

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 1 July 2024

**Public Authority:** Chief Constable of Cleveland Police  
**Address:** St. Marks House  
St. Marks Court  
Thornaby  
Stockton-On-Tees  
TS17 6QW

#### **Decision (including any steps ordered)**

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1. The complainant requested information, including policies and procedures, relating to a named investigation. Cleveland Police denied holding some information within the scope of the request and refused to disclose the remainder, citing sections 31(1)(a) and (b) (law enforcement) of FOIA.
2. The Commissioner's decision is that Cleveland Police does not hold information in scope of the first part of the request and was entitled to rely on sections 31(1)(a) and (b) of FOIA to withhold the information in scope of the second part of the request.
3. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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4. On 24 November 2023, the complainant wrote to Cleveland Police and requested information in the following terms:  
  
"Under the FOIA would you please provide me with all Cleveland Police Policies and Procedures regarding how an investigation such as operation Magnolia should be conducted and with any other

background information dating from 2010 up until the present date”.

5. The preamble to the request stated:

“The allegations relate to abuse at Kirklevington Detention Centre in Yarm between the 1960s to the 1990s.

Cleveland Police launched the investigation under Operation Magnolia in 2014. It is one of the largest ever conducted by the force”.

6. Cleveland Police responded on 24 December 2023. It confirmed it holds information within the scope of the request but refused to provide it, citing section 31(1)(a) and (b) (law enforcement).

7. Following an internal review, Cleveland Police wrote to the complainant on 24 January 2024, maintaining its position.

### **Scope of the case**

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8. During the course of the Commissioner’s investigation, having revisited its handling of the request, Cleveland Police clarified that it considered the request was for two distinct elements of information.

9. It advised both the Commissioner and the complainant that it does not hold information within the first part of the request, namely policies and procedures regarding how an investigation such as operation Magnolia should be conducted. It confirmed that it holds information within the second part of the request, ie any other background information, and confirmed its application of section 31 to that information.

10. In its submission, Cleveland Police told the Commissioner that the withheld information comprises what is known as a Senior Investigating Officer’s (SIO) Policy file.

11. Mindful of the wording of the request, and the name of the document, it explained that the SIO will maintain a policy file for the duration of the investigation. It also explained that each policy file will be different and specific to the investigation. It therefore considers that it falls in scope of the second part of the request.

12. Having viewed a representative sample of the withheld information, the Commissioner is satisfied that, rather than being a generic policy or procedure regarding how an investigation should be conducted, the withheld information falls within the scope of the second part of the request.

13. The analysis below considers whether, on the balance of probabilities, Cleveland Police holds any information within the scope of the first part of the request. The Commissioner has then considered Cleveland Police's application of section 31 of FOIA to the information it confirms it holds that falls within the second part of the request.

## **Reasons for decision**

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### **Section 1 general right of access to information**

14. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled, under subsection (a), to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
15. In this case, Cleveland Police confirmed that it does not hold information that satisfies the first part of the request.
16. As is his practice, the Commissioner asked Cleveland Police to describe the nature of the searches it had undertaken to establish whether or not it holds information of the description specified in the request.
17. Cleveland Police told the Commissioner that it had contacted the member of staff who is the lead for the specified investigation, and who would therefore be the first point of contact in relation to any queries regarding Operation Magnolia, to see if Cleveland Police holds the requested information. Cleveland Police told the Commissioner that they had confirmed that the requested information is not held.
18. The Commissioner acknowledges that, in correspondence with Cleveland Police, the complainant said:

"... the ICO guidelines and the college of policing guidelines (amongst many others) clear state that policies are procedures should be published on the Cleveland police official website under section 19 FOIA [sic]".
19. The Commissioner asked Cleveland Police to address that point.

20. Cleveland Police confirmed that it does actively publish policies and procedures. It provided the Commissioner with the link to where such information can be found on its website<sup>1</sup>.
21. Cleveland Police also confirmed that there is generic guidance published on the College of Policing website. However, it also explained that this guidance is for generic investigations and is not specific for an historic and complex investigation like Operation Magnolia.

### **The Commissioner's view**

22. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.
23. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.
24. In reaching his decision in this case, the Commissioner has taken account of the views put forward by the complainant. He has also considered the actions taken by Cleveland Police to check whether the requested information is held and the explanations it provided as to why the information is not held.
25. Based on the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, Cleveland Police does not hold recorded information falling within the scope of the first part of the request.
26. He is therefore satisfied that Cleveland Police has complied with the requirements of section 1 of FOIA in this case.

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<sup>1</sup> <https://www.cleveland.police.uk/foi-ai/cleveland-police/publication-scheme/our-policies-and-procedures/>

## Section 31 law enforcement

27. Section 31(1) of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
28. In this case, Cleveland Police is relying on subsections (1)(a) and (b):
  - (a) the prevention or detection of crime
  - (b) the apprehension or prosecution of offenders.
29. Section 31 is a prejudice-based exemption. This means a public authority can only rely on it where disclosing the information (or confirming or denying that it holds the information) could cause harm. To demonstrate the harm, it must satisfy a prejudice test.
30. In this case, 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 to the matters referred to in subsections (a) and (b). Three criteria must be met:
  - the actual harm which Cleveland Police envisages must relate to the applicable interests within the limbs of the exemptions it has cited;
  - there must be a causal relationship between disclosure and prejudice to those interests. This prejudice must be real, actual or of substance; and
  - Cleveland Police 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.
31. Accordingly, the Commissioner expects Cleveland Police to answer the following three questions:
  - Which law enforcement interest(s), protected by section 31, could be harmed by the disclosure?
  - Is the harm you have identified real, actual or of substance and is there a causal link between disclosure and that harm?
  - What is the likelihood of that harm actually occurring: would it occur, or is it only likely to occur?
32. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Cleveland Police's position**

33. In correspondence with the complainant, Cleveland Police described the withheld information as relating to "a live police investigation utilising current, up to date, policing tactics".
34. In its submission to the Commissioner, Cleveland Police explained, by way of background, that in major or serious and organised crime investigations, a senior investigating officer (SIO) will be allocated to lead the investigation. It told the Commissioner that the SIO will maintain a policy file for the duration of the investigation.
35. It further explained that the policy file is used to record all strategic, tactical and investigative decisions, including the rationale behind those decisions.
36. Cleveland Police told the Commissioner that a policy file has been maintained by the SIOs throughout the operation in question. It also confirmed that it is still being maintained as this is an ongoing investigation.
37. Regarding the harm arising from disclosure, it told the Commissioner that disclosure of the requested information could compromise the effectiveness of law enforcement. In that respect it told the Commissioner:

"...[disclosure] would allow criminals to note the tactical capabilities [of] the Force which offenders could use this to their advantage which would compromise public safety and more worryingly encourage offenders to carry out further crimes. This would be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public".
38. In the same way, it argued that disclosure of the SIO Policy File would, in this case, provide the public with an in-depth knowledge of policing tactics and strategies. It argued that this would be harmful "as this would inform the offender of the capabilities available [to] Cleveland Police in investigating criminal offences and apprehending offenders". It further argued that this would enable offenders to take steps to counter the police's methods and techniques.
39. With regard to the likelihood of prejudice, in correspondence with the Commissioner, Cleveland Police confirmed that it considers that the lower level of likelihood, namely 'would be likely' applies in this case.

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

40. The withheld information in this case is an SIO Policy File. The Commissioner is mindful that the complainant has emphasised the age

and length of the investigation. However, he has also taken into account that Cleveland Police has confirmed that the investigation is ongoing.

41. Cleveland Police has argued that disclosure would interfere with, and disrupt, police activity and harm its ability to protect the public. These are clearly matters that relate to the prevention or detection of crime and the apprehension or prosecution of offenders.
42. As regards a causal relationship between disclosure and prejudice to the above matters, having considered the nature of the withheld information, the Commissioner is satisfied that its disclosure would allow interested parties to build up a picture of law enforcement practices, capabilities and tactics. He is satisfied that this is information that would assist those planning to commit crime or evade detection.
43. With respect to the prejudice test, the Commissioner considers that, if a public authority claims that prejudice would occur, they need to establish that either:
  - the chain of events is so convincing that prejudice is clearly more likely than not to arise. This could be the case even if prejudice would occur on only one occasion or affect one person or situation; or
  - given the potential for prejudice to arise in certain circumstances, and the frequency with which such circumstances arise (ie the number of people, cases or situations in which the prejudice would occur) the likelihood of prejudice is more probable than not.
44. 'Would be likely' refers to a lower level of probability than 'would', but one which is still significant.
45. In this case, the Commissioner is satisfied that disclosure of the withheld information is capable of having a detrimental impact on law enforcement with respect to the prevention or detection of crime and the apprehension or prosecution of offenders.
46. Having considered the arguments put forward by Cleveland Police, the Commissioner is satisfied that the lower level of 'would be likely to occur' is met in this case.
47. 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**

48. Section 31 is subject to the public interest test, as set out in section 2 of FOIA. This means that although section 31 is engaged, 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 referred to in subsections (a) and (b).

### **Public interest in disclosure**

49. In support of their complaint, the complainant argued that there is evidence of grave concerns about the way in which operation Magnolia has been, and is currently being, conducted.
50. They also consider that the police have an obligation to act in a transparent manner.
51. Cleveland Police acknowledged the public interest in the transparency of policing operations "to ensure investigations, enquiries, etc. are dealt with appropriately". It also acknowledged the public interest in knowing that policing activity is appropriate and balanced in matters of investigative matters both locally and nationally.

### **Public interest in maintaining the exemption**

52. Arguing in favour of maintaining the exemption, Cleveland Police told the complainant that disclosing what information Cleveland Police holds could compromise law enforcement tactics. It argued that this would hinder the Force's ability to prevent and detect crimes. It also argued that vulnerable areas could be identified by disclosure, leading to more criminal activity which would, in turn, place the public in harm's way.

### **The balance of the public interest**

53. The Commissioner acknowledges the complainant's belief that disclosure would address some of the concerns raised and provide transparency in relation to a lengthy investigation.
54. The Commissioner recognises the public interest in transparency and accountability, for example in knowing whether policing activity is efficient and investigations are being conducted appropriately. In this case, he accepts that there is a public interest in the transparency of policing investigations and disclosure may provide assurance that Cleveland Police is dealing appropriately with an investigation into allegations of historic abuse.
55. However, in carrying out the statutory balancing exercise in this case, 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 or prosecution of offenders.



56. 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.
57. The Commissioner has also taken into account the nature of the investigation and the fact that it remains ongoing.
58. The Commissioner has had regard to the very strong public interest in ensuring that the disclosure of information 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.
59. 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.
60. His decision, therefore, is that Cleveland Police was entitled to rely on sections 31(1)(a) and (b) to withhold the information.

## **Right of appeal**

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61. 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)

62. 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.
63. 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**  
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