

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 May 2020

Public Authority: Dyfed Powys Police

Address: foi@dyfed-powys.pnn.police.uk

Decision (including any steps ordered)

1. The complainant requested information about the implementation of Project Servator. Dyfed Powys Police provided some information, but withheld other information under sections 24 and 31 of the FOIA. It also refused to confirm or deny whether it held other information by virtue of section 23(5) of the FOIA.
2. The Commissioner's decision is that Dyfed Powys Police has correctly applied section 24(1) to the remaining withheld information. However, in failing to respond to the request within the required timescale she finds that Dyfed Powys Police breached section 10. The Commissioner does not require any steps to be taken.

Request and response

3. On 31 March 2019 the complainant wrote to Dyfed Powys Police and requested information in the following terms:

"Under the provisions of the Freedom of Information Act 2000, please provide, any/all documentation relevant to the implementation of Project Servator within your constabulary, inclusive of any training material".

4. Following a chase email the complainant sent to Dyfed Powys Police, a response was issued on 7 May 2019. The response advised that a high volume of requests were being dealt with and asked him to confirm

whether he was still interested in proceeding with his request of 31 March 2019.

5. The complainant responded on 7 May 2019 and confirmed that he still wanted a response to the request. He contacted Dyfed Powys Police again on 25 May 2019 and asked it to conduct an internal review into its handling of the request in light of its continued failure to issue a response.
6. Dyfed Powys Police responded on 6 June 2019 and advised that "*presently there is nothing of substance to review*" as no initial response had been issued. It confirmed that it was unable to give a definitive timescale in which a response would be issued but advised that the request was "*26th in line for attention*".
7. The complainant responded on the same day expressing dissatisfaction with the continued delay in responding to the request. He pointed out that the FOIA did not contain any provisions for extending the timescales as a result of workloads.
8. Dyfed Powys Police responded to the request on 19 July 2019. It provided some of the information requested but withheld other information under sections 24(1) – national security and sections 31(1)(a) and (b) – law enforcement. It also stated that it could neither confirm or deny whether it held any other information by virtue of section 23(5) of the FOIA.
9. On 19 July 2019 the complainant requested an internal review of Dyfed Powys Police's handling of the request.
10. Dyfed Powys Police provided the outcome of its internal review on 23 July 2019 and upheld its position that the remaining information held relevant to the request was exempt for the reasons stated in its initial response.

Scope of the case

11. The complainant contacted the Commissioner initially on 9 July 2019 and again following receipt of the internal review response to express his dissatisfaction with Dyfed Powys Police's handling of the request.
12. During the course of the Commissioner's investigation, Dyfed Powys Police withdrew its reliance on section 23(5) of the FOIA.

13. The scope of the Commissioner's investigation into this complaint is to determine whether Dyfed Powys Police is entitled to rely on sections 24 and 31 to withhold the remaining withheld information.

Reasons for decision

Section 24 – National security

14. Section 24(1) of the FOIA states:

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

15. The FOIA does not define the term 'national security'. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:
 - 'national security' means the security of the United Kingdom and its people;
 - the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
 - the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
 - action against a foreign state may be capable indirectly of affecting the security of the UK; and,
 - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
16. The Commissioner's interpretation of "required" is taken by the approach in the European Court of Human Rights where interference to human rights can be justified where it is necessary in a democratic society for safeguarding national security. 'Necessary' in this context is

taken to mean something less than absolutely essential but more than simply being useful or desirable. 'Required' in this context is therefore 'reasonably necessary'. It is not sufficient for the information sought simply to relate to national security; there must be a clear basis that disclosure would have an adverse effect on national security before the exemption is engaged.

17. It is not necessary to show that disclosing the information would lead to an immediate threat to the UK, the exemption can be engaged to prevent a disclosure that would have adverse consequences. Safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent.
18. Dyfed Powys Police explained that the withheld information is contained within a restricted Operational Order for Operation SERVATOR. Dyfed Powys Police confirmed that the definition of an Operational Order in the context of the Police Service is set out within the College of Policing Authorised Professional Practice (APP) "*Operations – Briefing and debriefing*"¹ AS:

"Operation order

The operation order is a document that links basic information regarding an event or incident with the structure of the police response and, primarily, the operational resource requirement. The purpose of an operation order is to focus and coordinate the police response towards specific objectives, by describing how resources are to be deployed."

19. Dyfed Powys Police also provided the following background information relation to Operation Servator:

"Project SERVATOR is the name given to unpredictable, highly visible police deployments, designed to disrupt a range of criminal activity, including terrorism. The tactics are designed to identify and disrupt hostile reconnaissance – the information gathering a criminal does when planning to commit a criminal act, including terrorist attacks. They involve officers, both uniformed and plain clothed, who are specially trained to spot the tell-tale signs that an individual may have criminal intent. They are supported by other resources, such as police dogs

¹ www.app.college.police.uk/app-content/operations/briefing-and-debriefing/#operation-order

armed officers, CCTV operators, Automatic Number Plate Recognition (ANPR) and vehicle checkpoints. The approach relies on police working with the community – businesses, partners and members of the public – to build a network of vigilance and encourage suspicious activity to be reported. Project SERVATOR has been successful in gathering intelligence that has assisted Counter Terrorism Units across the UK in investigating and preventing acts of terror. It has resulted in many arrests for a multitude of offences and is responsible for removing firearms, knives and drugs from the streets. Police will turn up unannounced at various locations to carry out deployments. They will be unpredictable, so they could happen at any time, last for different amounts of time and involve varying numbers of officers and assets”.

20. The security of the country is of paramount importance. The police service is responsible for enforcing the law, preventing and detecting crime and protecting the communities they serve. Dyfed Powys Police believes that disclosure of the remaining withheld information would undermine the operational integrity of its activities and adversely affect public safety. This in turn will have a negative effect on both national security and law enforcement.
21. The Commissioner has viewed the withheld information and considered the representations submitted by Dyfed Powys Police, some of which have been provided in confidence to her. The Commissioner is unable to go into too much detail about these representations as to do so would reveal the withheld information and/or reveal information which itself may threaten national security. Much of the information which has been redacted relates to locations and operational matters (processes and methods) used by Dyfed Powys Police when deploying Operation Servator. The Commissioner is satisfied that disclosure of this information could assist an individual or organisation intent on criminal or terrorist activity and that this would threaten national security.
22. Taking all the above into account, the Commissioner's view is that, in this case, the exemption from the duty to disclose in relation to the information in question is reasonably required for the purposes of national security. She therefore considers that the exemption provided by section 24(1) of the FOIA is engaged.

Public interest test

23. Section 24 is a qualified exemption and so the Commissioner has gone on to consider whether in this case the public interest favours maintaining the exemption or disclosing the information.

24. In terms of the balance of the public interest in this case, the question here is whether the public interest in safeguarding national security is outweighed by the public interest in disclosure of the information. Clearly, the public interest in safeguarding national security carries very great weight. In order for the public interest to favour disclosure of the requested information it will be necessary for there to be public interest factors in favour of this of at least equally significant weight.

Public interest arguments in favour of disclosure

25. Dyfed Powys Police acknowledges that:

"The public are entitled to know how public funds are spent and resources distributed within an area of policing, particularly with regard to how the police effectively monitor and deliver operational law enforcement and sensitive policing matters".

26. Dyfed Powys Police also accepts that there is a public interest in disclosure of the remaining withheld information in terms of openness and transparency. Disclosure would provide the public with further detail about how it engages with Project Servator. It would also provide reassurance to the public that Dyfed Powys Police takes matters relating to terrorism threats and other criminal activity seriously.
27. The complainant considers that it is in the public interest for full disclosure of the information he requested. He pointed out that *"one of the major functions of Project Servator is illicit the support of the public in fighting crime"*. He also considers that the public have a keen interest in knowing and understanding *"how police resources are deployed, particularly in training and prioritisation"*.

Public interest arguments in favour of maintaining the exemption

28. Dyfed Powys Police considers that the threat of terrorism cannot be ignored. The international security landscape is complex and unpredictable and the UK has faced a sustained threat from terrorists and extremists.
29. Dyfed Powys Police does not believe it to be in the public interest to disclose information which would be of benefit to potential terrorists or those intent on criminal activity. Such disclosure would threaten national security and effective law enforcement activities.
30. Dyfed Powys Police considers that:

"the Public Interest has been served through the confirmation that information regarding Operation SERVATOR does exist and that there is

indeed an operational order in place. This coupled with information that is already in the public domain can provide reassurance to the public at large that Dyfed Powys Police is utilising the tactics and resources available to it under Operation SERVATOR with the aim of gathering intelligence to assist Counter Terrorism Units across the UK in investigating and preventing acts of terror. A Internet search identifies information about Project SERVATOR is published via a number of sources, this open sourced data provides information to the public which can provide reassurance to them. The confirmation that information is held alongside a partial disclosure of that information serves to show openness and transparency in relation to this matter, without impeding law enforcement or national security”.

31. Dyfed Powys Police considers there is an strong public interest in protecting information that could potentially place the safety of individuals at risk or undermine national security. Whilst it accepts that there is a public interest in the transparency of policing, and in this case providing assurance that the Police Service is effectively and appropriately engaging in operations that could help tackle crime and terrorism, Dyfed Powys Police is of the view that there is a stronger public interest in safeguarding national security.

Balance of the public interest test

32. In forming a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the considerable public interest inherent in the maintenance of this particular exemption as well as the specific factors that apply in relation to the withheld information.
33. Safeguarding national security is a matter of the most fundamental public interest; its weight can be matched only where there are also equally fundamental public interests in favour of disclosure of the requested information.
34. The Commissioner acknowledges the public interest in disclosure in this case in order to promote the openness and transparency relating to Dyfed Powys Police’s activities in relation to Project Servator. However, having considered all of the circumstances of this case, and taking into account the nature of the withheld information, Dyfed Powys Police’s submissions and her own guidance, the Commissioner does not consider that the public interest in disclosing the information matches the weight of the public interest in avoiding a disclosure that could be detrimental to national security.
35. The finding of the Commissioner is that Dyfed Powys Police has correctly applied section 24(1) of the FOIA to the withheld information and the

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

36. As the Commissioner has determined that the remaining withheld information is exempt by virtue of section 24(1) of the FOIA, she has not gone on to consider Dyfed Powys Police's application of section 31(1) to the information.

Section 10 – time for compliance

37. Section 1 of FOIA provides for a general right of access to information held by public authorities. Section 10(1) provides that a public authority must comply with section 1 promptly and in any event not later than the twentieth working day following the date of receipt of a request for information.
38. In this case the complainant made his request for information on 31 March 2019. Dyfed Powys Police did not issue a substantive response to the request until 19 July 2019, when it disclosed a redacted version of the information requested.
39. As Dyfed Powys Police did not respond to the request within the required timescale and failed to comply fully with section 1(1)(b) within the required timescale, it breached section 10(1) of the FOIA.

Right of appeal

40. 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

41. 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.
42. 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

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