

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2024

Public Authority: Chief Constable of Kent Police

Address: Sutton Road

Maidstone

Kent

ME15 9BZ

Decision (including any steps ordered)

1. The complainant requested information relating to any form of contact made by Kent Police on a specified date and location, including a time parameter, with various listed groups of individuals as well as a named individual. Kent Police would neither confirm nor deny ('NCND') holding any information by virtue of sections 30(3) (investigations and proceedings) and 40(5) (personal information) of FOIA.
2. The Commissioner's decision is that Kent Police was entitled to rely on section 30(3) of FOIA to refuse the request. As he has found section 30(3) to be engaged, the Commissioner has not deemed it necessary to consider Kent Police's reliance on section 40(5) of FOIA.
3. No steps are required as a result of this decision.

Request and response

4. On 16 January 2024, the complainant wrote to Kent Police and requested information in the following terms:

"On the 21st March 2023 did Kent police in any capacity contact any of its stakeholders, landowners or employees from [location provided]?"

This includes [name provided] from [location provided], [name provided] the underkeeper at the shoot-between 12.00hrs and 19.00hrs.

To clarify what I mean by contacting, I mean text, any messaging service, email and phone.

In particular individual police mobile [sic] used by officers in the rural task force but not exclusively.”

5. Kent Police responded on 13 February 2024. It refused to confirm or deny whether it held the requested information, citing the NCND provision in section 40(5) of FOIA – personal information.
6. The complainant requested an internal review on 21 February 2024. He argued that his request required only a ‘Yes or No’ response and that it did not constitute personal information.
7. Following its internal review Kent Police wrote to the complainant on 27 February 2024. It maintained that section 40(5) applied, but additionally cited section 30(3) of FOIA – the NCND provision within the exemption for investigations and proceedings conducted by public authorities.

Scope of the case

8. The complainant contacted the Commissioner on 4 March 2024 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether Kent Police was entitled to NCND that it held the requested information by virtue of sections 30(3) and 40(5) of FOIA.

Reasons for decision

Neither confirm nor deny (‘NCND’)

10. Section 1(1)(a) FOIA requires a public authority to inform a requester whether it holds the information specified in a request. The decision to use a 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, will be considering the likely consequences of confirming or denying whether or not particular information is held.
11. Public authorities need to use the NCND response consistently, over a series of comparable requests, regardless of whether or not they actually do hold the requested information. This is to ensure that an NCND response cannot be taken as an indication of whether or not information is in fact held.

12. Kent Police would neither confirm nor deny holding any of the requested information in its entirety, citing sections 40(5) (personal information) and 30(3) (investigations and proceedings) of FOIA exemptions. The issue for the Commissioner to decide is not disclosure of any requested information that may be held, it is solely the issue of whether or not Kent Police were entitled to NCND holding information of the type requested by the complainant.
13. The Commissioner has first considered whether Kent Police was entitled to rely on section 30(3) of FOIA.

Section 30(3) - investigations and proceedings

14. Section 30(3) of FOIA provides an exclusion from the duty to confirm or deny in relation to any information which, if it were held, would fall within any of the classes described in sections 30(1) or 30(2) of FOIA. Kent Police confirmed that, in this case, section 30(1)(a)(i) was the appropriate limb of section 30.
15. Section 30(1)(a) of FOIA states:

“(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it”.

16. The Commissioner considers the phrase “at any time” to mean that information can be exempt under section 30(1)(a) if it relates to a specific ongoing, closed or abandoned investigation. The information requested (if it were held) must be held for a specific or particular investigation and not for investigations in general.
17. His guidance¹ also states:

“Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an

¹ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

offence, or if they have been charged, whether they are guilty of it. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence. However, the purpose of the investigation must be to establish whether there were grounds for charging someone, or if they have been charged, to gather sufficient evidence for a court to determine their guilt”.

18. Consideration of section 30(3) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
19. The first step is to address whether, if Kent Police holds information falling within the scope of the complainant’s request, it would fall within the classes specified in section 30(1)(a)(i) of FOIA.
20. In its internal review Kent Police explained:

“The information requested, were it held by Kent Police, would be for the purpose of conducting an investigation with a view to ascertaining whether any person ought to be charged with an offence, and would be exempt from release by virtue of the exemption at Section 30(1)(a)(i) FOIA. In accordance with Section 30(3) there is no duty to confirm or deny if such information were held, subject to a public interest test.

Responses under FOIA are deemed to enter the public domain. Where information is provided to Kent Police by members of the public, there is an expectation that this information will be treated sensitively and in confidence. Were an erroneous disclosure to be made under FOIA, this would damage public confidence and make the public less likely to engage with Kent Police in future.

Whilst it could be considered that to confirm or deny whether such information were held would contribute to openness and transparency, to confirm or deny the existence of any such information under FOIA would risk prejudice to any past, present or future investigations by disclosing into the public domain where Kent Police is conducting investigations, or conversely where Kent Police is not conducting investigations, and it would not be in the public interest to do so.”

21. Kent Police told the Commissioner:

“The information requested by the Applicant, were it to be held by Kent Police, would be recorded for the purposes of its functions relating to investigations which Kent Police has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence and would therefore be exempt information by virtue of section 30(1)(a)(i) FOIA.”

22. The Commissioner is satisfied that, as a police force, Kent Police has a duty to investigate criminal offences and allegations of offences.

23. Referring to the wording of the request, and to the explanation provided by Kent Police, the Commissioner is satisfied that any information, if it were held, would be held in relation to such an investigation. Therefore, the Commissioner is satisfied that, if Kent Police were to hold the requested information, it would be held for the purpose of criminal investigations. The exemption provided by section 30(3) is, therefore, engaged.

Public interest test

24. Section 30(3) is a qualified exemption. This means that the Commissioner must consider the public interest test contained at section 2 of FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.

25. In accordance with his guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.

26. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.

Arguments in favour of confirming or denying whether the requested information is held

27. Kent Police acknowledged that a confirmation or denial “would contribute to/promote openness, transparency and accountability”.

Arguments in favour of maintaining the exemption

28. Kent Police said:

"...to confirm or deny the existence of such information under FOIA would risk prejudice to any past, present or future investigations by disclosing into the public domain where Kent Police is conducting investigation or conversely where Kent Police is not conducting investigation and it would not be in the public interest to do so. Members of public place their confidence in Kent Police's ability to protect certain information from disclosure under FOIA in order that investigations are not harmed. Were an investigation to be prejudiced by a disclosure under FOIA then this would undermine the rights of all but most importantly the rights of any victims to criminal justice. The ability to protect certain information from blanket disclosure under FOIA therefore promotes information sharing between communities and Kent Police, it follows that to disclose into the public domain whether Kent Police does or does not hold the requested information in the circumstances would erode public trust.

Section 30 exists to preserve the integrity of investigations conducted by public authorities and the ability of the Police (and other applicable public authorities) to conduct them effectively. It is not in the public interest to jeopardise the ability of the Police to effectively investigate and there is a need to prevent disclosures that would prejudice or obstruct investigatory processes generally."

Balance of the public interest

29. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the act of confirming or denying whether the requested information is held could have a harmful impact on the ability of the police to carry out effective investigations.
30. This does not mean that public authorities should use an NCND response in a blanket fashion. They should base their decision on the circumstances of the particular case with regard to the nature of the information requested and with appropriate consideration given to the public interest test. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.
31. In considering the balance of the public interest in this case, the Commissioner recognises that there is a significant public interest in the need to prevent disclosure (by way of confirmation or denial) that would prejudice either a particular investigation or set of proceedings, or the

investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings. This goes to the heart of what the section 30 exemption is designed to protect.

32. The Commissioner also considers that significant weight has to be given to the need to protect Kent Police's ability to adopt a consistent approach when responding to similar requests in the future.
33. The Commissioner recognises that confirmation or denial in relation to an investigation might generally be harmful to Kent Police's ability to manage its investigations effectively. He accepts that it has the potential to undermine its present and future investigations and therefore hinder its ability to conduct its policing functions, which would not be in the public interest.
34. However, it needs to be borne in mind that section 30 is not an absolute exemption and there will be occasions where the public interest overrides any inherent harm in this exemption; this goes, too, for the NCND principle.
35. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – that is the public interest in Kent Police being able to effectively conduct its function of carrying out criminal investigations.
36. Having given due consideration to the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of confirmation or denial do not equal or outweigh those in favour of maintaining the exemption. Accordingly, the Commissioner is satisfied that Kent Police is entitled to rely on section 30(3) of FOIA.
37. As the Commissioner has found that Kent Police was entitled to NCND whether it held the requested information, he has not deemed it necessary to consider its reliance on section 40(5) of FOIA.

Right of appeal

38. 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

39. 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.

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

Carol Scott
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