

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2024

Public Authority: Chief Constable of Hampshire & Isle of Wight Constabulary

Address: Police Headquarters
Tower Street
Winchester
Hampshire
SO23 8ZD

Decision (including any steps ordered)

1. The complainant requested information relating to two specified cameras. Ultimately, Hampshire & Isle of Wight Constabulary ('Hampshire Constabulary') would neither confirm nor deny that it held the requested information, citing the 'neither confirm nor deny' ('NCND') provision within section 31(3) – the FOIA exemption for law enforcement.
2. The Commissioner's decision is that Hampshire Constabulary correctly relied on section 31(3) of FOIA to NCND holding information within the scope of the request and that the balance of the public interest favours maintaining this exemption.
3. The Commissioner does not require any steps as a result of this notice.

Request and response

4. On 14 August 2023, the complainant wrote to Hampshire Constabulary and requested information in the following terms:

"Please provide details of what the camera attached to the lamp post on [location redacted] opposite to the entrance to [location redacted] in [location redacted] is being used for.

Please provide details of what the camera attached to the lamp post on [location redacted] opposite [location redacted] Car Park is being used for.

In both cases above, please provide details of what data is actually being recorded and retained/deleted.

In both cases above, please provide details of who this data is being shared with.

In both cases above, please provide details of data that is being anonymised and how this and any non anonymised data is being secured.

In both cases above, please provide details under what authority these cameras have been installed.

In both cases above, please provide details of whether these cameras are intended to be permanent or temporary instalments. If temporary then please provide the intended date for removal."

5. Hampshire Constabulary responded on 13 September 2023 and denied holding the requested information. It provided advice and assistance in accordance with section 16 of FOIA and suggested the complainant may wish to contact Hampshire Council with his request "as they will be best placed to assist you [him]".
6. The complainant requested an internal review on 13 September 2023. He explained he had already been in touch with two councils on this matter and included copies of letters from Hampshire County and New Forest District Councils. He referenced that these councils had already confirmed that the cameras were installed by Hampshire Constabulary and that they are used for ANPR [Automatic Number Plate Recognition] purposes.
7. Following its internal review, Hampshire Constabulary wrote to the complainant on 27 September 2023 and revised its position. It said:

"I have concluded the review and note the position in respect of what has been disclosed by another public authority. However, in line with national police policy, we don't reveal details of ANPR locations as this information is likely to be of benefit to offenders and could reduce the value of ANPR. Under FOI any confirmation or disclosure is about disclosure to the world not just one individual."
8. Hampshire Constabulary now cited section 31(3) – the NCND provision for law enforcement within FOIA and said it could not provide details of

the locations of ANPR cameras. However, by way of advice and assistance, Hampshire Constabulary provided the complainant with a link to how the police use ANPR in general terms.¹

Scope of the case

9. The complainant contacted the Commissioner on 4 October 2023 to complain about the way his request for information had been handled. Given that a local Council had confirmed that the specified cameras are used for ANPR purposes, the complainant argued that Hampshire Constabulary's NCND stance based on "compromising the effectiveness of these cameras is a moot point". He also objected to Hampshire Constabulary initially advising him that it did not hold the requested information.
10. Under FOIA, a public authority may revise its position both up to and during the Commissioner's investigation. Whilst the Commissioner accepts that it can appear misleading or confusing when a 'do not hold' response is amended to that information being withheld, (or as in this case a confirmation or denial that that information is held), the public authority is entitled to review and revise its original position in response to a request.
11. The Commissioner has considered whether Hampshire Constabulary was entitled to rely on section 31(3) of FOIA.

Reasons for decision

Neither confirm nor deny ('NCND')

12. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. This is commonly known as "the duty to confirm or deny". However, there are exemptions to this duty, whereby a public authority may NCND whether it holds the requested information.
 13. The decision to use an NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases,
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¹ Automatic Number Plate Recognition (ANPR) | Police.uk (www.police.uk)

will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.

14. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
15. Hampshire Constabulary has taken the position of neither confirming nor denying whether it holds any of the requested information in its entirety, citing section 31(3) of FOIA. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not Hampshire Constabulary is entitled to NCND whether it holds any information of the type requested by the complainant.

Section 31 – Law enforcement

16. In this case, Hampshire Constabulary has relied on the NCND exclusion on the basis that confirming or denying whether it holds information within the scope of the request would be likely to prejudice both the prevention or detection of crime and the apprehension or prosecution of offenders, the exemptions at sections 31(1)(a) and (b) of FOIA.
17. In its submissions to the Commissioner, Hampshire Constabulary said:

“The entire Police Service use ANPR (Automatic Number Plate Recognition) technology to help detect, deter and disrupt criminal activity at a local, force, regional and national level. This includes travelling criminals (those using the road network to avoid being caught), organised crime groups and terrorists.

Our decision is in line with national police policy as all forces are advised to not reveal details of ANPR locations as this information is likely to be of benefit to offenders and could reduce the value of ANPR... The Police Service position on this issue can be viewed at [see footnote 1 above].

This technology can also be used in combating acts of terrorism but also in the prevention and detection of crime. Therefore, if the locations of ANPR cameras were disclosed their capability to prevent such activity would be compromised.

It is our view that knowing the location of ANPR cameras, means the criminal fraternity could bypass them, and effectively build up a picture of ‘safe areas’ where they may more successfully operate”.

18. The exemptions are subject to a public interest test. This means that the information must be disclosed if the public interest in disclosing the information is equal to, or greater than, the public interest in protecting the matters at subsections (a) and (b).
19. The complainant's views are set out in paragraph 9 above.
20. Hampshire Constabulary self-evidently has the function of preventing and detecting crime.
21. The Commissioner has accepted, in previous decision notices, that bodies charged with enforcing the law need to maintain a degree of ambiguity about their activities in order to enforce the law effectively. Disclosing information about the precise tactics such a body does or does not use, could provide useful information to would-be criminals about the likelihood of their crimes being detected. This could potentially encourage certain crimes with a low risk of detection or could enable would-be criminals to counter the tactics being deployed by Hampshire Constabulary.
22. While the Commissioner does not suggest that this is the complainant's purpose in requesting the information, he must bear in mind that disclosure under FOIA is to be considered as being to the world at large.
23. In terms of the envisaged prejudice or harm a confirmation or denial in this case could cause, Hampshire Constabulary submitted that:

"It is a recognised fact that criminals will use whatever means necessary to undermine policing and evade justice. Knowing the location of ANPR cameras would in our view provide a clear link surrounding the prejudice that would be likely to occur with policing our communities. The college of policing authorised professional practice provides evidence on the value and clear links to fighting crime. See²:-
24. The Commissioner is therefore satisfied that section 31 is engaged in respect of the first two parts of the request, as providing a confirmation or a denial as to what purposes the specified cameras are used for would reveal key information about the public authority's crime detection capabilities and therefore would at least be likely to prejudice the prevention and detection of crime.

² Automatic number plate recognition (ANPR) | College of Policing

25. As the remaining parts of the request are predicated on the assumption that Hampshire Constabulary holds information within the scope of parts 1 and 2, the Commissioner accepts that it cannot issue a confirmation or a denial that it holds information within the scope of these elements either. Not only would issuing a confirmation or a denial that information was held undermine its response to parts 1 and 2, but these remaining parts seek even more granular information about the force's crime detection capabilities.
26. The Commissioner therefore accepts that confirmation or denial would be likely to prejudice law enforcement operations and the apprehension or prosecution of offenders. He is therefore satisfied that the exemptions at sections 31(1)(a) and (b) provide grounds for neither confirming nor denying whether information is held in this case.

Public interest test

27. As explained above, the Commissioner must nevertheless consider whether the public interest in refusing to confirm or deny whether information is held outweighs the public interest in providing such a confirmation or denial.

Public interest arguments in favour of confirmation or denial

28. The complainant's position is set out at paragraph 9 above. He also argued that, given the Council's position as to what the specified cameras have been licensed for, it seemed "rather ridiculous" that Hampshire Constabulary would not confirm their purpose. He expressed concern that Hampshire Constabulary appear, on the face of it, not to want public scrutiny of its practices.
29. Hampshire Constabulary told the complainant it recognised that:

"Confirmation would provide reassurance that Hampshire & Isle of Wight Constabulary is adequately prepared and equipped to deal with its task of detecting and preventing criminal activity within its communities."

Public interest arguments against confirmation or denial

30. In its internal review result, Hampshire Constabulary has argued:

"Confirming whether or not information is held in this case would compromise the basic purpose and reasoning of employing tactics in respect of ANPR. Public safety is of paramount importance and confirmation would be likely to undermine law enforcement."

31. As part of its submissions to the Commissioner, Hampshire Constabulary said:

“The contribution ANPR cameras make to intelligence gathering, and therefore to the prevention and detection of crime and the apprehension and prosecution of offenders is significant. As a result, confirming that data is held would weaken our ability to monitor criminal activity which would not be in the public interest. We would like to emphasise that the effect of confirmation would be likely to allow criminals to evade routes monitored by ANPR cameras if our decision to NCND in this specific case was not maintained. It would weaken any argument to not provide confirmation for any other locations of ANPR in the Hampshire area. Confirmation would be likely [sic] impact on the operational effectiveness of these cameras and the ability of the police to capture information for intelligence purposes. These arguments are strengthened by virtue of the geographical area Hampshire & Isle of Wight Police is responsible for policing given its proximity to a number of ports.”

Balance of the public interest test

32. Hampshire Constabulary submitted the following in relation to the balancing test:

“The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. As part of that policing purpose, various policing tactics, covert or otherwise, may or may not be used. It is our opinion that for these issues the balance test favours neither confirming nor denying that information exists.”

33. The Commissioner agrees that there is a public interest in transparency and accountability, and in understanding the ways in which the Police Service detects and tackles criminal activity. There is also a public interest in people being able to understand the protections in place to ensure that law enforcement capabilities are being properly considered.
34. However, he also recognises the strong public interest in protecting the ability of Hampshire Constabulary to enforce the law and to apprehend and prosecute offenders. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – in this case, it would not be in the public interest to prejudice law enforcement operations and the capabilities of Hampshire Constabulary to apprehend and prosecute offenders by providing confirmation or denial as to whether the specified cameras are used for ANPR purposes. Doing so would be likely to place the area Hampshire Constabulary is responsible for policing at an increased risk of harm.

35. The Commissioner considers that on balance, the factors against confirming or denying in this case have greater weight and he finds that the public interest lies in maintaining the exemption. Consequently, he finds that section 31(3) of FOIA was correctly applied to the request.

Right of appeal

36. 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

37. 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.

38. 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**