

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 June 2024

**Public Authority:** Chief Constable of North Yorkshire Police  
**Address:** Alverton Court  
Crosby Road  
Northallerton  
North Yorkshire  
DL6 1BF

#### Decision (including any steps ordered)

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1. The complainant has requested copies of correspondence it has sent to Potto Parish Council, and an investigation report, from North Yorkshire Police ("NYP"). NYP confirmed holding some information but advised that it was exempt from disclosure by virtue of section 40(2) (Personal information) of FOIA.
2. During the Commissioner's investigation, NYP added reliance on section 31(1)(a) and (b) (Law enforcement) of FOIA to withhold the information in its entirety. The Commissioner is satisfied that it was entitled to do so. He does not require any steps.

#### Background

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3. Potto Parish Council minutes can be found on its website<sup>1</sup>.
4. The extracts referred to by the complainant in his request are:

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<sup>1</sup> <https://www.potto.org.uk/ppc.php>

### **January 2023 8.2**

Email sent to Parishioners – Parishioner are receiving unsolicited email from someone who is using the oil group email list. Many residents are concerned about their personal security and how their emails had been obtained. The emails and information has been forwarded to the Police.

### **February 2023 11.0**

A vexatious email was sent to a councillor, this has been forwarded to North Yorkshire Police.

### **March 2023 4.3.3**

- A number of correspondences have been forwarded to NY Police, these are being investigated, the Charity "Protection against Stalking" is assisting the parish council.

### **March 2023 4.10.2**

- Discussed complaint from Journalist against Clerk, it was noted that the author was misrepresenting themselves, details to be forwarded to NY Police.

### **April 2023 4.3.4**

- A number of correspondences have been forwarded to NY Police, these are being investigated, the Charity "Protection against Stalking" is assisting the parish council.

### **May 2023 6.3**

- A number of correspondences have been forwarded to NY Police, these are being investigated, the Charity "Protection against Stalking" is assisting the parish council".

5. NYP advised the Commissioner:

"The reported matter was recorded under Stalking / Harassment, which is a criminal offence, and the information provided was being reviewed to see whether the information provided, by the reporting person, amounted to Stalking and Harassment and whether any charges should be made. The incident logs and emails refer to this investigation and provides information regarding the harassments put forward by members of the Potto Parish Council".

6. NYP confirmed that the investigation was completed at the time of the request.

## Request and response

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7. On 23 September 2023, the complainant wrote to NYP and requested the following information:

"I refer to the published meeting minutes of Potto parish council. The 2023 minutes record that a number of complaints and emails have been sent by Potto council to North Yorkshire Police (NYP), with allegations of harassment and vexatious content. I refer in particular to the minutes for January item 8.2, February item 11.0, March item 4.3.3 and also March item 4.10.2, April item 4.3.4 and May item 6.3.

As an example, May item 6.3 states 'A number of correspondences have been forwarded to NY Police, these are being investigated'.

However, I understand that there is no evidence of harassment or vexatious content in any of this correspondence – I suggest that Potto council is wasting Police time. I contend, contrary to the statement in May item 6.3 'these are being investigated', the fact is that none of the council's allegations are being 'investigated'.

Accordingly, please provide me with a copy of any correspondence, as sent by NYP to Potto council during 2023, with regard to the matters raised in the above agenda items.

Please provide me with a copy of the 'investigation' report (or confirm information not held). I realise that this is a wide timeframe, but I understand that the total correspondence in 2023 from NYP to Potto council likely consists of only one or two emails.

For clarification, please exclude any other correspondence about matters unrelated to these agenda items, such as routine or monthly crime stats, etc".

8. On 27 September 2023, NYP responded. It confirmed holding information but advised that it was exempt from disclosure by virtue of section 40(2) of FOIA.

9. The complainant requested an internal review on the same day. He said:

"... I take issue with you that the entire scope of my request constitutes personal information I contend that this cannot possibly be correct. For example, please confirm (with regard to information / correspondence sent by NYP to Potto within the scope of my request only).

1) the numbers of items of correspondence,

- 2) the type of correspondence, e.g. emails or hard copy letters, etc,
- 3) the date(s) that this correspondence was sent to Potto council”.

10. NYP responded to the internal review request on 19 October 2023, saying:

“I note you have asked me to review my decision in relation to whether the numbers of items of correspondence, the type of correspondence, eg, emails or hard copy letters, etc. and the date(s) that this correspondence was sent to Potto council are considered personal information.

I wish to confirm that my decision to exempt this information pursuant to Section 40(2) remains. As detailed in the response sent to you section 40(2) [sic] the rights given under the FOI Act to request official information held by public authorities does not apply to the personal data of third parties where disclosure of that information would not be fair to the individual, and where there is no legitimate public interest in disclosure.

Further to the above, any future requests in relation [sic] Potto Parish Council would be considered under Section 14 of the act and in accordance with ICO guidance which states - dealing with vexatious requests clarifies that section 14 can be considered where the request is likely to cause a disproportionate or unjustified level or disruption, irritation or distress”.

## **Scope of the case**

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11. The complainant contacted the Commissioner on 5 December 2023 to complain about the way his request for information had been handled. He complained about a lack of internal review and the citing of section 40(2) of FOIA to withhold the requested information, adding that any personal information could be redacted.
12. It appeared to the Commissioner that the correspondence in paragraph 10 above amounted to an internal review. However, when asked regarding this, NYP advised the Commissioner:

“This was an informal review, which is part of our complaints procedure...It was then logged as an internal review. We have had a backlog of internal reviews, but a draft Internal review was formulated but was never provided. We then received the ICO complaint matter (which you are dealing with) therefore the Internal Review was stopped, as the original decision was not going

to be overturned, and therefore it was prudent to wait for the ICO decision”.

13. The Commissioner has commented further on this approach in “Other matters” at the end of this notice. The complaint will be considered without a formal internal review.

14. Regarding the requested correspondence, the complainant explained:

“The information requested is a copy of the correspondence between two public bodies. The subject matter is, I believe, a request or instruction from NYP to Potto council to the effect that it ceases its policy of forwarding correspondence received from the public to NYP.

It is what is sometimes known as a ‘cease and desist letter’.

Accordingly, this FOI request is for information with regard to NYP policy.

It is NOT data about a living individual; therefore it does not constitute ‘personal data’.”

15. Regarding any investigation that may have been carried out, he explained:

“I contend that it is quite clear that Potto council has formed the view that NYP was investigating the public’s correspondence, for at least a period extending to three months.

This ‘NYP investigation’ is a very serious matter, especially for those members of the public who had submitted their correspondence in good faith to Potto council during these months.

These people would likely be worried and distressed by the council’s assertion; they would likely be intimidated and feel harassed.

If the council’s assertion were really true, it would be a very serious matter. However, as the results of this apparent NYP ‘investigation’ have never been revealed, it may be reasonable to consider there was no such ‘investigation’.

Nevertheless, the public deserves and is entitled to clarity.

... The other possibility, perhaps more likely, is that the council’s published record ‘**these are being investigated**’ is actually only propaganda – and entirely and substantively untrue.

If this FOIA request determines that NYP did not 'investigate', it means that the council's statement to the contrary, approved by the council as being a true and accurate record, is malicious – it is robust evidence of Potto council's ongoing maladministration.”.

16. The Commissioner notes that these details have not been stated in the actual information request. The request seeks only any correspondence sent by NYP to the Parish Council regarding some agenda items and any investigation report that may be held.
17. The complainant also provided a more detailed background to his request. Whilst this has been read, the Commissioner is only considering the response to this specific FOIA request.
18. During the Commissioner's investigation, NYP added reliance on sections 31(1)(a) and (b) of FOIA in respect of all of the withheld information. To ensure no further delay, the complainant has not been informed regarding this change.
19. NYP has confirmed that it holds: “a police report and officer logs, which details actions, contact with suspects or victims and information regarding decisions made when finalising any matters”. The Commissioner has viewed this material.
20. The Commissioner will consider the citing of exemptions below. He has viewed the withheld information and discussed the background to the request with NYP.
21. NYP also provided a confidential submission which has been taken into account but not cited in this notice.

## **Reasons for decision**

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### **Points raised when requesting an internal review**

22. As NYP did not provide an internal review, the points raised by the complainant were not responded to. To prevent any further delay, and with NYP's agreement, the Commissioner can confirm that it sent one email to Potto Parish Council during the specified time period in 2023; this was sent on 24 February 2023. It also confirmed that the case was not being further investigated. The Commissioner considers that this statement now answers the related points in full.
23. Furthermore, for the complainant's information, the Commissioner can confirm that the email correspondence does not contain any content that could be classed as being of a 'cease and desist' nature.

### **Section 31 – Law enforcement**

24. NYP has cited sections 31(1)(a) and (b) to cover all of the material.
25. Section 31 of FOIA allows a public authority to withhold information which, if disclosed, could harm its own, or another public authority's, ability to enforce the law.
26. Sections 31(1)(a) and (b) of FOIA apply where disclosure would, or would be likely to, prejudice:
  - (a) the prevention or detection of crime; and
  - (b) the apprehension or prosecution of offenders.
27. In order for the exemption to apply, it must be the case that if the withheld information was disclosed, it would, or would be likely to, cause prejudice (ie harm) to the matters referred to in subsections (a) and (b). Three criteria must be met:
  - the prejudice which NYP envisages as a result of disclosure, must relate to the prevention or detection of crime and the apprehension or prosecution of offenders;
  - there must be a causal relationship between disclosure and prejudice to those matters. This prejudice must be real, actual or of substance; and
  - NYP must show that the level of prejudice it envisages is met – ie it must demonstrate why disclosure 'would be likely' to result in prejudice or, alternatively, why disclosure 'would' result in prejudice.
28. NYP explained to the Commissioner:

“Disclosures under FOIA is a release to the public at large. Questions are not raised about why information is requested, but disclosing details of reported crimes would question the policing service in providing a duty of care to all members of the public.

Crime reports and any information supplied through emails, detail sensitive matters that have strongly affected individuals, and albeit information can be redacted to protect their identity, disclosure of such information will still impact the future relationship between the victims and the police. There is a public perception that information is treated confidentially when contacting the police, by releasing their reports under FOI to the wider world it breaks that public trust and confidence. Many individuals can struggle to contact the police and therefore releasing such information will likely affect any future

reports they, or others, may wish to make, due to the risk of that information would be released into the public domain, via FOIs.

The Police are there to support the public and deliver effective law enforcement, including the investigation of suspects and the protection and safeguarding of victims. Releasing information that can then be used by a suspect, could compromise the personal safety of any victims. For example, the suspect may continue to pursue such matters knowing that their actions have not been taken further".

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

29. The withheld information in this case relates to a matter that was reported to NYP for consideration as to whether or not a crime had been committed. The withheld information relates to its investigation and provides details about the matters being considered.
30. The allegation was criminal in nature and NYP's arguments reflect matters that relate to the prevention or detection of crime and the apprehension or prosecution of offenders.
31. As regards a causal relationship between disclosure and prejudice to the above matters, and having viewed the withheld information, the Commissioner is satisfied that its disclosure would allow interested parties to build up a picture of events. He is satisfied that this information would be of interest to those who were the alleged offender/s and could assist them in planning or continuing their activities in the future. It could reveal information which could also have a wider law enforcement impact because it could be used to ascertain the parameters needed to establish whether or not a crime has been committed.
32. NYP did not confirm the level of likelihood being relied on so the Commissioner has considered the lower likelihood, ie that prejudice "would be likely" to occur.
33. Having considered the arguments put forward by NYP, the Commissioner is satisfied that the lower level of "would be likely to occur" is met in this case. As the three criteria set out above are satisfied, the Commissioner considers that sections 31(1)(a) and (b) of FOIA are engaged

### **Public interest test**

34. Sections 31(1)(a) and (b) are qualified exemptions and are subject to the public interest test set out in section 2 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**

35. The complainant's views are included above.

36. In its response to the Commissioner, NYP argued:

"Releasing information would allow the public to see the type of offences reported and how the police have communicated with those involved, alongside any decisions that are made. Some information about...Potto Parish reporting matters to the police are already in the public domain and have been included within their own minutes".

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

37. NYP argued:

"The decisions / advice given regarding the outcome would be identified by suspects and therefore the information would be likely to be used by the suspect against future detection.

The offences reported, are very sensitive to the individuals and members of the public need to see that reports and personal comments provided to the police are kept confidential. Individuals would likely become reluctant to provide information, which could assist an investigation, due to concerns that the information provided could be requested by suspects, and others, and released under Freedom of Information requests.

Any barriers preventing individuals reporting such matters will affect public safety, further crimes would not be reported, and the police would not be able to offer any preventative / apprehensive action or safeguarding, therefore prejudicing any future detections of crime.

Furthermore, this matter is only personal to the one individual and is not a high-profile matter.

Therefore, there is a matter of proportionality included within the public interest of this FOI request against the serious nature of the offences and the vulnerable individuals who have been affected by the suspects actions".

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

38. NYP determined that:

“Whilst there is a public interest in the transparency of policing, there is also a very strong public interest in safeguarding the integrity and confidentiality of police reports, alongside any correspondence relating to such matters, especially for offences that are very sensitive”.

39. The Commissioner understands that there is a public interest in the transparency of policing investigations and disclosure may provide assurance that NYP is dealing appropriately with reports of stalking and harassment.
40. The Commissioner also recognises the public interest in transparency with regard to decisions about the thresholds required in determining whether or not something should, or could, be further investigated. He accepts there is some public interest in understanding whether or not a reported crime meets this threshold.
41. However, in carrying out the statutory balancing exercise, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption. In this case he has considered the public interest in avoiding likely prejudice to law enforcement matters, specifically in avoiding prejudice to the prevention or detection of crime and the apprehension of prosecution of offenders.
42. Clearly, it is not in the public interest to disclose information that may compromise NYP's ability to accomplish its core function of law enforcement, either in this specific matter, or future related issues that may arise if the allegations of stalking and harassment were to continue. Disclosure of the requested information may assist the offender in determining what, if any, future action to take.
43. The Commissioner has had regard to the very strong public interest in ensuring that the disclosure of information under FOIA does not materially impede the prevention and detection of crime or the apprehension or prosecution of offenders. He has also taken into account that disclosure under FOIA to the applicant is effectively disclosure to 'the world at large', with no onward restrictions on how the information may be used.
44. On balance, the Commissioner is satisfied that, in the circumstances of this case, the public interest in maintaining the exemption outweighs that in disclosing the requested information.
45. His decision, therefore, is that NYP was entitled to rely on sections 31(1)(a) and (b) of FOIA to withhold the information in its entirety.
46. The Commissioner has therefore not found it necessary to consider the citing of section 40(2) of FOIA.

## **Other matters**

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47. Although they do not form part of this notice the Commissioner wishes to highlight the following matters.

### **Internal review**

48. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
49. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
50. The complainant asked for an internal review of his request on 27 September 2023 and NYP failed to provide one.
51. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, NYP has not acted in accordance with the section 45 code. Furthermore, any expression of dissatisfaction should be treated as a trigger for conducting an internal review and not dealt with only as part of its own complaints procedure. These matters will be logged for monitoring purposes.
52. The Commissioner expects NYP to ensure that the internal reviews it handles in the future adhere to the timescales he has set out in his guidance.

## **Right of appeal**

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53. 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)

54. 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.
55. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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