

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2022

Public Authority: Chief Constable Cambridgeshire Constabulary
Address: Constabulary Headquarters
Hinchingsbrooke Park
Huntingdon
Cambridgeshire
PE29 6NP

Decision (including any steps ordered)

1. The complainant has requested information relating to illegal abortion crimes. Cambridgeshire Constabulary ("the Constabulary") refused to disclose the information and relied on section 38(1) (Health and Safety) and section 40(2) (Personal information) of FOIA as its basis for doing so.
2. The Commissioner's decision is that the Constabulary was entitled to rely on section 38(1) of FOIA to withhold the information requested. He does not require the public authority to take any further steps.

Request and response

3. On 15 March 2022, the complainant wrote to the Constabulary and requested information in the following terms:
4. "From police recorded data, I can see that the force recorded the following offences:

Procuring illegal abortion:

- 2018/19: 1

- 2013/14: 1

For each of these recorded crimes, could you please tell me if the suspect was the pregnant woman or a third party performing an act against a pregnant woman."

5. The Constabulary responded and refused to provide the requested information citing section 38(1) and 40(2) of FOIA. Following an internal review, the Constabulary upheld its original position.

Reasons for decision

6. Section 38(1)(a) of FOIA states that information is exempt if its disclosure would or would be likely to endanger the physical or mental health of any individual¹. In order to satisfy the Commissioner that this exemption is engaged, the Constabulary must demonstrate that there is a causal link between the endangerment and disclosure of the information.
7. The Constabulary has explained that, the disclosure of information relating to illegal abortion where the data is disaggregated and the numbers are low would cause further distress to the victim and have a detrimental effect to their health and mental well-being. They consider that it would have a significant impact on their health to discover that information had been released to the public domain. Even, if the incident occurred some time ago, the disclosure of the minutiae of the incident could lead to the victim re-experiencing thoughts and feelings associated with the event. They consider that the public would lose confidence in Cambridgeshire Constabulary's ability to protect the wellbeing of the community if it disclosed information that caused further harm and distress to those involved."

The Commissioner's view

8. The Commissioner accepts that the actual harm which the Constabulary alleges would or would be likely to occur if the withheld information was disclosed, relates to the applicable interests which the exemption is designed to protect.
9. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of a causal link, because the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would lead to endangerment: there must be a logical connection between the disclosure and the endangerment in order to engage the exemption.

¹ [Section 38 – Health and safety | ICO](#)

10. In this case, he is satisfied that the Constabulary has demonstrated a causal link between the potential disclosure and the stated endangerment.
11. He recognises that the question of the degree of endangerment is not a straightforward one. However, he accepts that, even given the passage of time, re-opening sensitive matters relating to illegal abortion, by way of disclosure of information to the world at large, has the potential to endanger the mental health and wellbeing of those involved.
12. The Commissioner accepts that the arguments presented by the Constabulary relate to endangerment to both physical and mental health of the victims, family members and those who provided evidence. He acknowledges the psychological impact that the disclosure of the information would have on these individuals. Accordingly, he is satisfied that section 38(1)(a) is engaged on the basis that there is a real and significant likelihood of the endangerment occurring.
13. The Commissioner has considered the complainant's argument that other forces provided the information and did not engage the exemptions applied by the Constabulary. However, he has noted that the release of such information under the FOIA is not just to the complainant but to the world at large. In addition, each public authority makes its own determination on the suitability for disclosure and therefore it cannot be expected that all circumstances will be the same.
14. Having concluded that sections 38(1)(a) is engaged and satisfied that the lower level of 'would be likely to endanger' has been demonstrated, the Commissioner has gone on to consider the balance of the public interest.

The public interest test

15. The Constabulary recognises the public interest in transparency and accountability would lead to a better-informed public. However, it also identified the public interest in protecting Police information in relation to victims of crime. It argued that it would have significant impact on their health to discover that information had been released into the public domain and that the disclosure of the minutiae of the incident could lead to the victim re-experiencing thoughts and feelings associated with the event. It also contends that there would be significant harm to the Constabulary's reputation if it was forced to disclose information which could lead to harm and distress to members of the community.
16. The Commissioner will invariably place significant weight upon protecting individual from risk to their physical and mental wellbeing. The natural consequence of this is that disclosure under FOIA will only be justified where a compelling reason can be provided to support the decision. Clearly in any such situation where disclosure would be likely

to lead to endangerment to health, there is a public interest in avoiding that outcome.

17. In this case, the Commissioner considers that the strength of the arguments favouring disclosure is outweighed by the public interest in maintaining the exemption in order to safeguard the mental health of the victims of illegal abortion and their families. Therefore, in all the circumstances, the Commissioner has decided that the balance of the public interest favours maintaining the exemption at section 38(1)(a) of FOIA.
18. As section 38(1)(a) is engaged, the Commissioner has not deemed it necessary to go on and consider section 40(2) of FOIA.

Right of appeal

19. 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

20. 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.

21. 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

**Esi Mensah
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**