, more likely to become victims of crime and the Force would need to use additional resources in policing to keep the community safe. This would innately hinder police investigations as there would be less information on which to base them.
- Disclosure of details relating to a specific crime would undermine the associated police investigation. Such detail could alert suspects/offenders that they are under investigation and also provide them with an indication as to how much the police knows about the matter. An offender might be able to evade justice by establishing an alibi, disposing of evidence etc.

- Even where suspects have already been identified and questioned, placing details of a particular matter into the public domain before sufficient time has elapsed to complete the full criminal justice process could jeopardise that process. Inappropriate media scrutiny could prejudice a court case.
  - Furthermore, members of the public report crime to the police service with a degree of expectation that the details they provide will be treated confidentially. If the police were to routinely start releasing such information in answer to Freedom of Information requests, the public would lose trust in the police service and would become reluctant to provide information in the future, which would impede the ability of the police service to investigate matters of this nature.”
70. At internal review, Merseyside Police relied on the same public interest factors, although worded slightly differently.
71. During the course of the Commissioner’s investigation, Merseyside Police referenced the following:

“Members of the public would not expect disclosures of information relating to police investigations to be disclosed by means of a Freedom of Information Act application response, even after the investigation was complete, where there was no tangible benefit to the public.

Where the public can show that Merseyside Police have been cavalier in the disclosure of personal data that the Force was entrusted to hold as part of an investigation, members of the public will be less trusting in the Force to handle information correctly. Loss of public trust makes members of the public less likely to assist in the provision of assistance to the Force, for example, if they believe that information which may lead them to either being identified or perceived as being the person who provided information to the police may be disclosed under Freedom of Information Act processes. In certain parts of the Force area, such action has been seen to lead to harassment or harm to the individual, their family and damage to property. The lower end of such harassment is graffiti on walls identifying the person as a “grass”, which is an invitation to certain members of the public to harass the named person.”

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

72. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in Merseyside Police disclosing the requested information. The Commissioner has also considered whether disclosure would be likely to harm any investigation,

which would be counter to the public interest, and what weight to give to these competing public interest factors.

73. As set out above, the purpose of section 30 is to protect the effective investigation and prosecution of offences. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.
74. Set against this, the Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases.
75. The points above highlight the argument for and against disclosure of information relating to a specific ongoing investigation. The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. The Police Service will never divulge specific information if to do so would place the safety of an individual(s) at risk or compromise an ongoing investigation.
76. Whilst there is a public interest in the transparency of policing operations and investigations, and in providing reassurance that the Police Service is appropriately and effectively engaging with the threat from criminals, there is a very strong public interest in safeguarding the health and safety of individuals and upholding its ability to carry out investigation effectively. As much as there is a public interest in knowing that policing activity is appropriate and balanced it will only be overridden in exceptional circumstances.
77. In this case, the Commissioner is mindful that some details of the investigation are already in the public domain, namely that individuals were arrested and that the offence was considered under Article 94 of the Air Navigation Order 2016. Further, the fact that arrests were made was in the public domain at the time of the request. The Commissioner cannot see any prejudice in the disclosure of the specific offence.
78. The complainant has stated that he is more interested in the disclosure of the offence committed if there is a valid reason for withholding the amount of money seized (as set out in paragraph 66). The Commissioner must consider the public interest as applicable at the time of the request. He considers that as the investigation was 'live' at the time of this request that the disclosure of the sum of money could be prejudicial.
79. Taking all the above into account and having given due consideration to the arguments put forward by both parties, the Commissioner considers that the public interest in disclosure of the amount of money seized is

outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined.

80. The Commissioner is therefore satisfied that Merseyside Police was entitled to rely on section 30(1)(a)(i) of FOIA to refuse this part of request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
81. However, in relation to the offence committed, whilst the Commissioner is satisfied that section 30(1)(a)(i) is engaged, he considers that the public interest in disclosure outweighs the public interest in maintaining the exemption. Merseyside Police is ordered to disclose this information as set out in paragraph 3 of this notice.

### **Other matters**

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82. 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.
83. Part 5 of the section 45 Code of Practice<sup>9</sup> (the Code) states that it is best practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Code states that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
84. The Commissioner is concerned that the complainant first requested an internal review on 24 May 2021 and that it took the Commissioner's intervention for an internal review to be completed on 8 November 2021.
85. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy<sup>10</sup> to improve standards of

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<sup>9</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf)

<sup>10</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>



accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual<sup>11</sup>.

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<sup>11</sup> [https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1\\_0.pdf](https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf)

## Right of appeal

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86. 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)

87. 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.

88. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**