

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2022

Public Authority: Chief Constable of Avon and Somerset Constabulary

Address: Force Headquarters
PO BOX 37
Portishead
Bristol
BS20 8QC

Decision (including any steps ordered)

1. The complainant has requested information about an incident in which a member of the public was seriously injured by a police dog when Avon and Somerset Constabulary (ASC) shut down an illegal rave. ASC withheld the information, citing sections 30 (Investigations and proceedings), 31 (Law enforcement), 38 (Health and safety) and 40 (Personal information) of FOIA.
2. The Commissioner's decision is that ASC was entitled to rely on section 40(2) to withhold the information it held in respect of parts 1), 2), and 5) of the request. It was also entitled to rely on section 40(2) to withhold some of the information it held in respect of part 3) of the request. ASC was entitled to rely on section 30 to withhold the information it held in respect of parts 6), 7) and 8) of the request. However, it was not entitled to rely on these exemptions to withhold the information it held in respect of part 4) of the request. By failing to disclose that information, and some information it held in respect of part 3) of the request which was not exempt under section 40, within the statutory time for compliance, ASC breached section 1 and section 10 of FOIA.
3. The Commissioner requires ASC to take the following steps to ensure compliance with the legislation.
 - Disclose the information it holds in respect of part 3) of the request, ensuring it redacts all information which the

Commissioner has identified as being exempt under section 40(2) of FOIA.

- Disclose the information it holds in respect of part 4) of the request.
4. ASC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 26 November 2020, the complainant wrote to ASC and requested information in the following terms:

"BACKGROUND

...

An investigation has been launched into a police dog attack on a woman that left her with life-changing injuries.

The incident, which occurred during an operation to shut down an illegal rave on the outskirts of Bristol, has exacerbated concerns about the frequency that police are using force on members of the public amid the ongoing Covid-19 pandemic.

[Name redacted] was hospitalised with injuries to her leg and foot that included a fractured bone. The injuries required skin grafts, muscle grafts, and reconstructive surgery.

"I was dancing when I was attacked with no warning at all," [name redacted] told The Independent.

"I didn't even know it was there. The dog came out of nowhere, grabbed me by the thigh and pulled me to the floor.

"I was screaming in pain and the dog bit through my thigh muscle and tore out fat. "

REQUEST

- 1) What is the name of the dog.
- 2) What is the name and number of the police dog handler.
- 3) Provide the dog's police records, notes etc.

- 4) Which officer gave order to attend with dogs, provide the order.
- 5) Provide dog handler dog handling training record, qualifications, etc.
- 6) State if dog handler or other officer gave dog command to bite victim and reasons.
- 7) Provide copy of report you are sending to the IOPC.
- 8) Provide your reasons for the dog attacking.”

(Numbering has been added by the Commissioner, for clarity.)

6. ASC responded on 18 December 2020. Noting that the incident the request related to was currently under investigation, it refused to disclose the requested information, citing the following non-disclosure exemptions of FOIA:
 - section 30(1)(a)(b)(c) – Investigations and proceedings conducted by public authorities
 - section 40(2) - Personal information.
7. The complainant requested an internal review on 18 December 2020.
8. ASC provided the outcome on 30 December 2020. It upheld its decision to apply sections 30 and 40 of FOIA. It said that the withheld information was also exempt under section 38 (Health and Safety) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 30 December 2020 to complain about the way his request for information had been handled. He disagreed with ASC’s decision to withhold the information.
10. During the investigation, ASC told the Commissioner that section 31(1) (Law enforcement) also applied in respect of part 7) of the request. It also said that it intended to disclose some information which it had previously considered exempt, although it has not gone on to do so.

Information in scope

11. ASC provided the Commissioner with a copy of the information it said fell within the scope of the request. The Commissioner notes that some of it was created after the request and that it therefore falls outside of its scope.

12. By way of background, ASC also provided him with an internal report which it said fell outside of the scope of the request. However, the Commissioner notes that the internal report contains information which falls within scope of parts 1), 2), 4), 6) and 8) of the request. He has therefore considered that information for disclosure in this decision notice.
13. The analysis below considers whether ASC was entitled to rely on sections 30 and 40 to refuse the request. It has not been necessary to consider the other exemptions mentioned as they were not cited by ASC in connection with the information which the Commissioner has determined should be disclosed. The Commissioner has also considered ASC's compliance with section 1 and section 10 of FOIA.

Reasons for decision

Section 40 – personal data

14. ASC applied section 40(2) to withhold the information it held in respect of parts 1), 2), 4) and 5) of the request. It also told the Commissioner that the information it held in respect of part 3) could be disclosed if "anonymised". The Commissioner has taken this as a claim that only some of that information is exempt under section 40(2) of FOIA.
15. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
16. In this case, the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
17. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

18. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

19. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

20. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
21. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
22. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
23. Parts 1), 2) and 5) of the request ask for information on the dog handler and their dog. Their focus is clearly on knowing information which is specifically about the handler (their identity, training, qualifications and overall aptitude).
24. This is all information which **relates to** the dog handler in question. The second part of the test is whether the withheld information **identifies** that individual.
25. The Commissioner accepts that the name and badge number of the handler is information which will directly identify them. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
26. The handler's dog-handling training and qualifications (if held) is clearly information about them specifically. Nevertheless, the Commissioner has considered whether it would be possible to disclose this information in an anonymised form. If anonymisation was possible, then, once anonymised, the information would not be personal data.

27. On this point, the Commissioner's guidance on section 40² states:

"The DPA defines personal data as any information relating to an identified or identifiable living individual. If an individual cannot be directly identified from the information, it may still be possible to identify them".

28. In view of the high profile nature of this incident and the interconnected nature of working relationships within the police force, the Commissioner is satisfied that the identity of the handler of the dog involved in the incident will be known to their colleagues. Therefore, it would not be possible to truly anonymise this information before disclosing it, as their colleagues would know that the information pertained to them. The Commissioner is therefore satisfied that the information falls within the definition of 'personal data' in section 3(2) of the DPA.

29. ASC said that web searches of the dog's name reveal the name of its handler, and therefore that the dog's name is also information which identifies the handler. The Commissioner conducted a cursory search and was able to replicate the results ASC described. Because of this ability to identify the handler via the dog's name, the Commissioner is satisfied that the dog's name falls within the definition of 'personal data' in section 3(2) of the DPA. This would also be the case in respect of colleagues who, even were the name not in the public domain, would know who the handler was if the dog's name were disclosed.

30. With regard to part 3) of the request, the withheld information comprises information about the dog, with passing references to its handler and other persons (vets, trainers and similar). For the reasons set out above, the Commissioner is satisfied that the names of the dog, the handler and the other individuals fall within the definition of 'personal data' in section 3(2) of the DPA. However, ASC told the Commissioner that it was content that the remaining information about the dog itself could be disclosed; to his knowledge, this has not been done.

31. Turning to part 4) of the request, ASC holds the identity of the senior officer in question. For the reasons set out above, the Commissioner is satisfied that this is information which relates to and identifies that individual. This is therefore information which falls within the definition of 'personal data' in section 3(2) of the DPA.

² <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-regulation-13.pdf>

32. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
33. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

34. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

35. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
36. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

37. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.
38. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”³.

³ Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

39. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;

Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;

Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

40. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

41. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
42. The complainant has not offered any explanation as to what legitimate interest is being pursued in the request. The Commissioner surmises that it is the legitimate interest in external scrutiny of the actions of the police in relation to an incident in which a member of the public was injured.

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

Is disclosure necessary?

43. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

Parts 1), 2), 3) and 5) of the request

44. As set out above, the complainant has not made any submissions as to why disclosure of the withheld information is 'necessary'. In the absence of the complainant's input, the Commissioner does not consider that disclosure of this personal data is reasonably necessary for the purposes of the legitimate interests he has identified above. Quite simply, there are other measures which can achieve external scrutiny of the police in regard to the incident the request relates to. The background and actions of the handler (and others) have been, or will be, subject to proper scrutiny following IOPC procedures, and then, if appropriate, in any disciplinary proceedings. The fitness of the handler in terms of their handling of the dog and their level of training or qualification, can therefore be effectively, formally scrutinised without the release of their personal data or the personal data of anyone involved in training or assessing the dog. A formal investigation with full access to the facts of the matter and an in-depth knowledge of processes is the appropriate forum for such a determination as opposed to a less informed evaluation by the general public.
45. Since disclosure under FOIA is not the least intrusive means of achieving the legitimate aim in question, it follows that it is not "necessary".
46. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interests in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).

Part 3) of the request – other information

47. As noted in paragraph 30, section 40(2) is only being applied to withhold personal data and ASC has conceded that the information it holds in respect of part 3) of the request, other than the names of individuals and the dog, may be disclosed.
48. The Commissioner has been unable to identify any harm which would flow from information which is purely about the dog (as distinct from information on the handler's (or other people's) interaction with the dog)

being disclosed. ASC should therefore take the steps specified in paragraph 3.

Part 4) of the request

49. ASC holds the identity of the senior officer in question. The Commissioner considers that the interests of public scrutiny and accountability would be served by knowing their identity and that disclosure of this information would achieve that legitimate interest. He is therefore satisfied that disclosure of this information is necessary to meet that interest.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

50. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
51. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
52. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
53. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
54. ASC offered the following commentary on the information it held in respect of part 4) of the request:

"Our stance has changed and I would recommend that we should disclose

This is due to the seniority of the Officer, and obtaining consent to overcome section 40.”

55. ASC has confirmed that the individual is a senior officer. The Commissioner considers that, as such, they would have an expectation that information about operational decisions they make will be subject to greater public scrutiny than decisions made by less senior officers. ASC has not argued that disclosing the information would prejudice any investigation. It confirmed to the Commissioner three times that the information could be disclosed. The Commissioner also notes that ASC says that consent to the disclosure has been obtained from the person concerned. The consent of the data subject significantly addresses any concerns about the effects of disclosure on them, in this case.
56. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is an Article 6 basis for processing and so the disclosure of the information would be lawful.

Fairness and transparency

57. Even though it has been demonstrated that disclosure of the requested information under FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent under principle (a).
58. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
59. The requirement for transparency is met because as a public authority, ASC is subject to FOIA.
60. In this instance, the Commissioner has decided that ASC has not demonstrated that the exemption at section 40(2) is engaged in respect of the information it holds in relation to part 4) of the request.

Conclusion

61. The Commissioner has decided that ASC was entitled to withhold the information requested at parts 1), 2) and 5) under section 40(2), by way of section 40(3A)(a).
62. In respect of part 3), it was entitled to reply on section 40(2) to withhold personal data. However, as it agrees that not all of the information it holds in respect of part 3) of the request is personal data, it should disclose the remainder as no other exemption has been cited in respect of this part of the request.

63. In respect of part 4) of the request, ASC was not entitled to withhold the information under section 40(2) of FOIA. As section 30 of FOIA has also been cited in respect of this part of the request, the Commissioner has considered below whether section 30 provides grounds for it to be withheld.

Section 30 – Investigations and proceedings

64. The Commissioner has considered whether ASC was entitled to rely on sections 30(1)(a) and (b) of FOIA to withhold the information it held in respect of parts 4), 6), 7) and 8) of the request.

65. Sections 30(1)(a) and (b) of FOIA state:

“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-

(i) whether a person should be charged with an offence, or

(ii) 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...”.

66. The phrase “at any time” means that information can be exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation.

67. As joint arguments were submitted in respect of both subsections cited by ASC, the Commissioner has considered them together.

Is the exemption engaged?

68. Section 30 is a ‘class based’ exemption and it is not necessary to show that disclosure would, or would be likely to, result in any prejudice, for it to be engaged. It is enough that the information sought by the request falls within the particular class of information described by the exemption.

69. In order for the exemption to be engaged, any information must be held for a specific or particular investigation and not for investigations in general.

70. The withheld information in respect of part 7) of the request is a referral form to the IOPC detailing the circumstances in which a member of the public who attended an illegal rave came to be seriously injured during a

police operation to shut it down. Although the purpose of the referral form is for the IOPC to consider and determine an appropriate mode of investigation for the incident, there is a considerable overlap in the report between information about the injury and information detailing the wider context in which it occurred, to the extent that the two are interlinked; it would not be possible to give a clear account of the injury without describing the wider circumstances, which were the subject of a criminal investigation. The referral form contains extensive descriptions of ASC's operation to shut down the illegal rave and allegations of widespread criminal behaviour. Media reports indicate that 10 arrests were made and several prosecutions followed. The Commissioner is satisfied that the information in the referral form was sourced from information held in support of the criminal investigation which resulted in those prosecutions.

71. As a police force, ASC has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. The Commissioner is therefore satisfied that it has the power to carry out investigations of the type described in section 30(1)(a) of FOIA and that the information contained in the IOPC referral form was held by ASC for the purposes of a specific, criminal investigation.
72. The Commissioner also notes that the referral to the IOPC was made because a member of the public sustained a serious injury during the police operation. The circumstances of the injury met the criteria for mandatory referral to the IOPC, and the resultant investigation would be required to consider, amongst other things, whether there was evidence that the incident amounted to an assault occasioning actual bodily harm, contrary to Section 47 of the Offences Against the Person Act 1861⁴. The IOPC has the power to refer its findings to the Director of Public Prosecutions, should they indicate a criminal offence has taken place.
73. The information held in respect of part 4) of the request is the identity of the senior officer responsible for the tactical response to shutting down the illegal rave.
74. The withheld information in relation to parts 6) and 8) of the request concerns the operational events which led up to the dog bite. This information is contained within the IOPC referral report, and the internal report.

⁴https://www.policeconduct.gov.uk/sites/default/files/Documents/statutoryguidance/2020_statutory_guidance_english.pdf

75. The information therefore forms part of the matters being considered by both the IOPC and the accompanying criminal investigation into the illegal rave.
76. Taking all the above into account, the Commissioner is satisfied that the exemption provided by section 30(1)(a) of FOIA is engaged in respect of the information it holds for parts 4), 6), 7) and 8) of the request.
77. With regard to section 30(1)(b), the Commissioner's guidance states that this exemption may only be claimed where a public authority has the power to institute and conduct criminal proceedings that result from its investigation.
78. The Commissioner has not been presented with any evidence that ASC holds such powers. His understanding, from previous experience of considering this exemption, is that charging decisions on criminal investigations are generally made by the Crown Prosecution Service. The Commissioner therefore considers that section 30(1)(b) of FOIA is not engaged by the information and he has not considered its application further in this decision notice.

Public interest test

79. Section 30(1)(a) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

80. The complainant did not offer any submissions as to why the public interest favoured disclosure, beyond stating that disclosure of all the information he had requested was in the public interest.
81. ASC acknowledged that disclosure of information about its policing of the incident would demonstrate to the public that it is transparent and accountable. It would also allow the public to understand the circumstances that led to the incident in which a member of the public was seriously injured, thus informing any public debate on the matter.
82. However, with regard to part 4) of the request, ASC specifically commented:

"... I feel the application of section 30 would favour disclosure on balancing the public interest."

Public interest arguments in favour of maintaining the exemption

83. ASC said that, at the time of the request, the information formed part of a live criminal investigation into the illegal rave. Premature disclosure would have the power to prejudice and undermine that investigation.

“Information relating to any ongoing investigation whether this be an internal or external investigation of members of the public or members of the police force are very rarely disclosed via the Freedom of Information Department. Should disclosure be made at this time it would seriously undermine the right to a fair trial of all those involved.”

84. It also argued that disclosure of information about how the operation was policed would inform criminals of the tactical abilities and capabilities employed by ASC. Such methods continue to be used when policing incidents of this nature, including protests. To make public these details would compromise general law enforcement and interfere with evidence gathering. This would be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public.

Balance of the public interest

85. When considering the public interest in maintaining exemptions the Commissioner considers it important to be clear about what they are designed to protect.
86. The purpose of section 30 is to preserve the ability of relevant public authorities to carry out effective investigations. Key to the balance of the public interest in a case where this exemption is found to be engaged is whether disclosure could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police (and other relevant bodies) to investigate crime effectively, and in turn, increase the risk of harm to members of the public from offenders.
87. The Commissioner has considered what public interest there is in ASC disclosing the requested information. He has also considered whether disclosure would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.

Part 4) of the request

88. ASC has stated that the public interest favours disclosure and that it intended to disclose this information (but it has not done so). It has not argued that disclosing the information would prejudice any

investigation. The information does not reveal anything operationally sensitive about the investigation it pertains to and the senior officer concerned (who would be well placed to gauge whether disclosure would be problematic) has consented to the disclosure of their name. The Commissioner can see no discernible harm arising from disclosure; had the party been the subject of an investigation themselves then this view would probably differ, but no such argument has been made by ASC. The Commissioner is therefore satisfied that the public interest in favour of disclosing the information outweighs that in favour of maintaining the exemption.

89. ASC should now take the action specified in paragraph 3.

Parts 6), 7) and 8) of the request

90. The Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. It is in the public interest that the police having an effective and transparent accountability mechanism and public confidence will be increased by permitting it to be scrutinised, which may involve examining the decisions taken in particular cases.

91. In this case, the Commissioner considers that there is significant public interest in disclosure, given the severity of the injuries sustained from the police dog. Disclosure would add to the public's understanding of the incident, including how it occurred, the circumstances the police faced at the time and the assistance offered to the victim. This is a valid factor in favour of disclosure of some weight.

92. Turning to the public interest in the maintenance of the exemption, as set out above, section 30(1)(a) exists in order to protect the ability of relevant public authorities to carry out effective investigations. Clearly it is in the public interest for ASC to be able to carry out effective investigations into an illegal rave, where other, serious criminal offences were observed. It is of further significance that ASC's criminal investigation was ongoing at the time the request was received. On that point, the Commissioner's guidance on section 30⁵ states:

"...as a general rule there will always be a strong public interest in maintaining the section 30 exemption whilst an investigation is ongoing."

⁵ <https://ico.org.uk/media/1205/investigations-and-proceedings-foi-section-30.pdf>

93. The Commissioner understands that the IOPC's investigation of the incident was also underway, the request being received just over three weeks after the referral to the IOPC was made. It remains ongoing and, depending on its findings (specifically, whether it finds any evidence of a criminal offence), there remains the potential for further prosecution, which the withheld information in this case would be relevant to. Such action could be undermined by premature disclosure of this information under FOIA.
94. Having regard to his guidance, the Commissioner recognises that the public interest in maintaining the exemption in relation to information on a live criminal investigation is of very significant weight. Disclosure of information that may prejudice a possible future prosecution would be strongly counter to the public interest.
95. As regards ASC's arguments about the wider impact on law enforcement if the information was disclosed, as a general rule, the Commissioner accepts that certain information held by the police about criminal investigations can impart intelligence which may be useful to those seeking to commit criminal offences and evade detection. Its disclosure may also, in future, deter people (victims, witnesses and suspects) from cooperating with the police, for fear that information which might be capable of identifying them may be placed in the public domain. The Commissioner has placed weight on these as arguments for withholding information, when the information requested has been, for example, specific details of offences, locations, dates, and the names or other identifiers of victims, witnesses or suspects. He notes that the withheld information contains such information.
96. In conclusion, the Commissioner recognises that there is a valid public interest in the disclosure of the information in the referral form in order to improve public knowledge and understanding of the circumstances of this serious incident and the actions taken by ASC in relation to it. However, that it occurred in circumstances (an illegal rave where other criminal offences were witnessed) which gave rise to a criminal investigation is also relevant in relation to the public interest in preserving a space to carry out the ongoing processes relating to it. The Commissioner's view is that the public interest in protecting the criminal investigation process is stronger than the arguments favouring disclosure. His finding is therefore that the public interest in favour of maintaining the exemption outweighs that in favour of disclosure. It follows that ASC was entitled to rely on section 30(1)(a) to refuse to disclose the requested information.
97. In light of this conclusion, it has not been necessary for the Commissioner to go on to also consider the other exemptions cited by ASC.

Section 1 – general right of access

Section 10 - time for compliance

98. Section 1(1) of 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.
99. Section 10(1) of FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
100. The complainant submitted his request on 26 November 2020. ASC holds information falling within the scope of the request that is not covered by a non-disclosure exemption and which it has not disclosed to the complainant, despite assuring the Commissioner, on more than one occasion, that it would do so.
101. ASC has therefore breached section 1(1)(b) and section 10(1) of the FOIA.
102. The Commissioner now requires ASC to take the action specified in paragraph 3, above
103. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"⁶ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"⁷.

⁶ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁷ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

104. 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

105. 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.

106. 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
Water Lane
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SK9 5AF**