

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 December 2023

**Public Authority:** National Police Chiefs' Council  
**Address:** 1st Floor  
10 Victoria Street  
London  
SW1H 0NN

#### Decision (including any steps ordered)

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1. The complainant has requested details of a "roundtable" meeting chaired by the Prime Minister, from the National Police Chiefs' Council ("the NPCC"). The NPCC advised that some of the information was not held and that the remainder was exempt from disclosure by virtue of sections 31(1)(a) and (b) (Law enforcement) of FOIA. At a late stage, the NPCC withdrew reliance on section 31 and introduced sections 36(2)(b)(i) and (ii), and 36(2)(c) (Prejudice to Effective Conduct of Public Affairs) of FOIA, in its place.
2. The Commissioner's decision is that the NPCC was entitled to rely on sections 36(2)(b)(i) and (ii) of FOIA to refuse the request. No steps are required.

#### Background

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3. The NPCC explained to the complainant:

"The National Police Chiefs' Council (NPCC) brings UK police leaders together to set direction in policing and drive progress for the public. This is achieved through:  
Coordination – by joining up the operational response to critical national policing issues to deliver policing today and shape the future.

Collaboration – by working in partnership as part of the whole policing system and beyond to improve public safety.

Communication – by sharing the collective expertise, views and action of UK police chiefs.

Working with partners such as the College of Policing<sup>1</sup> and the Association of Police and Crime Commissioners<sup>2</sup> (APCC), NPCC helps the police cut crime and keep the public safe by joining up the operational response to the most serious and strategic threats”.

4. It also advised the Commissioner that:

“The Round Table meeting which is the subject of the request was held on 01/12/2022 included the Prime Minister, the Home Secretary, the Policing Minister, representatives of the police service and others. The meeting was held to discuss the policing response to disruptive climate change protests in London and across the UK”.

## Request and response

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5. On 14 June 2023, the complainant wrote to the NPCC and requested the following information:

“Please accept this request under the Freedom of Information Act.

The explanatory memorandum to the Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023<sup>3</sup> states: “The National Police Chiefs Council, the Metropolitan Police Service, the Police and Crime Commissioners of the police forces whose areas include the M25, and National Highways were consulted on how to improve the response to highly disruptive protests at a roundtable chaired by the Prime Minister.”

I’m seeking:

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<sup>1</sup> <https://www.college.police.uk/>

<sup>2</sup> <https://www.apccs.police.uk/>

<sup>3</sup> [https://www.legislation.gov.uk/ukdsi/2023/9780348247626/pdfs/ukdsiem\\_9780348247626\\_en.pdf](https://www.legislation.gov.uk/ukdsi/2023/9780348247626/pdfs/ukdsiem_9780348247626_en.pdf)

1. Any recordings of this roundtable made by NPCC staff. These could include recordings made by individual staff members for the purpose of preparing minutes or other record-keeping.
  2. Minutes of this roundtable.
  3. Any other notes of this roundtable taken by NPCC staff members".
6. On 17 July 2023, the NPCC responded. It advised that it held no information in respect of parts (1) and (2) of the request. In respect of part (3), it confirmed that it held two sets of notes taken by NPCC representatives, but it had determined that these were exempt from disclosure under sections 31(1)(a) and (b) of FOIA.
7. The complainant requested an internal review on 8 August 2023, making no reference to the NPCC's statement that some information was not held. His grounds were:

"The refusal notice states that "releasing the UK Government and NPCC's confidential position on a live and sensitive policy area would hinder the ability for open collaboration across parties". However, after the roundtable took place, the government published an update<sup>4</sup> that included details of policy measures enacted since the meeting and a statement from the NPCC. This suggests that the NPCC's position on matters discussed at the meeting was not considered confidential and, given specific government actions have since been announced, it is questionable whether this police area should be considered "live and sensitive".

It appears from the government update that the discussion focused on broad police powers rather than detailed policing tactics. On that basis, I contend that little weight should be given to the impact of disclosure on "the prevention or detection of crime" or "the apprehension or prosecution of offenders".

Rather, disclosure of the requested notes would help provide the public with a full, rather than a partial, picture of discussions that led to new policy measures being introduced in relation to a matter of significant public interest. It would improve public understanding and debate about the introduction of new police powers, provide

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<sup>4</sup> <https://www.gov.uk/government/news/pm-takes-action-to-stop-disruptive-protests>

reassurance that threats to public wellbeing are being appropriately addressed, and build confidence in the proper course of justice”.

8. The NPCC provided an internal review on 5 September 2023 in which it maintained its position, saying:

“It remains the NPCC view that there would be a chilling effect on free and frank discussion and an adverse impact on future policy development if confidential discussions were disclosed. Such disclosures would hinder open collaboration on this and other sensitive policy areas impacting on law enforcement”.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 5 September 2023 to complain about the way his request for information had been handled. His grounds were as follows:

“... I believe the authority has incorrectly relied upon the assertion that the requested information relates to a "live and sensitive" policy area when considering the public interest test.

Disclosure of the requested notes would help provide the public with a full, rather than a partial, picture of discussions that led to new policy measures being introduced in relation to a matter of significant public interest. It would improve public understanding and debate about the introduction of new police powers, provide reassurance that threats to public wellbeing are being appropriately addressed, and build confidence in the proper course of justice”.

10. On 29 November 2023, the NPCC wrote to the Commissioner revising its position. Instead of relying on section 31 of FOIA, it advised that it now wished to rely on sections 36(2)(b)(i)(ii) and 36(2)(c) of FOIA; it provided the necessary qualified person’s opinion.
11. The NPCC did not advise the complainant regarding this change of position. However, to forego any delay, the Commissioner has used his discretion and proceeded directly to a decision notice. The complainant will not be disadvantaged if he disagrees with the findings as he is still able to appeal.
12. The Commissioner will consider the application of section 36 to part (3) of the request below.
13. The withheld information consists of two sets of notes taken by NPCC representatives. The Commissioner has viewed this information.

## Reasons for decision

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### Section 36 – Prejudice to the effective conduct of public affairs

14. Section 36 of FOIA states that information is exempt where, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
15. The NPCC has applied sections 36(2)(b)(i) and (ii) and 36(2)(c) to withhold the requested information in its entirety. It has relied on the lower threshold of prejudice 'would be likely to' effect these sections of FOIA.
16. The Commissioner will first consider the application of sections 36(2)(b)(i) and (ii).
17. Arguments under sections 36(2)(b)(i) and (ii) are usually based on the concept of a 'chilling effect'. The chilling effect argument is that disclosure of discussions would inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and deliberation and lead to poorer decision making.
18. The NPCC said: "[t]he purpose of 'roundtable' discussions such as this are to allow those parties in attendance to candidly discuss the operational, policy and political dimensions to particular events and support government in developing policy".
19. The Commissioner's guidance on section 36<sup>5</sup> states that information may be exempt under sections 36(2)(b)(i) and (ii) if its disclosure would, or would be likely to, inhibit the ability of public authority staff, and others, to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation.
20. In this case, the notes were made by a Chief Constable and the NPCC Communications Manager who attended the round table meeting, with a view to briefing senior officers and the NPCC following the meeting. The NPCC explained to the Commissioner: "This meeting took place at a difficult time where protests were having a major impact on the lives of the general public across the country and there was considerable focus

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<sup>5</sup> <https://ico.org.uk/media/for-organisations/documents/2260075/prejudice-to-the-effective-conduct-of-public-affairs-section-36-v31.pdf>

on how the police exercised their powers to manage public order and public safety”.

21. The NPCC further explained:

“The release of the meeting notes would demonstrate to the Prime Minister, the Home Secretary and others who attend future meetings to discuss important and sensitive policing and public safety matters, that what they discuss is at real risk of being disclosed to the public.

At a meeting such as this, candid conversations involve honest and sometimes critical views of how policing challenges are responded to. These conversations can include disagreements between those present and it is important that senior police officers can speak plainly and are able to provide government with professional police advice and opinion.

The release of such notes would be likely to lead to more guarded opinion being expressed and consequently, less quality free and frank provision of advice. The impact of this is significant and could affect how senior leaders in policing and in Government are able to handle difficult and sensitive live policing matters in the future. The prevalence of such protests continues and the public order challenges arising in relation to these matters persist. The requirement to maintain a forum such as a ‘roundtable’ meeting between Government and senior police leaders in which free and frank advice in respect of live, sensitive and difficult issues can be provided is essential to effective decision making and political and operational policy making”.

22. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a qualified person. The Commissioner is satisfied that a Chief Constable is authorised as the qualified person under section 36(5) of FOIA and that he gave the opinion that the exemption was engaged.

23. The Commissioner accepts that it was reasonable for the qualified person to consider that there was a need to protect the confidentiality of discussions and deliberations between the police and government. He is further satisfied that the qualified person’s opinion - that inhibition would be likely to occur through disclosure of the withheld information - was reasonable. He is therefore satisfied that the exemption was engaged correctly.

24. When considering whether the public interest favours maintaining the exemption or disclosing the requested information, the Commissioner has taken account of the age of the information (around 6 months old at

the time of the request) and that the policing of climate demonstrations / protests, which often do not follow a 'traditional' template of marches or rallies, continues to present a significant public concern.

25. The NPCC explained:

"This roundtable meeting in particular and future similar meetings are important in supporting informed deliberation and discussion to arrive at the best outcome. The requirement to maintain a forum where police leaders can brief senior government and provide free and frank advice as regards to live and sensitive and difficult issues is essential to the most effective execution of their duties. The harm that follows from the disclosure of meeting notes is not merely speculative, but could undermine the most effective policing of protests and the maintenance of public safety. Whilst the request 3 was made some 6 months after the roundtable meeting, the issue of policing disruptive protests is still very much a live one".

26. The Commissioner considers the public interest in good decision-making by the NPCC to be a compelling argument in favour of maintaining the exemption. While he acknowledges that the public interest in openness and transparency would be served if the information was disclosed, on balance, he finds the public interest in protecting the NPCC's access to unfiltered and frank advice on these policing matters to be the stronger argument.

27. Consequently, he is satisfied that, in this case, the public interest favours maintaining the exemption. It follows that his decision is that the NPCC was entitled to rely on sections 36(2)(b)(i) and (ii) of FOIA to refuse the request.

28. In light of this decision, he has not gone on to consider the NPCC's citing of section 36(2)(c) of FOIA.

## Right of appeal

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29. 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)

30. 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.

31. 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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SK9 5AF**