

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 March 2023

**Public Authority:** Chief Constable of Hampshire Constabulary

**Address:** Mottisfont Court  
Tower Street  
Winchester  
SO23 8ZD

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Hampshire Constabulary ("the Police") regarding the number of incidents attended by the Police at a named hotel in the past 48 months. The Police refused to confirm or deny whether relevant information is held and applied section 30(3) of FOIA (Investigations and Proceedings) to neither confirm nor deny holding the requested information.
2. The Commissioner's decision is that the Police were entitled to apply the exemption at section 30(3) of FOIA to the request to neither confirm nor deny holding the requested information, and that the public interest lies with maintaining the exemption.
  - The Commissioner does not require the Police to take any steps as a result of this decision.

## Request and response

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3. On 9 December 2022, the complainant wrote to the Police and requested information in the following terms:

“The amount of incidents where records indicate that Hampshire police have attended [name redacted] Hotel in [town name redacted] in each month of the last 48 months.”
4. The Police responded on 12 January 2023. It neither confirmed nor denied whether relevant information is held citing section 40(5)(a) of FOIA (Personal information).
5. Following an internal review, the Police wrote to the complainant on 14 February 2023. It upheld its initial position but changed its reliance on section 40(5) to section 30(3) of FOIA which it felt was the most appropriate exemption for this request. The Information Commissioner has considered representations he received from both the complainant and the Police; he has received some further representations which the Police provided in confidence.

## Reasons for decision

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### **Section 30(3)- Investigations and proceedings conducted by public authorities.**

6. The following analysis explains why the Commissioner has decided that the Police were correct to rely upon section 30(3) of FOIA to neither confirm nor deny (NCND) whether relevant information is held falling within the scope of the complainant's request.
7. Section 30(1) of FOIA provides 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-
    1. whether a person should be charged with an offence, or
    2. 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 power to conduct, or

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

8. Section 30(3) of FOIA provides that:

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be exempt information by virtue of subsection (1) or (2).”

9. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information requested. The effect of section 30(3) is therefore that the public authority is not required to confirm or deny whether relevant information is held where the exemption in section 30(3) is applicable.

10. 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 theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.

11. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.

12. Given the nature of the information requested, the Commissioner is satisfied that if information falling within the scope of the complainant's request were held, it could fall within the scope of the exemption in section 30(1) FOIA.

13. Section 30(1) relates to the investigation of crimes rather than actions taken with the intention of deterring or preventing crime. There is a difference between information being held as part of a specific investigation, which would be likely to fall within the scope of section 30, and a police operation to deter criminal activity, which would not.

14. The complainant has said they simply requested numerical data and no personal information, however, the Police have argued that the disclosure of even numerical data would have the same effect as a full disclosure. Dependent upon the nature of any operation, the Commissioner notes that it is hypothetically possible that information would be held falling within the scope of the complainant's request for

information. For instance, a police operation could potentially include surveillance on the actions of specific individuals who are currently under investigation. Disclosing numbers of any police attendances could indicate a level of police interest in the premises and could prejudice or undermine any future operations or possible court proceedings. The Commissioner therefore accepts that the exemption is engaged.

15. The exemption is subject to the public interest test set out in section 2(1)(b) of FOIA. It can only be maintained if, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether or not the public authority holds relevant information.

### **The public interest test**

16. The complainant has argued that as this is a licensed premises there is an inherent public interest to ensure the correct planning permissions have been sought and that any Police attendance would affect the licensing and planning for the premises. The Police have countered this by saying that any confirmation or denial would give one of two impressions, that of investigatory activity or that no investigation is or has taken place. The public interest in confirming or denying whether the information is held can be summarised as follows:

- There is a public interest in the police being transparent about its decision making and in its spending of public money.
- There is a public interest in the Police Force being open to scrutiny about its activities.
- A disclosure of the requested information would lead to a better-informed general public. It would promote public trust in the police and provide greater transparency in its activities, demonstrating openness and accountability. This would enhance public confidence in the police service.

17. The public interest in the exemption being maintained can be summarised as follows:

- Confirming that information is held would potentially undermine any investigation.
- There is a strong public interest in allowing the police to carry out investigations without these being undermined by any ongoing operational information being disclosed.

- Confirming or denying whether relevant information is held would disclose information which may allow individuals or groups to avoid discovery.
- Confirming or denying information is held may disclose whether any intelligence is held about planned activities. This could undermine the source of that intelligence.
- Confirming information is held in relation to a request could enable individuals to identify if specific people or groups have, or have not, been the subject of a police operation. This could harm the investigation or the subject(s) of it.

### **The Commissioner's view**

18. The Commissioner notes the complainant's counter argument that they simply require numerical information over a large range of months, not inclusive of any personal information. The Commissioner considers that even numerical information may alert anyone under investigation of the likelihood of a police presence or the opposite. The decision by the Police must therefore be made on its own merits, based upon the individual circumstances of the case.
19. The Commissioner has considered the arguments submitted by the complainant and the Police. He is satisfied that the public interest in neither confirming nor denying whether information is held outweighs that in responding to the requirements of section 1(1)(a) of FOIA.
20. The Commissioner's decision is that the Police were therefore entitled to rely upon Section 30(3) of FOIA in this case.

## Right of appeal

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

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

22. 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.
23. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**