

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 November 2022

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 intelligence information held by Hertfordshire Constabulary on child criminal exploitation. Hertfordshire Constabulary cited section 23(5) (Information supplied by, or relating to, bodies dealing with security matters) of FOIA to neither confirm nor deny ('NCND') whether it held any relevant information.
2. The Commissioner's decision is that Hertfordshire Constabulary was entitled to rely on section 23(5) of FOIA to NCND whether it held the requested information.
3. The Commissioner requires no steps as a result of this decision.

Request and response

4. On 28 May 2021, as part of a 'round robin' request for information to UK police forces, the complainant wrote to Hertfordshire Constabulary and requested information in the following terms:

"Under freedom of information legislation, I am seeking the following information:

- A copy of any intelligence reports or problem profiles on the issue of child criminal exploitation, including but not limited to county lines

drug dealing, produced between January 1, 2010, and the present day.”

5. Hertfordshire Constabulary responded on 2 July 2021. It issued an NCND response on the grounds that the requested information, if it was held, would be exempt under section 23(5) of FOIA. Hertfordshire Constabulary said that some information was also exempt under sections 31 (Law enforcement) and 40 (Personal information) of FOIA.
6. The complainant requested an internal review on 28 July 2021. Hertfordshire Constabulary provided the outcome on 2 September 2021, maintaining the above position.

Scope of the case

7. The complainant contacted the Commissioner on 11 October 2021 to complain about the way her request for information had been handled.
8. During the Commissioner’s investigation, Hertfordshire Constabulary confirmed that it was applying section 23(5) of FOIA to the request as a whole.
9. The analysis below considers the application of section 23(5) to the request.

Reasons for decision

Section 23 – Information supplied by, or relating to, bodies dealing with security matters

10. Section 1(1)(a) of FOIA states that an individual who asks for information is entitled to be informed whether the public authority holds that information. This is commonly known as “the duty to confirm or deny”. However, there are exemptions to this duty.
11. Section 23(1) of FOIA states that:

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in sub-section (3).”
12. Section 23(5) of FOIA states that:

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or

indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

13. The Commissioner’s guidance on section 23¹ explains that to successfully engage the exemption at section 23(5), a public authority needs only to demonstrate that the relevant information, if it was held, would be directly or indirectly supplied to it by any of the bodies listed at section 23(3) of FOIA, or that it relates to any of those bodies. The full list of bodies specified in section 23(3) can be viewed online². As section 23 is a class based exemption, there is no need for the disclosure to prejudice the work of those bodies in anyway.
14. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies’ operations, section 23(5) is likely to apply. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
15. The Commissioner notes that the information requested is intelligence information relating to organised crime involving children (for example, ‘county lines’ information). Hertfordshire Constabulary has explained to the Commissioner that the requested information, if held, would comprise information relating to one or more named security bodies. Hertfordshire Constabulary has identified the named security body/bodies in question to the Commissioner and explained that the requested information, if it was held, would be exempt from disclosure under section 23(1), in its entirety.
16. From the wording of the request and the information provided to him, the Commissioner is satisfied that confirming whether or not Hertfordshire Constabulary holds information falling within the scope of the request would disclose information which relates to one or more of the security bodies, listed in section 23(3) of FOIA. The Commissioner cannot elaborate further on the rationale behind this finding without compromising the application of this exemption.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-23-security-bodies/>

² <https://www.legislation.gov.uk/ukpga/2000/36/section/23>

17. The Commissioner is therefore satisfied that Hertfordshire Constabulary was entitled to rely on section 23(5) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of the request.
18. In view of his decision, it has not been necessary to consider the other exemptions cited by Hertfordshire Constabulary .

Other matters

19. It was necessary for the Commissioner to issue an Information Notice to obtain arguments from Hertfordshire Constabulary regarding its handling of the request. This significantly extended the length of the Commissioner's investigation.
20. The Commissioner has made a note of this for monitoring purposes.

Right of appeal

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: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF