

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2018

Public Authority: Chief Constable of Kent Police
Address: Kent Police Headquarters
Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant has requested a copy of Kent Police's guidance on dealing with paedophile vigilante groups. Kent Police refused to disclose the requested information on the grounds that it was exempt under section 31 (law enforcement) of the FOIA.
2. The Commissioner's decision is that Kent Police was entitled to rely upon section 31 to withhold the information. However, she found that it breached section 10 by failing to respond to the request within the statutory time for compliance.
3. The Commissioner requires no steps to be taken.

Background

4. Paedophile vigilante groups ("PVGs") are groups of private individuals who operate to publicly expose people they believe to be paedophiles. Typically, they do this by creating false social media profiles for children. If an individual initiates contact with the fake profile, the communication is of a sexual nature and the individual suggests meeting up, these groups will arrange and attend the meeting and confront the individual about their actions. Confrontations are generally videoed and posted on the internet, usually with the intention of publicising the identity of the alleged paedophile.

5. Confrontations may be notified to the police by the groups prior to taking place, after the event, or not at all.
6. Evidence collated by PVGs has sometimes been used to successfully prosecute offenders and the groups tend to view their actions through the lens of child protection. However, there have also been instances where the individuals they have confronted have been assaulted or have gone on to commit suicide.

Request and response

7. On 31 August 2017, the complainant wrote to Kent Police and requested information in the following terms:

"We understand that Kent Police has produced a guidance document to Kent Police officers and staff in how to deal with paedophile vigilantes, members of the public that try to unmask paedophiles by engaging with them online and entrapping them, and by other means.

Please provide a copy of this document, and all other guidance produced by your police force concerning dealing with paedophile vigilantes."

8. Kent Police responded on 23 October 2017 confirming that it held the requested information and providing an overview of the types of information contained within the guidance. However, it said that it was exempt from disclosure under sections 31(1)(a) and (b) of the FOIA.
9. Following an internal review, Kent Police wrote to the complainant on 13 November 2017, upholding the position set out in the refusal notice.

Scope of the case

10. The complainant contacted the Commissioner on 14 November 2017 to complain about the way his request for information had been handled. He disputed that section 31 was engaged.
11. The Commissioner has therefore considered Kent Police's application of section 31 of the FOIA to withhold the requested information. She has also considered Kent Police's failure to respond to the request within the statutory timescale for compliance.

Reasons for decision

Section 1 – general right of access **Section 10 – time for compliance**

12. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.

13. Section 10(1) of FOIA states that:

"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt".

14. The complainant requested information on 31 August 2017 and Kent Police responded on 23 October 2017.

15. Kent Police therefore breached section 1(1) and section 10(1) of the FOIA by failing to respond within 20 working days.

16. As well as issuing this notice, the Commissioner has made a separate record of the failure by Kent Police to respond to the complainant's request within the statutory timescale. This issue may be revisited should evidence from other cases suggest that this is necessary.

Section 31 – law enforcement

17. Kent Police is relying on sections 31(1)(a) and (b) to withhold information. 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..."

18. 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 maintenance of the exemption outweighs the public interest in disclosure.

19. 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;
 - 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.
20. The relevant applicable interests cited in this exemption are the prevention or detection of crime and the apprehension or prosecution of offenders.
21. The complainant believes that disclosing the withheld information would not prejudice the prevention or detection of crime. He pointed to the fact that Kent Police publishes guidance on other sensitive crimes, such as rape, seemingly without any suggestion that doing so would compromise its law enforcement functions.
22. The complainant also considers that section 31 has been applied in a "blanket" fashion, and that it should be possible to disclose at least some of the information in the guidance without prejudice to law enforcement tactics.
23. Kent Police said that it has a responsibility to prevent crime and arrest those responsible for committing crime and those who plan to commit crime. The public relies on the police service to carry out investigations properly and in accordance with the legal frameworks in order to ensure cases are not undermined. PVGs operate in a highly sensitive area, often on the fringes of the law and in a manner which can compromise the integrity of police investigations, and so it is important that Kent Police is able to control the way in which it responds to and interacts with them.
24. The requested information contains operational details of tactics used by Kent Police when responding to suspected sexual offences reported by PVGs. It said that disclosure of the requested information would interfere with its ability to police a highly sensitive area and may assist any individuals involved in committing an offence, whether they are the alleged paedophile, a member of a PVG or a member of the public wishing to carry out an attack on the alleged paedophile. Such individuals could use the information contained in the guidance to evade

detection, apprehension and prosecution. This would cause direct harm to the effective delivery of operational law enforcement by Kent Police.

25. Addressing the complainant's point about its disclosure of other sensitive guidance documents, Kent Police said that the documents he had referred to were in fact published in redacted form. The published sections related to publicly available information, such as legal definitions and formal reporting protocols. Information which had been redacted or omitted in its entirety related to specific law enforcement tactics. Such information was operationally sensitive.
26. Kent Police said that the guidance requested in this instance was similarly operationally sensitive, and focused in its entirety on tactics regarding seizing and dealing with evidence, safeguarding the 'suspect', and the acceptable parameters for PVGs' behaviour. For this reason it was not possible to disclose any part of the document without prejudicing law enforcement.
27. Kent Police said that currently, its relationships with PVGs active in its area are positive and tend to be characterised by the PVGs involving the police in "stings" at an early stage. It considered that knowledge of its formal operational position would be likely to cause PVGs to be less inclined to cooperate with police investigations or to notify them of sexual offences that they become aware of. This would be likely to undermine any future criminal investigation of those alleged offences. It is vital that where a crime is detected, the police are able to access the scene quickly to seize and preserve evidence. Delays in police attendance at an incident would, for example, allow time for the on-camera questioning of alleged paedophiles, which could undermine any future prosecution case, and potentially prevent a fair trial. It would also increase the risk of evidence obtained by the group being contaminated and provide a window for the alleged paedophile to destroy any evidence of their own that might incriminate them.
28. If PVGs are deterred from being open about their activities with the police this would also be likely to increase the risk of public order offences occurring and of harm to individuals. Kent Police said that it had attended a number of public order incidents which followed on from confrontations, in which local residents had also become involved and taken matters into their own hands. It was also aware of incidents handled by other police forces where the vigilante groups themselves had assaulted the alleged paedophile.
29. The Commissioner has considered the applicability of the exemption at section 31 of the FOIA. With regard to the first criterion of the three limb prejudice test described above, the Commissioner accepts that potential prejudice to law enforcement activity relates to the applicable interests which sections 31(1)(a) and 31(1)(b) are designed to protect.

30. With regard to harm being caused by disclosure, having considered the withheld information the Commissioner is satisfied that its disclosure would be likely to have a detrimental effect on law enforcement, in that it would be likely to render PVGs less inclined to involve the police in their activities. Kent Police has shown that this would be likely to hinder future police operations and investigations and that it could also have a tangible effect on public order.
31. Having viewed the guidance, and in view of the potential consequences of its disclosure, the Commissioner is satisfied that, on this occasion, the resultant prejudice which Kent Police considers would be likely to occur can be correctly categorised as real and of substance.
32. As regards the third criterion, the likelihood of prejudice arising, Kent Police was concerned about the likely impact of disclosure on future policing operations, the integrity of its investigations and on public order. Having considered the evidence it supplied, the Commissioner is satisfied that it demonstrated that prejudice "*would be likely to*" occur.
33. The Commissioner is therefore satisfied that the exemptions at sections 31(1)(a) and (b) of the FOIA are engaged.

Public interest test

34. Section 31 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemptions contained at sections 31(1)(a) and (b) outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

35. The complainant stated to the Commissioner that the public interest in openness tips the balance in favour of disclosure of the guidance.

"There is a strong public interest in understanding how the police deal with so called "paedophile vigilantes", given that despite public sympathy for their actions, they may actually be allowing dangerous people to remain a threat to children. Releasing this information would serve this public interest by educating the public about how police deal with these situations."

36. For its part, Kent Police stated that disclosure would promote openness and transparency. It would also demonstrate Kent Police's awareness of a sensitive issue, and show that planning had taken place to respond to it. This would enhance public understanding of how it policed the area.

Public interest arguments in favour of maintaining the exemption

37. Kent Police stated that there is a clear public interest in protecting society from the impact of crime, and that this would be served by not disclosing the guidance.
38. It also advanced the following arguments:
- that justice would be undermined as evidence is destroyed, or suspects abscond;
 - that innocent individuals could be put at risk; and,
 - that the document reveals police tactics, which are not isolated to these particular offences, and could undermine the wider use of those tactics.

Balance of the public interest

39. The Commissioner has weighed the public interest in avoiding prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders against the public interest in openness and transparency; she has also taken into account the arguments advanced by the complainant and by Kent Police.
40. The Commissioner considers that it is important that the general public has confidence in the police service, which is responsible for enforcing the law. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
41. The Commissioner accepts the complainant's view that the subject matter of this case is of interest to the public. It is clear that private individuals who involve themselves in criminal investigative work risk undermining formal police investigations. There is also a danger that they may wrongly identify people as paedophiles. Their activities could therefore have very serious consequences. There is a public interest in Kent Police demonstrating that it has recognised and proactively addressed these concerns.
42. However, the Commissioner believes that there is stronger public interest in ensuring that the overall effectiveness of investigations being undertaken by Kent Police is not undermined or compromised. Whilst there is a public interest in knowing that Kent Police has proactively devised an approach to policing a highly sensitive area, the Commissioner considers that there is a stronger public interest in ensuring that the apprehension and prosecution of individuals is not prejudiced as a result of inappropriate disclosure. The public is entitled

to expect that those who have committed offences will be investigated and prosecuted. It would clearly not be in the public interest if the disclosure of information resulted in the inability of prosecuting authorities to successfully apprehend or prosecute such offenders. In this case the Commissioner has had regard to the serious nature of the crimes which are being considered and the impact on the success of future prosecutions.

43. 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) outweighs the public interest in disclosing the withheld information.

Right of appeal

44. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

45. 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.
46. 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

Samantha Bracegirdle
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