

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 February 2012

**Public Authority:** The Chief Constable  
**Address:** Essex Police Headquarters  
PO Box 2  
Springfield  
Chelmsford  
Essex  
CM2 6DA

### Decision (including any steps ordered)

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1. The complainant requested information from Essex Police, including information about payments it had made to informants every year since 2005. Essex Police refused to disclose that information, citing section 30(2) of FOIA (investigations and proceedings).
2. The Information Commissioner's decision is that Essex Police was correct to refuse to disclose the requested information.
3. The Information Commissioner requires no steps to be taken.

### Request and response

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4. The complainant wrote to Essex Police on 10 May 2011 and requested information in the following terms:  
*"1. How much money has been spent by Essex police on payments to informants every year since 2005?"*  
*2. How often has evidence from police informants been used in prosecutions every year since 2005?"*
5. Essex Police responded on 20 May 2011. With respect to the information requested at part (2) of the request, it told the complainant that it did not hold the information in a readily accessible format. It estimated that

it would exceed the appropriate limit to comply with that part of the request.

6. With respect to question (1), Essex Police provided the complainant with its response to a similar recent request. That response stated that the requested information was exempt from disclosure by virtue of the investigations and proceedings exemption (section 30(1) and (2)).
7. In an effort to assist, Essex Police did, however, provide the complainant with details of the median average figure showing the typical spend on payments made to Covert Human Intelligence Sources (CHIS) in Essex, based on figures since 2004-05.
8. The complainant appealed against the decision not to disclose the information requested at part (1) of his request: the annual payments made by Essex Police to informants.
9. Following an internal review, Essex Police wrote to the complainant on 22 June 2011. It confirmed its decision not to disclose the information requested in part 1 of the request, citing section 30(2)(a) and (b) of FOIA (investigations and proceedings).

### **Scope of the case**

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10. The complainant contacted the Information Commissioner to complain about the way that part of his request had been handled. He told the Commissioner that Essex Police had refused his request:

*"despite other forces having released the equivalent information in other parts of the country".*

11. The Commissioner considers the scope of his investigation to be with respect to the application of section 30(2) in relation to part (1) of the request, namely the amount of money Essex Police has spent on informants in each of the years specified.

### **Reasons for decision**

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12. Section 30(2)(a) and (b) of FOIA exempt, as a class, information relating to the obtaining of information from confidential sources (informers) if it was obtained or recorded for the purposes of the authority's functions relating to criminal investigations and proceedings.

13. In the Commissioner's view, the term 'confidential' is intended to cover the 'confidential' relationship between the source and the public authority whereby protection is given to the identity of the source.
14. Having regard to the wording of the request, the Commissioner is satisfied that the withheld information in this case, relating as it does to amounts paid to informers, is covered by the exemption. He therefore finds section 30(2) of FOIA engaged.

### **The public interest test**

15. The Commissioner notes that the public interest arguments in respect of money paid to informants have been rehearsed on other occasions: for example, Commissioner's references FS50123912 and FS50227776 and Information Tribunal reference EA/2010/0006. The Commissioner notes that, in those cases, the level at which the information was requested, for example, borough level, metropolitan police division, are not necessarily analogous to the level in this case.
16. Whilst acknowledging the existence of other similar cases having been investigated, the Commissioner's duty is to decide, on a case-by-case basis, whether a request for information has been dealt with in accordance with the Act. Accordingly, he has next considered the public interest arguments advanced in this case.

### ***Public interest arguments in favour of disclosing the requested information***

17. Both the complainant and the public authority acknowledged that other police forces routinely publish their annual spend on CHIS.
18. The complainant told the Commissioner:

*"I think there is a strong public interest reason to find this information given cuts to the Force's funding and a reduction to the number of officers they employ. Essex Police has refused to release the information, instead offering a rough median figure for the spending over the five year period. This doesn't show any increased or decreased spending on informants".*

19. Essex Police agreed that there was a public interest in disclosure, telling the complainant:

*"The public interest arguments in favour of disclosure of such information have already been identified by yourself and Essex Police and are not disputed".*

20. It acknowledged that release of the information would assist in any public debate on the police service's use of informants - debate which it considered could otherwise be subject to inaccurate rumour and speculation.
21. In favour of disclosing the requested information, Essex Police also acknowledged the public interest in the allocation of resources for the purpose of investigating crime:

*"Disclosure of this information would inform members of the public as to how much Essex Police have paid to CHIS (covert human intelligence sources) for information. This would promote awareness and accountability where expenditure of public funds is concerned and could lead to scrutiny of whether the expenditure is value for money in the circumstances".*

22. The Commissioner recognises that there is clearly a public interest in the accountability and financial transparency in the spending of public money. In this respect, he accepts that, in line with its obligation to provide advice and assistance, Essex Police provided the complainant with its median average figure for spending on informants. However, he gives some weight to the complainant's view that, against a background of budget cuts affecting the number of officers the force employs, the median figure does not indicate any increase or decrease in spending on informants over the period of time specified.

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

23. In correspondence with the complainant, Essex Police acknowledged that the use of informants is an extremely sensitive area of police business. However, in favour of maintaining the exemption, Essex Police argued that disclosure would result in the withdrawal of co-operation from current investigations and reluctance on the part of informants to assist in the future.
24. It argued that it would not be in the public interest if disclosure in this case harmed the force's ability to recruit and retain informants:

*"a process essential to the effective investigation of serious and organised crime".*

25. Furthermore, it told the complainant that the use of informants takes place *"in an environment of absolute trust and confidence"*. In this respect, it explained that informants are briefed about the risks they may face and receive assurances that those risks will not be increased by any deliberate action the police may take. In Essex Police's view, disclosure would undermine the promise that the well-being of those involved would be protected as far as possible.

26. It also cited the risk that disclosure would enable criminals either to identify persons they suspect may be CHIS or lead them to wrongly identify persons as covert sources.
27. In its internal review correspondence Essex Police concluded that, as the annual amounts vary but do not demonstrate any rising or falling trend, disclosure of the withheld information would do nothing to better inform public debate or media speculation. It repeated this argument during the Commissioner's investigation, maintaining that the value to the public of the information, without context or more detailed information, was limited.
28. In contrast to Essex Police's view, the complainant does not consider that disclosure of actual figures year on year would jeopardise Essex Police's work.

***Balance of the public interest test***

29. When balancing the opposing public interests in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
30. In considering the opposing public interest factors in this case, the Commissioner has taken into account the following:
  - the nature of the information requested – expenditure on payments to informants, at force level, by Essex Police. He notes the specific arguments made by the force about the type of geographical area Essex is and what disclosing CHIS payments by year could reveal;
  - the level of detail requested - the request is not for individual payments or details of individual investigations where informants have been involved; and
  - the information in question relates to 12-month periods.
31. He also considered the decision of the Information Tribunal in *MPS v ICO (EA/2010/0006)* to be of particular relevance. A number of points are persuasive. Firstly, the evidence about the potential impact of disclosure on CHIS (in essence a "chilling effect on CHIS"). The Commissioner notes the different geographical areas involved but finds the decision is still of relevance and Essex have put forward valid arguments explaining its relevance. He has also drawn on the Tribunal's findings about the limited use of the information to the public debate.

32. The Commissioner accepts that the public interest is served where disclosure of the requested information would facilitate accountability and transparency in the spending of public money. He therefore gives some weight (but not strong weight given the usefulness of the information) to the argument that disclosure in this case could lead to scrutiny of the way Essex Police's budget is allocated with regard to expenditure on CHIS. However, he considers that the public interest is met to some extent by the median average having been disclosed.
33. In the Commissioner's view, there is a very strong public interest in ensuring the effective investigation and detection of crime and in not disclosing information which would, for example, substantially prejudice the ability of the police to recruit and manage CHIS to assist in its law enforcement functions. In this respect, the Commissioner recognises that section 30(2) of FOIA is principally intended to give protection to the identities of confidential sources so that those sources are not discouraged from approaching investigative bodies to inform on criminal or improper acts.
34. In this case, the Commissioner gives weight to the argument that disclosure of the requested information relating to CHIS would significantly erode the relationship of trust that is fundamental to the whole CHIS system and that this would cause serious harm to the retention and recruitment of CHIS. A general principle should also be applied: that a significant risk of identifying CHIS from any notable increases in expenditure would not be in the public interest. The Commissioner recognises the importance of applying this consistently, as future disclosures could also reveal increases when data is compared.
35. The Commissioner acknowledges the public interest in ensuring that the investigation and detection of criminal activities is not undermined. He accepts that disclosure of the disputed information in this case could disrupt the flow of information to the police and that this in turn would cause significant disruption to police operations. In his view, this would not be in the public interest.
36. The Commissioner has therefore concluded that, in all the circumstances of the case, the public interest in the maintenance of the exemption outweighs that in the disclosure of the information requested.

## Right of appeal

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37. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

38. 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.
39. 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** .....

**Steve Wood**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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