

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2023

Public Authority: Chief Constable of West Midlands Police
Address: Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant has requested, from West Midlands Police (WMP), information about the number of response and support officers on duty during a specified night shift (8 May 2023).
2. WMP refused to disclose the requested information, citing sections 31(1)(a) and (b) of FOIA (the law enforcement exemption).
3. The Commissioner's decision is that WMP was correct to rely on sections 31(1)(a) and (b) of FOIA and refuse disclosure.
4. The Commissioner does not require any further steps as a result of this decision notice.

Request and response

5. On 30 June 2023, the complainant wrote to WMP and requested information in the below terms. The request was an amended version of an earlier, wider request:

"... please can you provide data for the following amended request:

1. The total number of response officers on duty in the West Midlands during the night shift of **May 8, 2023**.
2. The total number of supporting officers (e.g. those in control rooms, custody suites and other facilities) on duty in the West Midlands during the night shift of **May 8, 2023**".
6. WMP responded on 18 July 2023. It confirmed holding relevant information but refused disclosure, citing sections 31(1)(a) and (b) of FOIA.
7. Following an internal review, on 14 August 2023 WMP upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 14 August 2023 to complain about the way their amended request for information of 30 June 2023 had been handled.
9. They disagree with WMP's refusal to provide the requested information.
10. They commented that other police forces have disclosed such information.
11. They emphasised that the request relates to police staffing for a single day only. They consider that they have requested "generalised data" that would show "merely how many officers were working a single shift".
12. The Commissioner considers that the scope of his investigation is to consider whether WMP was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse the 30 June 2023 request.
13. The Commissioner has not asked WMP for any submissions or a copy of the withheld information. He considers that in this instance he is able to make his decision without those things.

Reasons for decision

14. Sections 31(1)(a) and (b) of FOIA respectively provide that information is exempt if its disclosure would, or would be likely to, prejudice the prevention or detection of crime, or the apprehension or prosecution of offenders.
15. The exemptions, if engaged, are subject to the public interest test.

16. First the Commissioner is satisfied that the envisaged harm relates to the law enforcement interests protected by sections 31(1)(a) and (b), stated at paragraph 14 above. WMP has expressed concerns about revealing police capacity, thereby enabling criminals to be “more effective in carrying out criminal activities”, for example by targeting their efforts. Clearly this relates to the prevention or detection of crime, or the apprehension of offenders.
17. He is satisfied that the harm is not trivial. Crime is a serious matter and as WMP noted, criminal activity risks the safety of the public. It is important that crime is detected and that offenders are apprehended.
18. He is satisfied that there is a causal link between disclosure and the harm, and disclosure ‘would be likely to’ cause the harm, as he explains below.
19. WMP’s responses indicate that it is claiming the lower level of likelihood, namely that disclosure ‘would be likely to’ harm the interests in question. For example, it used words like “could”, when discussing the link between disclosure and harm. This means there must be a real and significant risk of the harm occurring, even if the risk is less than 50%.
20. As the Commissioner’s section 31 guidance¹ explains, when considering the prejudice test, account should be taken of any ‘mosaic effect’.
21. The prejudice test is not limited to the harm that could be caused by the requested information on its own. Public authorities can take account of any harm likely to arise if someone pieced together the requested information with other information to form a broader picture.
22. Complying with one request can make it more difficult to refuse requests for similar information in the future. Public authorities are therefore entitled to consider any harm that could be caused by combining the requested information with the information a public authority could subsequently be required to provide, if the current request was complied with.
23. Such points are clearly relevant to this case, concerning a request for the number of officers on duty during a specified night shift.
24. Whilst the complainant has argued that their request relates to a single shift only, the Commissioner would point out that other similar requests

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/>

for different shifts or locations, if successful, would likely enable a wider picture to be built.

25. WMP referred to the mosaic effect. It noted that the requested information relates to a night shift, and said "this snapshot may be enough for those with criminal intent to make assumptions about the staffing levels for similar shifts". Combined with other information about shifts and officer availability, it said, this could indicate the capability of the force.
26. The Commissioner is aware that the complainant has made the same (or a very similar) request to a number of different police forces.
27. The Commissioner also notes that the shift that is the focus of this particular series of requests from the complainant is the night shift of 8 May 2023, the bank holiday for the coronation of King Charles III.
28. The Commissioner would remind the complainant that disclosure under FOIA is 'to the world', and not just to the complainant themselves.
29. The Commissioner considers that there is a real and significant risk of disclosure causing harm to the prevention or detection of crime and the apprehension or prosecution of offenders. It is not difficult to imagine criminals using information about the number of police officers on duty at different times or locations to plan their criminal activities and evade apprehension, or try to.
30. The Commissioner therefore considers that the exemptions are engaged.

Public interest test

31. WMP acknowledged considerations in favour of disclosure, such as transparency in relation to police staffing. It recognised that disclosure may assist public awareness of police work and could reassure the public regarding WMP's preparedness.
32. However against disclosure, WMP emphasised the importance of public safety and argued disclosure could compromise WMP's law enforcement role.
33. It concluded that the public interest favours withholding the information.
34. The Commissioner recognises that there is a general public interest in promoting transparency and accountability, which must always be given some weight in the public interest test.

35. The complainant has not, in their complaint about WMP, put forward any specific public interest arguments regarding the issue or information that their request relates to.
36. The Commissioner also notes that in its internal review, WMP highlighted that there is official information publicly available regarding police workforce numbers. The Commissioner's understanding is that WMP was directing the complainant to some statistics available on www.gov.uk².
37. He considers that those statistics already go some way to satisfying any public interest there may be in disclosure of the information requested by the complainant under FOIA, and transparency around police staffing.
38. As noted above, the complainant said that other police forces have disclosed such information. Even if that is so, it does not automatically follow that all police forces should disclose it.
39. The Commissioner highlights that there is a very strong public interest in protecting the ability of public authorities to enforce the law.
40. The Commissioner considers that on balance, the factors against disclosure have greater weight and the public interest lies in maintaining the exemptions.

² <https://www.gov.uk/government/collections/police-workforce-england-and-wales>

Right of appeal

41. 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

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

42. 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.
43. 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

Daniel Kennedy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF