

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 March 2021

**Public Authority:** Chief Constable of West Midlands Police  
**Address:** Police Headquarters  
Lloyd House  
Colmore Circus  
Birmingham B4 6NQ

### Decision (including any steps ordered)

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1. The complainant requested information relating to the reason police attended at a specified location at a given date and time. West Midlands Police refused to provide the requested information, citing sections 40(2) (personal information) and 30(1) (investigations and proceedings conducted by public authorities) of the FOIA.
2. The Commissioner investigated its application of section 30(1) and considered whether there was a procedural breach of section 17 (refusal of request).
3. The Commissioner's decision is that West Midlands Police was entitled to rely on section 30(1) of the FOIA to withhold the requested information.
4. She is also satisfied that it complied with its obligations under section 17.
5. The Commissioner requires no steps to be taken as a result of this decision.

### Request and response

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6. On 6 July 2020, the complainant wrote to West Midlands Police and requested information in the following terms:

*"Please can you confirm and or provide a copy of the incident log (or details from it), which pertain to the reason why several police*

*cars, officers and a police helicopter were in attendance at [location redacted], between [time redacted] and [time redacted], on 24 June 2017".*

7. West Midlands Police responded on 15 July 2020. It denied holding the requested information, advising that there was no specific recorded information held.

8. Following receipt of that response, the complainant wrote to West Midlands Police on 15 July 2020, requesting (complainant's emphasis):

*"notwithstanding the video evidence (attached to this request), please supply a copy of West Midlands Police's **unique reference number, Command and Control Log, Decision Log, CID Diary and or Incident Log** that was specifically created, in relation to the dispatch of West Midlands Police resources (i.e. police officers, police cars and a police helicopter), to account for the Police attendance to [location redacted], between [time redacted] and [time redacted], on 24 June 2017".*

9. West Midlands responded on 27 July 2020, variously citing 'internal review', 'amended request', and 'refusal notice'. It refused to provide the requested information, citing the following exemptions as its basis for doing so:

- section 40(2) (personal information);
- section 30(1) (investigations and proceedings conducted by public authorities).

## Scope of the case

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10. The complainant contacted the Commissioner on 6 August 2020 to complain about the way his request for information had been handled.

11. He asked the Commissioner to consider a number of points regarding West Midlands Police's handling of his request for information.

12. The Commissioner wrote to the complainant at the start of her investigation, addressing the points he had raised and setting out the scope of her investigation. Regarding the latter, she told him that her investigation would look at whether West Midlands Police is entitled to rely on the exemptions cited as a basis for refusing to provide the requested information (points (2) and (5) of the complaint) and would also consider its compliance with section 17 of the FOIA (point (3) of the complaint).

13. The complainant responded, noting that any personal information could be redacted, thus enabling the requested information to be disclosed.
14. During the course of the Commissioner's investigation, West Midlands Police confirmed that it considered sections 30 and 40(2) both apply in this case.
15. The analysis below considers West Midlands Police's application of exemptions to the requested information. The Commissioner has also considered its compliance with section 17 of the FOIA.

## Reasons for decision

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### Section 30

16. Section 30(1) of the FOIA states that:

*"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*

*(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has the power to conduct,*

*or*

*(c) any criminal proceedings which the authority has power to conduct".*

17. The phrase "at any time" means that information can be exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation.
18. During the course of the Commissioner's investigation, West Midlands Police confirmed that it considers that the withheld information is exempt under sections 30(1)(a) and (b).
19. As joint arguments were submitted in respect of both subsections, the Commissioner has considered these together.

*Is the exemption engaged?*

20. Section 30 is a 'class based' exemption and as such it is not necessary to show that disclosure of the withheld information would, or would be likely to, result in any prejudice. It is enough that the information sought by the request should fall within the particular class of information described by the exemption.
21. In order for the exemption to be engaged, any information must be held for a specific or particular investigation and not for investigations in general.
22. The request in this case relates to an incident, described in the request and subsequent correspondence.
23. In correspondence with the complainant, West Midlands Police stated that the information he has requested relates to information that would have been gathered only for the purposes of an investigation.
24. During the course of her investigation, West Midlands Police provided the Commissioner with information in support of its view that the requested information is exempt from disclosure.
25. In its submission to the Commissioner, West Midlands Police confirmed that the information within the scope of the request "*was created for the sole purposes of an investigation*".
26. It also explained that it had taken into account that the complainant had requested details of one specific incident that occurred on a specific date at a specific location.
27. As a police force, West Midlands Police clearly has a duty to conduct criminal investigations by virtue of its core function of law enforcement. The Commissioner is also satisfied that it has the power to conduct investigations.
28. Taking the above into account, and mindful of the wording of the request, the Commissioner is satisfied that the exemption at section 30(1)(a) and (b) is engaged.

*Public interest test*

29. As section 30(1) is a qualified exemption it is subject to the public interest test: in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

30. From the evidence she has seen, West Midlands Police did not put forward any public interest arguments in its correspondence with the complainant.

*Public interest arguments in favour of disclosure*

31. In correspondence with the Commissioner, the complainant pointed out that the incident specified in the request took place a number of years ago.
32. He also argued that it was in the public interest for West Midlands Police to be accountable for its use of public money. Furthermore, he considered it was important that West Midlands Police informed the public of the nature of the incident that necessitated police resources to attend.

33. In its submission to the Commissioner, West Midlands Police acknowledged:

*"To provide details of why [the police] were in attendance at the address may allow for better public awareness of the Police Force activities and its resources, which in itself would increase local confidence in its approach to crime prevention".*

34. It also acknowledged the public interest in the public being reassured that the police investigate matters in an appropriate manner.

*Public interest arguments in favour of maintaining the exemption*

35. Arguing in favour of maintaining the exemption, West Midlands Police told the Commissioner:

*"The force is accountable for its actions in relation to activity and investigations undertaken, it is essential that the release of information does not breach an individual's Data Protection or Human rights, affect future investigations or damage the criminal justice process".*

36. West Midlands Police confirmed that details of the incident had not been made public. It also disputed that there was any benefit to the wider community to know what occurred to prompt police attendance at a location more than three years after the incident occurred.
37. It considered that it would not be in the public interest to disclose information that would identify police involvement in an investigation, arguing that that could prejudice law enforcement or potentially damage the criminal justice system.

38. Generically, West Midlands Police argued that if it was known what the police have been informed of and/or are investigating (or not investigating), this could enable individuals engaged in criminal activity to take action to minimise the risk of being detected.

*Balance of the public interest arguments*

39. In accordance with her 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.
40. In the circumstances of this case, she considers it important to recognise that the purpose of the section 30 exemption is to protect the effective investigation and prosecution of offences.
41. In applying the public interest test in a case such as this, where the exemption is found to be engaged, the Commissioner must consider whether the disclosure of the requested information could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively, and in turn, increase the risk of harm to members of the public from offenders.
42. The Commissioner recognises that there is a general public interest in promoting transparency, accountability, public understanding and involvement in the democratic process. The FOIA is a means of helping to meet that public interest, so it must always be given some weight in the public interest test.
43. The Commissioner acknowledges the importance of the public having confidence in those public authorities tasked with upholding the law. Confidence will be increased by transparency of their performance and by accountability in respect of how public funds are spent.
44. This may involve providing assurance that the police service is appropriately and effectively engaging in such incidents as the one that is the subject matter of the request.
45. The Commissioner recognises that, in addition to the general public interest in transparency and accountability, and any public interest arising from the issue concerned, there may be a specific public interest in disclosing the information in question. However, while she is aware that the complainant has an interest in the way West Midlands Police conducts itself, she is not aware of any wider public interest in this incident from 2017.
46. The Commissioner recognises that an incident log records the nature of an incident and how the investigation into the incident was undertaken.

47. The Commissioner acknowledges that disclosure of the requested information would meet the public interest in transparency and accountability of West Midlands Police.
48. In the circumstances of this case, however, the Commissioner has accorded greater weight to the arguments surrounding the public interest in protecting the ability of West Midlands Police to conduct effective investigations. She accepts that it would not be in the public interest to disclose information that would prejudice the investigatory and prosecution process by undermining the investigation and detection of criminal activities.
49. Having considered all the issues in this particular case, the Commissioner is satisfied that section 30(1) has been applied appropriately and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
50. In light of the above conclusion, the Commissioner has not considered the other exemption cited by West Midlands Police in relation to the same information.

*Section 17 refusal of request*

51. Section 17(1) states:

*"(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—*

*(a) states that fact,*

*(b) specifies the exemption in question, and*

*(c) states (if that would not otherwise be apparent) why the exemption applies".*

52. The complainant asked the Commissioner to consider:

*"Whether WMP [West Midlands Police], in any failure to cite an exemption relied upon, breached section 17(1)(b) of the FOIA".*

53. In her published guidance 'Refusing a request: writing a refusal notice'<sup>1</sup> the Commissioner states:

*"When a public authority receives a request made under the Freedom of Information Act then it must either:*

- provide the information to the requester;*
- write back to the requester to inform them that the information is not held;*
- refuse to confirm or deny whether information is held; or*
- confirm that information is held but refuse to provide it".*

54. In this case the Commissioner acknowledges that West Midlands Police initially advised the complainant that no specific recorded information was held, and issued a refusal notice stating that fact.

55. Following an internal review, West Midlands Police told the complainant:

*"You requested a copy of an incident log/details from within it and a search was conducted of force incident logs for the date and address specified. No incident log was found and therefore the response provided to you was deemed correct at the time.*

*However, in view of the additional information that you were able to provide further searches were able to be conducted. I can now advise that information relevant to the request has been identified. Full details are not available to you but I can advise that it pertains to an incident that occurred in a different location to [redacted], and a subsequent search for an individual/s. This is why it was not found for the initial request".*

56. During the course of the Commissioner's investigation, West Midlands Police confirmed that, as a result of the additional information that the applicant provided on 15 July 2020, namely footage of police officers and police cars in attendance at an address, further searches were able to be conducted and information relevant to the request identified.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1211/refusing\\_a\\_request\\_writing\\_a\\_refusal\\_notice\\_foi.pdf](https://ico.org.uk/media/for-organisations/documents/1211/refusing_a_request_writing_a_refusal_notice_foi.pdf)



57. With respect to internal reviews, the Commissioner's guidance<sup>2</sup> states:

*"Internal reviews should consider how the request was handled and the initial response, whether the relevant information was identified, and whether you wish to uphold the original exemptions or whether you wish to apply a different or additional exemption(s)".*

58. The Commissioner accepts that, following an internal review, West Midlands Police revised its position, confirming that information in the scope of the request was held, but refusing to provide it on the basis that exemptions applied.

59. From the evidence she has seen, the Commissioner is satisfied that West Midlands Police complied with section 17 of the FOIA.

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<sup>2</sup> <https://ico.org.uk/for-organisations/request-handling-freedom-of-information/#internal>

## Right of appeal

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60. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

61. 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.

62. 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 .....**

**Laura Tomkinson**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**SK9 5AF**