



Information Commissioner's Office
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Freedom of Information Act 2000 (Section 50)

Decision Notice

Case Reference: FS50089518

Date 6 June 2006

Public Authority: Chief Officer of Police

**Address: Devon and Cornwall Constabulary
Strategic Development Department
Force Headquarters
Middlemoor
Exeter
Devon
EX2 7HQ**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1).

In view of the matters referred to below the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that the Public Authority disclose to the Complainant the shift pattern for Neighbourhood Beat Managers as at the 1 September 2004 and as disclosed to the Information Commissioner under cover of letter dated 17 February 2006.

- 1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
 - 1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner has a duty to either notify the complainant that he has not made a decision (and his grounds for not doing so) or to serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The Complainant has advised that on 4 April 2005 the following information was requested from the Public Authority in accordance with section 1 of the Act.

“Details of the schedule of foot patrol beat officers during the hours of darkness” during the “six month period 1st September to 31st March 2005”.

- 2.2.1 On 3 May 2005, the Devon and Cornwall Constabulary (“DCC”) served a Refusal Notice which stated that the notice could not be taken as confirmation or denial that DCC holds the information requested. Further, DCC advised that even if it did hold the requested information, then it would be exempt from disclosure under section 31(1)(a) of the Act.
- 2.2.2 DCC believed the information requested to be of an operational nature and that disclosure of it could endanger DCC’s operational effectiveness. DCC took the view therefore, that disclosure of the requested information would be likely to prejudice the purposes of law enforcement and that therefore the exemption at section 31 of the Act is engaged. This exemption is subject to the public interest test.
- 2.2.3 DCC provided its exposition of the relevant public interest considerations. It felt that the arguments in favour of disclosure are accountability and public awareness. The argument against is that the efficient and effective conduct of the force would be prejudiced and that the current or future law enforcement role of the force may be compromised by the release of the information.
- 2.2.4 On 22 April 2005, the Complainant asked DCC to review its decision. He argued that as a Council Tax payer, he has a right to know how his money is being spent and that he and his family, property and communal property are being adequately protected. Further, as the

information is historical, the Complainant argued that the information could not be security sensitive.

- 2.2.5 On 30 August 2005, DCC told the Complainant that an officer not connected with the original decision had completed a review and had agreed with DCC's original decision to withhold the exempt information. DCC advised the Complainant that although he had requested historical data, due to the cyclical nature of shift patterns, the exemption in section 31 of the Act still applied.
- 2.2.6 On 19 September 2005, the Complainant complained to the Commissioner requesting his intervention on the basis that the information requested was not as sensitive as other disclosures which have already been made under the Act, the information is historical so sensitivity cannot be an issue and as a rate payer, he has a right to know he is receiving the security that is his right. Consequently, the Complainant argued that the requested information should be disclosed.

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 31(1)(a) provides that -

“(1) 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”

4. Review of the case

In his investigation of this complaint, the Commissioner has made detailed enquiries of DCC.

DCC has advised that it is not possible to comply with the Complainant's request as there is no longer a police officer known as a

“foot patrol officer”. However, public authorities have a duty to assist under section 16 of the Act and DCC has therefore identified the shift patterns of NBMs to be the information that most closely matches the initial request. The Commissioner is satisfied that this is a reasonable interpretation of the Complainants request.

DCC has provided the Commissioner with a copy of the information and its file of investigation. The requested information shows the hours that various police officers are, or are not, on duty. It does not reveal detail of the beats that police officers follow. It does not, for example, show that a particular officer, or officers, will, or will not be, at a particular place at a particular time. Although such detailed information is not held, the DCC argues the more general information which is held could prove useful to those members of society who currently commit or who may in the future consider committing, criminal offences in the Tavistock area.

DCC has referred to the “Manual of Guidance Freedom of Information” version 2.1 of the Association of Chief Police Officers (“ACPO”). In particular, DCC has stated that releasing the information could have an effect on:

- operational effectiveness
- the likelihood of any crime being committed in the future

ACPO believes prejudice may result if information revealing the deployment of staff and officers and their patterns of duty were to be disclosed. Disclosure of the requested information would apparently breach the guidelines - something that DCC argues should only occur in exceptional circumstances.

DCC has argued that although shift patterns do change, they are in the main cyclical. DCC believes that if the requested information is disclosed then it may be used by criminals to carry out crimes at times of least police cover. This in turn will impact on the operational effectiveness of the force. DCC argues that this is particularly the case in an area such as Tavistock because of the small number of officers available.

DCC has provided the Commissioner with the shift patterns for Neighbourhood Beat Managers (“NBM’s”) and Response Officers (“Response”). By way of explanation, policing within DCC is based on a multi-layer approach. An NBM is allocated to a number of beats, including in some cases the town beats and is responsible for managing the crime and other policing issues on their “patch”. Although encouraged to perform foot patrol within their allocated areas, they are provided with vehicles to enable them to be deployed in times of serious incidents to other areas. Working alongside NBM’s are a number of officers termed Response. The role of these officers is to deal with incidents that require immediate response, such as road

traffic collisions, reports of crimes in progress, etc. Alongside those roles, and available to be deployed on request, are the teams of specialist officers such as Traffic Officers, Tactical Aid Officers, Detectives, Domestic Violence Officers, Child Protection Officers etc.

5. The Commissioner's Decision

5.1.1 The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with section 1 of Part I of the Act. The Public Authority has failed to communicate to the Complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the Public Authority to refuse access.

Although the Commissioner accepts that it is conceivable that the information which has been refused might assist a criminal, he does not accept that in this particular case disclosing the information **would or would be likely to prejudice** the purposes of law enforcement. In the Commissioner's view an individual planning to commit a crime would be able to ascertain the presence, or not, of police in a particular area at a particular time by simple observation of uniformed NBM's. In the Commissioner's view it is unlikely that an opportunistic criminal would seek to use information to facilitate his or her criminal activity. The fact that the requested information is historical in nature further weakens arguments against its disclosure.

5.1.3 Even if an individual with criminal intent was to infer from the requested information that the presence of NBM's is sometimes at a relatively low level, this does not mean that the purpose of law enforcement would, or would be likely to be prejudiced. It is worth reiterating that NBM's are not the only form of policing present in the area. Response units are always available. This means that were an incident to be reported, a response vehicle should be available to attend the scene, whatever time of day or night. The presence of routine NBM patrols in an area may well have a deterrent effect on crime. However, this effect will be generated by their visible presence. This effect will be the same regardless of whether information about the shift patterns underlying any such presence is disclosed.

5.1.4 The Commissioner is not satisfied therefore that disclosure of the requested information would or would be likely to prejudice the purposes of law enforcement. The Commissioner's decision is, therefore, that the exemption at section 31 is not engaged in respect of the requested information. Although the exemption is subject to the public interest test, since, in the Commissioner's view the requested information is not exempt, the public interest test has not, therefore, been considered.

6. Action Required

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that the Devon and Cornwall Constabulary shall within 30 days after the date of service of this Decision Notice disclose to the Complainant the shift pattern for Neighbourhood Beat Managers as at the 1 September 2004 and as disclosed to the Information Commissioner under cover of letter dated 17 February 2006.

7. Right of Appeal

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@dca.gsi.gov.uk

- 7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

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