

Freedom of Information Act 2000
Request for an internal review of OPCC decision dated 28/09/2020

FOI Reference: FOI/OPCC/20-023

Review Reference: FOI/OPCC/R20-01

Date of Request: 01/10/2020

Date of Response: 26/10/2020

Dear Mr Taylor

I refer to your request dated 1st October 2020 for an internal review of the Office of the Police and Crime Commissioner's (OPCC) decision to refuse your request for the final report into the review of policing the "XR Protests", citing the exemption provided by section 31(1)(a) of the Freedom of Information Act relating to law enforcement, specifically prejudice or likely prejudice to the prevention and detection of crime.

In conducting this internal review I have had regard to the following documents:

- your original request dated 29/08/2020
- response of the OPCC dated 28/09/2020
- Appendix 1 of the OPCC's response
- Appendix 2 of the OPCC's response
- Statement of the Acting Police and Crime Commissioner ("A/PCC"), Ray Bisby dated 20/02/2020
- Further statement of the A/PCC dated 04/03/2020
- your request for an internal review dated 01/10/2020
- The Freedom of Information Act 2000 ("FOIA")
- ICO Guidance to the Freedom of Information Act 2000

I will reconsider the matters raised in your request in the order in which they appear.

The Public Interest Balance Test

I acknowledge that there is a presumption running through the FOIA that openness is, in itself, to be regarded as something which is in the public interest. Clearly, there are compelling public interest arguments in favour of openness and transparency, and of scrutiny of police methods. Effective policing is by consent and it is important that the general public has confidence in the police service which is responsible for enforcing the law. Confidence will be increased by allowing scrutiny of how the police execute their duties. It follows therefore that there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain confidence and trust. A better informed public may encourage individuals to provide intelligence in order to reduce crime.

On the other hand, disclosing information could compromise law enforcement tactics which would hinder Cambridgeshire Constabulary's ability to prevent and detect crime. Vulnerable areas could be identified by disclosure leading to increased criminal activity placing the public

in harm's way. Disclosure enabling individuals seeking to conduct themselves improperly to adapt their behaviour in order to evade detection, is not in the public interest. Release of information could allow those with criminal intent to exploit any current weaknesses potentially leading to increasing numbers of victims of crime. This would be contrary to the policing purposes being relied on here, that is, the prevention and detection of crime.

In carrying out the statutory balancing exercise in this case, I consider the appropriate weight must be afforded to the public interest inherent in the exemption – that is, the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that may compromise the Constabulary's ability to accomplish its core function of law enforcement.

In the circumstances of this case, I consider the public interest in maintaining the exemption outweighs the public interest in disclosing the information. I consider the OPCC was entitled to rely on section 31(1)(a) to refuse to disclose the requested information.

I do not agree with your assertion that “the review in question appears to be the primary mechanism via which the Police and Crime Commissioner has responded to concerns raised by the public and elected representatives”. The A/PCC has published detailed updates regarding the policing of the protests on the 20th February 2020 and the 4th March 2020. Meetings have been held with locally elected representatives and senior community partners.

Redaction of sensitive information

There are a number of reasons why this would be neither appropriate nor necessary. Firstly, redaction can have the effect of words and phrases being taken out of context and distorting or rendering the document meaningless. Secondly, the report has been produced by the constabulary – it is their information and only they can decide what is sensitive information and what is not. This leads me to another point which I will develop later in this review.

Explanation of the harm caused by disclosure

This has in large part been dealt with under the public interest balance test heading. It is self-evident that it is not appropriate to go into any further detail regarding the mechanism by which harm could be caused. It is worth noting the view of the National Police Chiefs' Council (“NPCC”) that “providing information that could indicate specific tactics, capabilities and operating models will be harmful to policing”.

Publication of the review could lead to more effective policing

Again, this has been largely dealt with under the public interest balance test. Nevertheless, it is worth remembering that disclosure under the FOIA is disclosure to the world at large. This could result in vulnerable areas of the Constabulary's methodology being exposed, leading to more criminal activity, adversely impacting upon the public and making policing less effective.

Informing local and national learning

See earlier remarks regarding the A/PCC's statements and community involvement.

Publication of key recommendations

I referred earlier to the fact that although the review was commissioned by the A/PCC, the information itself originates from the constabulary and was passed to the OPCC in confidence with the express instruction as set out in Appendix 1 that it was “for the eyes of the OPCC only” and that wider publication could not take place until there had been further discussion

on how this was to be achieved.

I consider the exemption at section 41 of the FOIA – information provided in confidence is applicable here.

(1) Information is exempt if-

- (a) it was obtained by the public authority from any other persons (including another public authority, and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The review, containing sensitive information relating to operational policing has the necessary quality of confidence, was expressly imparted in confidence and unauthorised disclosure to the world at large would be to the detriment of law enforcement and not in the public interest.

Whilst this exemption is absolute and does not require the application of the public interest test, nonetheless I have still considered the public interest in disclosure as set out under the heading public interest balance test and will not repeat those remarks again here.

In conclusion, I must advise you that your request to the OPCC for the final report into the review of the policing of the “XR” protests is refused.

However, given that the Chief Constable is ultimately responsible for the policing of protests and consequently any de-brief report, I consider it reasonable to provide you with advice in respect of who you wish to contact to request such information. The Constabulary, is a separate organisation to the OPCC, and is treated as such under the Act. You can contact the Constabulary by email at foi@cambs.pnn.police.uk. Alternatively, please see the link to the Constabulary’s Freedom of Information pages:

<https://www.cambs.police.uk/information-and-services/About-us/Freedom-of-information/Make-an-FOI-request>

May I remind you of your right to appeal this decision to the ICO. The ICO’s website provides information as to how to appeal: <https://ico.org.uk/>

Yours sincerely

Jim Haylett

Acting Chief Executive

Office of the Police and Crime Commissioner for Cambridgeshire and Peterborough

