Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 December 2019

Public Authority: Chief Constable of Thames Valley Police
Address: Headquarters South
Oxford Road
Kidlington
Oxfordshire
OX5 2NX

Decision (including any steps ordered)

1. The complainant requested the total numbers of police officers deployed to Reading Festival for three specified years. Thames Valley Police ('TVP') refused to provide the requested information citing subsections (a) and (b) of section 31(1), the exemption for law enforcement.

2. The Commissioner's decision is that TVP was correct to cite sections 31(1)(a) and (b) of FOIA and to conclude that the balance of the public interest test favours maintaining the exemption. She does not require TVP to take any steps as a result of this notice.

Background

3. The Commissioner understands that Reading Festival is an annual event held over a period of six days, but that the police operation runs much longer either side of the event.

Request and response

4. On 26 June 2019 the complainant wrote to TVP and requested information in the following terms:

> *"I would like to receive information regarding police deployment at Reading Festival.*
>
> *Specifically, I would like to know:*

- The total number of police officers deployed to Reading Festival for the following years: 2016, 2017 and 2018 (broken down by year)

I would like to receive this information in MS Excel format.

If this request is too wide or unclear, I would be grateful if you could contact me as I understand that under the Act you are required to advise and assist requesters. If any of this information is already in the public domain, please can you direct me to it, with page references and URLs if necessary."

5. TVP responded on 24 July 2019. It refused to provide the requested information, citing sections 31(1)(a) (the prevention or detection of crime) and (b) (the apprehension or prosecution of offenders), both of which relate to law enforcement. TVP said that the associated public interest test favoured maintaining both subsections of the exemption.

6. Following an internal review TVP wrote to the complainant on 21 August 2019 and maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 29 August 2019 to complain about the way her request for information had been handled. She asked the Commissioner to consider that, in response to similar FOIA requests the Metropolitan Police Service (the 'MPS') had provided her with police numbers for the Notting Hill Carnival, and that two smaller police forces had also provided this information in relation to festivals in their locality.

8. The Commissioner has considered whether TVP was correct to reply on sections 31(1)(a) and (b) to refuse this request.

Reasons for decision

Section 31 – law enforcement

9. TVP has cited sections 31(1)(a),and (b) of FOIA in relation to the information withheld for the requested years 2016, 2017 and 2018. These state:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,"

10. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but also that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

11. In order to be engaged, the following criteria must be met:

- the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, the prevention or detection of crime and the apprehension or prosecution of offenders);

- the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,

- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

12. The withheld information in this case consists of three figures for the total number of police officers deployed to Reading Festival, one for each of the specified years of 2016, 2017 and 2018.

The applicable interests

13. The first point for the Commissioner to consider is whether the arguments provided by TVP relate to the relevant applicable interests, namely the prevention or detection of crime and the apprehension or prosecution of offenders.

14. The complainant has argued:

"I contested the application of this exemption, saying TVP had not shown any reason why releasing data about the number of police officers deployed to Reading Festival would impact on the prevention or detection of crime, or the apprehension or prosecution of offenders.

Police forces regularly issue information about the number of police officers deployed to major public events, such as Reading Festival. The force did [sic] *refer to any particular circumstances that would engage Section 31 in this case, and override the precedent that police officer deployment figures are often made public.*

I also argued that knowing this information would not assist a criminal. In fact, information about police presence at Reading Festival is likely to act as a public deterrent to crime."

15. The Commissioner notes that, in its correspondence with the complainant, TVP relied to a large degree on the requested material being 'self-evidently' exempt, without making extensive effort to provide supporting material or penetrating analysis. TVP appears to have concentrated its analysis on the public interest factors. It was not until responding to her investigation enquiries that TVP explained why it considered the exemption was engaged.

16. In its submission to the Commissioner, TVP provided evidence in support of its view that disclosure would be likely to prejudice the prevention or detection of crime and the apprehension or prosecution of offenders.

17. The Commissioner is satisfied that the arguments provided by TVP (which are expanded on below) do relate to the applicable interests stated, so the first limb of the three part test outlined above is met.

The nature of the prejudice

18. The Commissioner next considered whether TVP demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that sections 31(1)(a) and (b) are designed to protect. In her view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.

19. TVP provided the following submissions to the Commissioner:

"The disclosure of this tactical information would have an impact on law enforcement and undermine our public duty of protecting the public. The Reading Festival is a yearly event and our tactics surrounding the number of officers deployed if disclosed would impact on our ability to undertake our policing role effectively.

The deployment data would be a valuable commodity to those individuals (and/or groups) wishing to commit crime as it provides an insight into the resources and operational strength available at this annual event. If we were to disclose the

requested data under FOIA we would inadvertently be providing details of our potential strength for this event in the future. A piecemeal approach to the disclosure of this valuable information could also enable those with ill intent to build up a picture of the numbers of officers available. Such a disclosure could potentially seriously inhibit the ability of TVP to prevent and detect crime and apprehend or prosecute offenders.

The requirement to exempt the information is based on real concerns the TVP have in respect of any such disclosure undermining our operational capability, methodology and tactics by possibly allowing individuals to consider whether TVP have any operational limitations and potential vulnerability. This would have a determinate impact on the ability of TVP to conduct its role of law enforcement, which in turn place the public at greater risk of harm should a disclosure be used by those with the necessary negative intent to hinder the prevention and detection of crime."

20. Additionally, TVP said:

> *"We would also like to highlight our concern of releasing a figure is that it may force other Police Forces to release a number which would identify the level of resourcing at different festivals and therefore potentially expose vulnerabilities for their future policing events. It would also set a precedent for future requests and potentially expose changes in resourcing which could also expose vulnerabilities."*

The likelihood of prejudice

21. In correspondence with the Commissioner, TVP variously used the terms 'may', 'could' and 'would'.

22. The Commissioner did not consider that this gave a clear indication of whether the risk of any prejudice occurring was considered to be one that 'would be likely to' occur, or whether the risk met the higher test of 'would occur'.

23. In light of the above, and in the absence of clear evidence that TVP was relying on the higher threshold that prejudice 'would' occur, the Commissioner considers that the lower threshold of 'would be likely to' occur was intended.

Is the exemption engaged?

24. In a case such as this, it is not enough for the information to relate to an interest protected by section 31(1)(a) and/or (b), its disclosure must

also at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it is likely to occur.

25. The Commissioner is satisfied that the prejudice alleged by TVP is real and of substance, and there is a causal relationship between the disclosure of the requested information and the prejudice which the exemption is designed to protect.

26. The Commissioner's finding is that it was plausible that the release of the information at issue could be used by interested parties to prejudice prevention or detection of crime and the apprehension or prosecution of offenders, and that the exemptions provided by sections 31(1)(a) and (b) are engaged.

Public interest test

27. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemptions at sections 31(1)(a), and (b) of FOIA outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

28. The complainant submitted the following public interest arguments in favour of disclosure:

- There is a strong public interest argument in releasing this information in order for the public to scrutinise how TVP polices Reading Festival, and how this might compare to policing of other festivals/events of similar prominence.

- TVP policing operations are ultimately paid for with public money and the public should be able to scrutinise how money is being spent deploying officers to large-scale public events.

- There is also precedent for this information being in the public domain. The MPS proactively release figures annually for the number of police officers deployed to the Notting Hill Carnival and the cost of this policing operation. This has not impeded the MPS' ability to prevent or detect crime, or the apprehension or prosecution of offenders.

- There is no reason why a special case should be made for TVP in relation to Reading Festival, which is a similar type of prominent public event to two other music festivals where the two applicable police forces have both disclosed the numbers of officers.

29. TVP acknowledges a general public interest in being open and transparent about how it operates and the resources allocated to such events, which it said fosters *"trust and co-operation".*

30. TVP also accepts that the public also has a right to know how public funds are spent by the police, which may be indicated through resource indications.

Public interest arguments in favour of maintaining the exemption

31. TVP argued the following:

> *"The public interest is not what interests the public, but what will be of greater good, if released to the community as a whole. It is not in the public interest to disclose information that may compromise TVP's ability to fulfil its core function of law enforcement in such events previously and in the future or that could endanger the health and safety of individuals, or its officers. The policing operation for the event may be undermined by the provision of intelligence to criminal or terrorist groups, leading to acts that could put the security of individuals and officers at risk".*

And,

> *"The provision of resource information, however general it may appear, to criminal and terrorist groups, has the potential for action to be taken and heightens the potential damage that such actions could cause. Individuals, not least the employees of Thames Valley Police and members of the public attending, could be placed at increased risk of harm."*

Balance of the public interest

32. 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.

33. The Commissioner accepts that there is a presumption running through the FOIA that openness is, in itself, to be regarded as something which is in the public interest.

34. The Commissioner acknowledges the public interest arguments in favour of openness and transparency, and of scrutiny of how public monies are being spent in relation to the policing of large-scale events.

35. The complainant has advised the Commissioner that she has made similar requests for policing numbers at other large-scale events and festivals. She has given examples of three instances where the requested numbers have been provided to her under FOIA.

36. The Commissioner has noted the above; however, she considers that each FOIA request must be considered on its own merits and responded to accordingly. In addition, the prevailing circumstances at the time of any particular disclosure may change, which could mean that at a later date the same information may not be released and *vice versa*.

37. The Commissioner is mindful of the 'mosaic effect' ie even if the requested information is not likely to be harmful on its own, it may be harmful when combined with other information already in the public domain. This is sometimes referred to as a 'mosaic' or 'jigsaw' effect. Public authorities are entitled to look at the effect of the disclosure in the context of existing information already in the public domain.

38. Given that specific policing numbers have already been provided for at least three major events under FOIA, the Commissioner considers it possible for criminals to build up a picture of potential vulnerabilities and potentially target those areas/times for criminal activity in the wider UK.

39. The Commissioner has also considered that there is not only a risk of harm in disclosure of the specific numbers to those attending the event, but also to individuals elsewhere in that locality ie if those intent on criminality or terrorist activity were aware of how many officers were being deployed to Reading Festival, they might decide to target the surrounding locality in the knowledge that police numbers are reduced by 'X amount' for the duration of the festival.

40. It is also noted that were, for example, the figures very low as there was judged to be little risk to the public, this could indicate to potential criminals that their efforts would be more likely to go unnoticed at this event as opposed to another similar event. This could therefore place the public at greater risk.

41. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders.

42. The Commissioner considers it clear that there is a very substantial public interest in avoiding those outcomes and that this is a public interest factor of considerable weight in favour of maintenance of the exemption.

Conclusion

43. The Commissioner accepts that TVP has a clear duty to protect the public from crime and those responsible for it. This includes any disclosure that compromises the security, safety and potentially the lives of individuals. She has seen no countervailing argument that is sufficient to support disclosure of such information given the accompanying likelihood of prejudice occurring.

44. Accordingly, based on the arguments above, the Commissioner has concluded that, in all of the circumstances of this case, the public interest in maintaining the exemptions at sections 31(1)(a) and (b) of FOIA outweigh the public interest in disclosing the withheld information.

Right of appeal

45. 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: 0870 739 5836
    Email: grc@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

46. 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.

47. 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
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