The Freedom of Information Act 2000 (FOIA)

Decision notice

Date:	**23 October 2023**
Public Authority:	**Chief Constable of Hertfordshire Constabulary**
Address:	**Hertfordshire Constabulary Headquarters** **Stanborough Road** **Welwyn Garden City** **Hertfordshire** **AL8 6XF**

Decision (including any steps ordered)

1. The complainant has requested, from Hertfordshire Constabulary, information about the number of response and support officers on duty during a specified night shift (8 May 2023).

2. Hertfordshire Constabulary refused to disclose the requested information, citing section 31(1) of FOIA (the law enforcement exemption).

3. The Commissioner's decision is that Hertfordshire Constabulary was correct to rely on section 31(1) of FOIA and refuse disclosure.

4. The Commissioner does not require any further steps as a result of this decision notice.

Request and response

5. On 1 July 2023, the complainant wrote to Hertfordshire Constabulary and requested information in the below terms. The request was an amended version of an earlier, wider request:

"... please can you provide data for the following amended request:

1. The total number of response officers on duty in Hertfordshire during the night shift of **May 8, 2023**.

2. The total number of supporting officers (e.g. those in control rooms, custody suites and other facilities) on duty in Hertfordshire during the night shift of **May 8, 2023**".

6. Hertfordshire Constabulary responded on 31 July 2023. It confirmed holding relevant information but refused disclosure, citing section 31(1) of FOIA.

7. The response referenced "the prevention and detection of crime", indicating that Hertfordshire Constabulary is relying on section 31(1)(a).

8. Following internal review, on 9 August 2023 Hertfordshire Constabulary upheld its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 14 August 2023 to complain about the way their amended request for information of 1 July 2023 had been handled.

10. They disagree with Hertfordshire Constabulary's refusal to provide the requested information.

11. They commented that other police forces have disclosed such information.

12. They emphasised that the request relates to police staffing for a single day only. They consider that they have requested "generalised data" that would show "merely how many officers were working a single shift".

13. The complainant said "there is a public interest in releasing such data, so that the police are openly accountable for officer staffing levels. The purpose of this request is to enable greater transparency around general police staffing levels".

14. The Commissioner considers that the scope of his investigation is to consider whether Hertfordshire Constabulary was entitled to rely on section 31(1)(a) of FOIA to refuse the 1 July 2023 request.

15. The Commissioner has not asked Hertfordshire Constabulary for any submissions or a copy of the withheld information. He considers that in this instance he is able to make his decision without those things.

Reasons for decision

16. Section 31(1)(a) of FOIA provides that information is exempt if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.

17. The exemption, if engaged, is subject to the public interest test.

18. First the Commissioner is satisfied that the envisaged harm relates to the law enforcement interests protected by section 31(1)(a), stated at paragraph 16 above. Hertfordshire Constabulary has expressed concerns about revealing numbers of officers on duty and criminals using such information to their advantage in furthering criminal activity, for example by targeting their efforts. Clearly this relates to the prevention or detection of crime.

19. He is satisfied that the harm is not trivial. Crime is a serious matter, and Hertfordshire Constabulary commented that undermining its ability to prevent and detect crime "can only be considered as being harmful to the public". It is important that crime is prevented or detected.

20. He is satisfied that there is a causal link between disclosure and the harm, and disclosure 'would be likely to' cause the harm, as he explains below.

21. Hertfordshire Constabulary's original response indicates that it is claiming the lower level of likelihood, namely that disclosure 'would be likely to' harm the interests in question. It used words like "could prejudice" and "likely to undermine", when discussing the impact of disclosure on the prevention or detection of crime. This means there must be a real and significant risk of the harm occurring, even if the risk is less than 50%.

22. As the Commissioner's section 31 guidance[1] explains, when considering the prejudice test, account should be taken of any 'mosaic effect'.

23. The prejudice test is not limited to the harm that could be caused by the requested information on its own. Public authorities can take account of any harm likely to arise if someone pieced together the requested information with other information to form a broader picture.

[1] https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/

24. Complying with one request can make it more difficult to refuse requests for similar information in the future. Public authorities are therefore entitled to consider any harm that could be caused by combining the requested information with the information a public authority could subsequently be required to provide, if the current request was complied with.

25. Such points are clearly relevant to this case, concerning a request for the number of officers on duty during a specified night shift.

26. Whilst the complainant has argued that their request relates to a single shift only, the Commissioner would point out that other similar requests for different shifts or locations, if successful, would likely enable a wider picture to be built.

27. Hertfordshire Constabulary alluded to the mosaic effect, when it explained that "[p]atterns could be drawn which would enable those intent on criminal activities to strategically plan offences …".

28. The Commissioner is aware that the complainant has made the same (or a very similar) request to a number of different police forces.

29. The Commissioner also notes that the shift that is the focus of this particular series of requests from the complainant is the night shift of 8 May 2023, the bank holiday for the coronation of King Charles III.

30. The Commissioner would remind the complainant that disclosure under FOIA is 'to the world', and not just to the complainant themselves.

31. The Commissioner considers there is a real and significant risk of disclosure causing the envisaged harm. It is not difficult to imagine criminals using information about the number of police officers on duty at different times or locations to plan their criminal activities, and evade detection.

32. The Commissioner therefore considers that the exemption is engaged.

Public interest test

33. As noted at paragraph 13 above, the complainant argued that the public interest favours disclosure of the requested information, as it would enhance accountability and transparency around police staffing levels.

34. Hertfordshire Constabulary acknowledged factors in favour of disclosure, such as general openness and transparency. It said that disclosure would "inform the public about how public funds are spent". It also mentioned "better awareness which may reduce crime or lead to more information from the public".

35. However against disclosure, Hertfordshire Constabulary is concerned about "more crime being committed", the impact on police resources and the risk to the public.

36. It concluded that the public interest favours withholding the information.

37. The Commissioner recognises that there is a general public interest in promoting transparency and accountability, which must always be given some weight in the public interest test.

38. Whilst the complainant argued that there is a public interest in accountability and transparency around police staffing levels, the Commissioner notes that there is already some official information publicly available on www.gov.uk regarding police workforce numbers[2].

39. He considers that those statistics already go some way to satisfying any public interest there may be in disclosure of the information requested by the complainant under FOIA, and transparency around police staffing.

40. As noted above, the complainant said that other police forces have disclosed such information. Even if that is so, it does not automatically follow that all police forces should disclose it.

41. The Commissioner highlights that there is a very strong public interest in protecting the ability of public authorities to enforce the law.

42. The Commissioner considers that on balance, the factors against disclosure have greater weight and the public interest lies in maintaining the exemption.

[2] https://www.gov.uk/government/collections/police-workforce-england-and-wales

Right of appeal

43. 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

44. 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.

45. 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 .....

Daniel Kennedy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF