

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 August 2023

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 requested information from Hertfordshire Constabulary for correspondence between senior officers and the Home Secretary, and for Public Order Incident Command logs completed during climate protests. Hertfordshire Constabulary said it held no information to parts one and two of the request. It confirmed it holds information to parts three and four but cited sections 31(1)(a) and 31(1)(b) (law enforcement) and also section 40(2) (personal data) and subsequently section 38(1)(b) (health and safety) of FOIA.
2. The Commissioner's decision is Hertfordshire Constabulary was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse to provide the information requested. Therefore, the Commissioner does not require Hertfordshire Constabulary to take any steps as a result of this decision.

Background

3. The complainant made the same request to the Metropolitan Police Service (MPS) which the Commissioner is currently investigating.

4. There are several online media articles linking Hertfordshire Constabulary with protests by Just Stop Oil¹ and Insulate Britain² in 2021 and 2022.

Request and response

5. On 2 February 2023 the complainant wrote to Hertfordshire Constabulary and requested information in the following terms:
 - i. "All emails and/or WhatsApp messages exchanged between Hertfordshire Constabulary chief constable Charlie Hall, or superintendent Sue Jameson, and home secretary Suella Braverman between 6-11 November 2022.
 - ii. All emails and/or WhatsApp messages exchanged between Hertfordshire Constabulary chief constable Charlie Hall, or assistant chief constable Genna Telfer, and home secretary Priti Patel between 13-23 September 2021.
 - iii. Copies of any Public Order Incident Command Logs completed in relation to the Just Stop Oil protests in November 2022.
 - iv. Copies of any Public Order Incident Command Logs completed in relation to the Insulate Britain protests in September 2021."
6. On 2 March 2023 Hertfordshire Constabulary responded. It stated 'no information held' to parts one and two of the request. With regard to parts three and four, Hertfordshire Constabulary cited section 23(5) (security bodies), section 24(2) (national security) and section 31(3) (law enforcement) of FOIA.
7. On 3 March 2023 the complainant requested an internal review to points three and four of his request.
8. On 6 June 2023 Hertfordshire Constabulary provided its review response. It overturned its original decision to neither confirm nor deny that information is held. It confirmed it holds information relating to parts three and four of the request but cited sections 31(1)(a) and

¹ <https://www.bbc.co.uk/news/uk-england-beds-bucks-herts-63569177>

² <https://www.bbc.co.uk/news/uk-england-beds-bucks-herts-59184640>

31(1)(b) (law enforcement) and also section 40(2) (personal data) of FOIA.

9. The complainant contacted the Commissioner on 9 June 2023 to complain about the way his request for information had been handled. Specifically, the refusal of information to parts three and four of his request under the exemptions Hertfordshire Constabulary cited.
10. During the investigation, Hertfordshire Constabulary provided the Commissioner with its final response concerning its refusal notice. It also applied section 38(1)(b) (health and safety) of FOIA to the request and set out its rationale.

Reasons for decision

11. This reasoning covers whether Hertfordshire Constabulary was entitled to rely on sections 31(1)(a) and 31(1)(b), 40(2) and 38(1)(b) of FOIA to refuse to provide the information to parts three and four of the request.

Section 31 – law enforcement

12. Section 31(1) of FOIA states that:

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.

13. It explained to the complainant that “incident command logs are highly confidential, containing information given within the context of a safe space with good faith all round to encourage engagement and to allow open and frank discussion to take place without fear of reprisal.” It said disclosure would set a precedence in divulging information given within these settings which would inhibit the exchange of such views in future.
14. Hertfordshire Constabulary stated the harm it could cause to the police service’s ability to protect the public it serves, if the information relating to the protests were disclosed. It said it could prejudice its ability to perform core functions such as ensuring a safe environment for protesters to express their views peacefully. Also, for officers on-site to do their work, which is protected under the Serious Organised Crime and Police Act 2005.

15. Disclosing information to the world at large, Hertfordshire Constabulary said, would give individuals with intent, the intelligence required to disrupt police activity in response to protests. It explained that this knowledge could be used to an advantage in disrupting policing response around the county and the country as a whole. It considered disclosure as being harmful to the public as it is likely to undermine the Police service's ability to serve the public in managing incidents.
16. Hertfordshire Constabulary said in order for effective policing to be successful, it requires the active participation of a wide number of individuals. Information is discussed during the course of public protection and provided with the assurance that it will be treated confidentially. Disclosure of the information under FOI would break this confidence, resulting in information not being discussed and it would impact on the process of law enforcement.
17. The complainant said he understands that some information contained within the requested Command Logs may be sensitive and may need to be redacted. However, he believes that much of the information within the logs could be disclosed. The complainant is interested in the extent of communication that took place between politicians and/or Home Office officials and Hertfordshire Constabulary in relation to these incidents. He argued "this information would be included within the command logs and that this could be disclosed without harming the police's ability to protect the public or disclosing personal information."
18. Hertfordshire Constabulary was asked to provide the Commissioner with the withheld information. The Command Logs for the Just Stop Oil November 2022 and Insulate Britain Protests September 2021 were disclosed to him but with some information redacted.
19. Hertfordshire Constabulary stated the operational information included in these documents "is incredibly sensitive..." and advised that the Commissioner already had sight of its response letters which evidenced the harm it could cause to the police if the information was disclosed.
20. Having considered all the circumstances of this case, the Commissioner has decided sections 31(1)(a) and 31(b) of FOIA are engaged. He has therefore gone on to consider the public interest.

Public interest test

21. Sections 31(1)(a) and 31(1)(b) are qualified exemptions and are subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosure

22. Hertfordshire Constabulary recognises there is a public interest in the community being made aware of how the Constabulary ensures public safety is sustained and improved.
23. It said the police service has a duty to enforce the law, and in this case, the release of information into the public domain would reinforce the forces commitment as an open and transparent service in respect of the information it holds. Also, it would provide detail in the management of incidents at a local level during the policing of planned and spontaneous public events, such as protests.

Public interest arguments in favour of maintaining the exemption

24. Hertfordshire Constabulary argued that the effectiveness of the service will be reduced when the current or future law enforcement role of the service is compromised by the release of information. In this case, the effectiveness of current and future strategies when managing incidents may be compromised for the reasons which Hertfordshire Constabulary outlined in the harm described above.
25. With regard to the information requested, Hertfordshire Constabulary said it contains information which would reveal police tactics that the officers were attempting to employ, incident management techniques, and other information vital to law enforcement. For much of its policing business, Hertfordshire Constabulary stated discussions or opinion between officers and partner agencies relating to specific incidents and the exchange of views on operational considerations take place routinely.
26. Hertfordshire Constabulary said the information requested documents its thinking and deliberation during the incident. It believes disclosure would harm the efficiency and effectiveness of the Constabulary. Incident management would be hindered because individuals would be unwilling to contribute to such deliberations or avoid putting suggestions and opinions forward, because they would fear their initial views were publicly attributable.
27. Hertfordshire Constabulary argued disclosure of the information (even redacted information) would place intelligence into the public domain which could be exploited by those intent on committing crime or avoiding detection which would have a direct impact on protecting the general public. It explained that highlighting changes to strategic intentions would lead to policing tactics being compromised by individuals who could utilise the information.

28. Hertfordshire Constabulary further argued "the risk to public safety cannot be ignored and Constabularies have a responsibility to ensure safety of individuals is protected at all times."

Balance of the public interest arguments

29. In balancing the public interest arguments, the Commissioner accepts the public interest in the community being informed on how the Constabulary ensures public safety is sustained and improved. He recognises the need for transparency of policing incidents and providing assurance that the police service is appropriately and effectively logging incidents.
30. The Commissioner understands that this is in order for the police service to provide a clear audit trail and to assist during post incident learning reviews. He also accepts with regard to the policing of incidents, there is a strong public interest in knowing that policing activity is efficient and productive.
31. However, appropriate weight must be afforded to the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that may compromise the police's ability to accomplish its core function of law enforcement.
32. The Commissioner is of the view that disclosure of the information would expose law enforcement tactics, capability and capacity, and operating procedures. He acknowledges that this would disrupt police activity and resources could be identified in each area of policing. Disclosure to one applicant would be to the world at large and the Commissioner accepts it would open up for similar disclosures, and the information could be used by individuals to gain an advantage over the police.
33. The Commissioner considers there is a strong public interest in protecting the law enforcement capabilities of a police service, and therefore, that appropriate weight must be given to the public interest fundamental in the exemptions, that is, the public interest in avoiding prejudice to the preventions or detection of crime and the apprehension or prosecution of offenders.
34. The Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Conclusion

35. The Commissioner concludes section 31(1)(a) and 31(1)(b) of FOIA are engaged and Hertfordshire Constabulary was entitled to refuse to disclose the information to parts three and four of this request.

36. In light of his findings, the Commissioner has not gone on to consider the application of section 40(2) or Hertfordshire Constabulary's subsequent reliance on section 38(1)(b) of FOIA.

Right of appeal

37. 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

38. 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.
39. 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

Joanna Marshall
Group Manager
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