

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 31 March 2014

**Public Authority:** Chief Constable of Cheshire Constabulary

**Address:** Cheshire Constabulary HQ

Oakmere Road

Winsford

CW7 2UA

### **Decision (including any steps ordered)**

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1. The complainant requested information from Cheshire Constabulary about two visits to the area by members of the Royal family. Cheshire Constabulary confirmed that it held some cost information associated with the visits. It refused to disclose that information citing sections 24(1) (national security), 31(1)(a) (law enforcement) and 38(1)(a) and (b) (health and safety) of the FOIA.
2. The Commissioner's decision is that Cheshire Constabulary withheld the information incorrectly. Accordingly he orders disclosure of the partial cost information which the Constabulary confirmed it holds relating to point 1 of each of the two requests and which has not already been disclosed to the complainant.
3. The public authority 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**

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4. On 4 June 2013 the complainant wrote to Cheshire Constabulary and requested information in the following terms about a visit from Prince Edward:

*"Please can you provide me (as a Freedom of information request) with the total cost of the Royal visit from Prince Edward on 16th April 2013 to Crewe and if possible, a breakdown of that cost?"*

*Areas for consideration of cost may be, but not limited to –*

*1. Security*

*Including cost of police, risk assessments and health and safety considerations, road closures, crowd safety, barriers etc.*

*2. Catering*

*Including cost of food and drink, catering staff wages and equipment (hired and/or purchased) etc.*

*3. Organisation*

*Including cost of time spent by staff to arrange the visit, "rest" facilities, building hire, administration and stationary costs, cost of any gifts, mementos or souvenirs, transport and stewarding etc.*

*Please could you also inform me if any of the cost was met by any other organisations or bodies or if you received any donations to help meet the cost, or received any sponsorship, who this was from and how much was given?"*

5. On 28 June 2013 the complainant made a further request for information - relating to a visit from Princess Anne:

*"Please can you provide me (as a Freedom of information request) with the total cost of the Royal visit from Princess Anne on 19th June 2013 to the Cheshire County show and if possible, a breakdown of that cost?"*

*Areas for consideration of cost may be, but not limited to –*

*1. Security*

*Including cost of police, risk assessments and health and safety considerations, road closures, crowd safety, barriers etc.*

*2. Catering*

*Including cost of food and drink, catering staff wages and equipment (hired and/or purchased) etc.*

*3. Entertainment*

*Including displays, technical equipment (hired and/or purchased), technical staff wages, music, Marque etc.*

*4. Decoration*

*Including cost of flowers or other decorations, guest books, commemorative plaques, building works (materials and staff wages) etc.*

**5. Organisation**

*Including cost of time spent by staff to arrange the visit, "rest" facilities, building hire, administration and stationary costs, cost of any gifts, mementos or souvenirs, transport and stewarding etc.*

*Please could you also inform me if any of the cost was met by any other organisations or bodies or if you received any donations to help meet the cost, or received any sponsorship, who this was from and how much was given?"*

6. Cheshire Constabulary responded – in a single response - on 3 July 2013. In respect of part (1) of both the requests – security – it refused to provide the requested information citing the following exemptions:

- section 24(1) (national security);
- section 31 (1)(a) (law enforcement); and
- section 38 (1)(a) and (b) (health and safety).

7. In respect of the other parts of the requests, Cheshire Constabulary told the complainant:

*"Question 2. Catering costs: None.*

*Questions 3 & 4 Request 2. Entertainment & decoration: None*

*Question 3 Request 1 & Question 5 request 2 Organisation: This information is not held. No separate calculation of costs connected with a particular event is made".*

8. On 3 July 2013, the complainant wrote to the Constabulary thanking it for its response to her request for information about Prince Edward and requesting an internal review. She said:

*"The reasons I do not accept this decision is that the request was only asking for the details of the cost for one specific visit, not the overall cost of security for Prince Charles [sic], or any other member of the royal family. ....Also, it is worth pointing out that many other police forces regularly provide information about the costs of security on specific royal visits, either through Freedom of Information requests or freely to the press".*

9. The Commissioner understands that the Constabulary considered that correspondence to be a request for a review of its handling of both of her requests.
10. Cheshire Constabulary sent the complainant the outcome of its internal review on 12 August 2013. It revised its position in relation to the request about the visit from Prince Edward, disclosing the cost of officer overtime for the security element of that visit.
11. However, it explained that the majority of the security resource for the Royal visits was within standard duty time, and confirmed its application of sections 24, 31 and 38 to that information. With respect to the visit by Princess Anne it said that *"all resource provided by the Constabulary was within standard duty time"*.
12. Cheshire Constabulary confirmed the responses it had previously provided in respect of the other parts of the two requests.

### **Scope of the case**

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13. The complainant contacted the Commissioner on 16 September 2013 to complain about the way her requests for information had been handled.
14. She told the Commissioner that she does not accept the reasons given for refusing to disclose the information:

*"The reasons they give for not releasing this information is that it might be harmful to members of the royal family and a threat to national security. This cannot be true as I have found many examples of police authorities releasing this information (as I pointed out to them, see links below) and I am not asking for the yearly overall cost of security for the royals, just the cost of the individual visits themselves. I am also not asking for details such as how many police officers were involved and what kinds etc, just the cost. I therefore fail to see how this information could pose a threat. It is after all, already out there in the public domain for other royal visits. How can it be fine for some Police Authorities to release this information but not others?"*

*Also, they have willingly given me the cost of overtime for one of the visits so it doesn't make sense why they wouldn't give me the other costs if they are happy to give this one".*

15. Although the Commissioner understands from the complainant that some police forces would appear to have complied with similar requests, the Commissioner does not consider that this sets an automatic

precedent for disclosure under the FOIA. In his view, each case must be considered on its merits.

16. During the course of his investigation, Cheshire Constabulary reviewed its responses to the requests. In relation to the visit that is the subject of the first request for information it told the Commissioner:

*"The full policing costs in relation to the security for this visit were never fully calculated. Apart from some minor overtime costs, the actual cost of [officers etc.] was not calculated at the time of the request and currently only partial related cost information is held. Officer time was in the main during normal duty time, there was a small additional overtime cost".*

17. The Commissioner acknowledges that the information about that overtime cost has been disclosed to the complainant.

18. In relation to the visit that is the subject of the second request for information the Constabulary also told the Commissioner that the full policing costs in relation to the security for that visit were never fully calculated. It said:

*"... currently only partial related cost information is held. Officer deployments were entirely during normal duty time".*

19. In relation to the cost information that it holds, a copy of which it provided to the Commissioner during the course of his investigation, the Constabulary told the Commissioner:

*"The information is exempt by virtue of:*

*Section 24(1) – National Security*

*Section 31 (1)(a) – the Prevention and Detection of Crime*

*Section 38 (1)(a) & (b) Health & Safety".*

20. The Commissioner is mindful that, in bringing her complaint to the Commissioner's attention, the complainant confirmed:

*"I am not asking for the yearly overall cost of security for the royals, just the cost of the individual visits themselves. I am also not asking for details such as how many police officers were involved and what kinds etc, just the cost".*

21. In light of the above, the Commissioner considers the scope of his investigation to be whether Cheshire Constabulary correctly applied sections 24, 31 and 38 of FOIA to the withheld information relating to part 1 of each of the two requests.

## Reasons for decision

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22. Cheshire Constabulary told the Commissioner it considers sections 24 and 31 *"to be equally relevant in this case"*.

23. The Commissioner has first considered its citing of section 24.

### *Section 24 national security*

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

*"Information which does not fall within section 23(1) [information supplied by, or relating to, bodies dealing with security matters] is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding the national security."*

25. Section 1(1)(b) is the subsection which relates to the public authority having a duty to communicate information to the requester.

26. In broad terms, section 24(1) allows a public authority not to disclose information if it considers that the release of the information would make the United Kingdom or its citizens vulnerable to a national security threat.

27. When investigating complaints about the application of section 24(1), the Commissioner will need to be satisfied that the exemption from the duty to communicate the information is required for the purpose of safeguarding national security.

28. The approach of the Commissioner is that *required* in this context means reasonably necessary. It is not sufficient for the information sought simply to relate to national security, there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption can be engaged.

29. In the Commissioner's view, safeguarding national security includes, amongst other things, protecting potential targets even if there is no evidence that an attack is imminent.

30. In correspondence both with the complainant and with the Commissioner, Cheshire Constabulary explained the harm to national security resulting from disclosure as follows:

*"The release of information requested by the applicant would result in harm to the national security of the United Kingdom. Releasing costs associated with the protection of any members of the Royal Family would provide those intent on committing acts of terrorism*

*with valuable information as to the level of resistance they might expect to counter when undertaking such an act. Someone could reasonably infer comparable protection levels with other public figures whose receipt of protection is a matter of public record, namely the Prime Minister and The Queen. The costs of these protections remain undisclosed for the same reasons of national security, health and safety and law enforcement. Disclosing the information sought would also give valuable tactical information to those who seek to harm such figures. The release of information which might assist a potential terrorist in planning an attack on a Member of the Royal Family, including the possibility of identifying protection surrounding the Head of State, her Heirs and the Prime Minister, would threaten the prime institution of the United Kingdom's constitutional arrangements, and thus the nation's security".*

31. Cheshire Constabulary provided the Commissioner with further submissions in support of its view that disclosing the information at issue would result in harm to the national security of the United Kingdom. For example it illustrated how, in its view, disclosing the associated costs could assist terrorists in forming an overview of security arrangements for such visits.
32. When deciding whether the section 24 exemption is engaged, it is the potential value of the disputed information in the hands of those who constitute a threat to national security that must be considered. There is no requirement for the public authority to demonstrate that there is a specific and imminent threat from disclosure, it is sufficient that the public authority has been able to demonstrate that the disputed information, in the wrong hands, could indirectly create a real possibility of harm to national security.
33. The Commissioner has considered the lengthy arguments provided by Cheshire Constabulary in this case. He recognises the strength of such arguments in respect of safeguarding the security of the United Kingdom and its people both from acts of terrorism and from the threat posed by lone individuals.
34. For example, the Commissioner recognises that terrorists can be highly motivated and may go to great lengths to gather intelligence. He acknowledges that gathering information from publicly available sources may well be a strategy used by those planning terrorist activities or other criminal attacks.
35. In reaching his conclusion in this case, the Commissioner does not dispute the very real risks which exist around the protection of the Royal Family and other high profile individuals. Nor does he dispute the

potential for threats to be made to public figures. In cases involving the section 24 exemption the Commissioner recognises that, depending on the circumstances, there may be grounds for withholding what seems harmless information. For example it may be necessary to withhold it on the basis that it may assist terrorists or lone individuals when pieced together with other information they may obtain.

36. The Commissioner acknowledges that Cheshire Constabulary has confirmed that it does not hold the total cost of the visits and has explained that the organising and policing of such events is carried out – in the main – by police officers as part of their everyday duties.
37. In the context of this case, having considered all the arguments and representations and having viewed the withheld information, the Commissioner does not accept that an exemption from disclosure of this information is required to safeguard national security. Therefore the Commissioner finds that the exemption is not engaged.

#### *Section 31 law enforcement*

38. The Commissioner has next considered Cheshire Constabulary's application of section 31 to the same withheld information.
39. During the course of his investigation, Cheshire Constabulary told him:

*"In this instance the arguments that the Force has put forward for section 31 and section 24 .... are very closely related".*

40. The Commissioner notes that the reasons put forward by the Constabulary in support of its view that section 31 is engaged in this case are very similar to its submissions in relation to section 24.
41. Section 31 provides a prejudice based exemption which protects a variety of law enforcement interests. For the exemption to be engaged it must be at least likely that the prejudice identified would occur. Even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
42. In this case, Cheshire Constabulary considers section 31(1)(a) applies. That section states:

*"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".*

43. In order for a prejudice based exemption, such as section 31, to be engaged the Commissioner considers that three criteria must be met.
- First, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather, there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

*The applicable interests*

44. The public authority must show that the prejudice it is envisaging affects the particular interest that the exemption is designed to protect.
45. In applying this exemption, Cheshire Constabulary told the complainant:

*"We state that the release of this information would prejudice the prevention and detection of crime. .... Any physical attack on any person, regardless of whether they are a Member of the Royal Family or not, is a crime and therefore where release would harm their safety (or that of any other person) section 31(1)(a) is engaged".*

46. The Commissioner accepts that Cheshire Constabulary's arguments relate to the law enforcement activity that the exemption is designed to protect.

*The nature of the prejudice*

47. Cheshire Constabulary told the complainant:

*"Disclosing the cost for providing security to any named Members of the Royal Family would have the effect of disclosing the level of policing and/or security resources that are assigned to events*

*attended by these specific people. This would compromise safety arrangements, as it would enable those wishing to circumvent those arrangements to form an assessment of the level of protection provided.*

*The release of information will also reveal policing tactics regarding these key figures of the Royal Family, and would be used to form part of a wider assessment of levels of protection afforded to others not subject to this request, including public figures of equivalent status who are not part of the Royal Family. The release of this information would be to the detriment of another public figure of equivalent status who may not be in receipt of similar levels of security”.*

*The likelihood of the prejudice occurring*

48. Cheshire Constabulary confirmed that it considers the higher limb of the exemption – would prejudice – applies in this case.

*Is the exemption engaged? Would disclosure prejudice law enforcement?*

49. In the Commissioner’s view, the exemption provided by section 31(1)(a) serves to protect society from crime. It can therefore be used to withhold information that would make anyone more vulnerable to crime. In considering whether the exemption is engaged, the Commissioner recognises that account can be taken of any harm likely to arise if the requested information were put together with other information.
50. In the circumstances of this case, having considered the disputed information – partial cost information relating to standard duties during the Royal visits - and Cheshire Constabulary’s arguments with respect to section 31(1)(a), the Commissioner does not find it plausible that the disclosure of that information would be prejudicial to law enforcement. It follows that he does not find the exemption engaged.

*Section 38 health and safety*

51. Section 38(1) of the FOIA provides that:

*“Information is exempt information if its disclosure under this Act, would, or would be likely to –*

- (a) endanger the physical or mental health of any individual, or*  
*(b) endanger the safety of any individual”.*

52. For the exemption to be engaged it must be at least likely that the prejudice identified would occur. Even if the exemption is engaged, the

information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

53. In this case, Cheshire Constabulary told the Commissioner that it considers that section 38(1)(a) and (b) is engaged:

*"as it is the consequence of any failure to prevent and detect crime in this instance - that any disclosure would be likely to result in an increased risk to protected individuals, with a corresponding prejudice to their health and safety".*

*The applicable interests*

54. Cheshire Constabulary told the complainant:

*"If the Cheshire Constabulary was to provide overall costs of providing security to these named Royal figures it would compromise personal safety arrangements for these specific individuals. There is also the possibility of a mosaic effect being established whereby disclosed information could be matched with unofficial information to form comparisons with other Royal and public figures that may or may not be in receipt of protective security arrangements.*

*The release of information will also reveal policing tactics regarding these key figures of the Royal Family and could be used to form part of a wider assessment of levels of protection afforded to others not subject to this request. The release of this information would therefore be to the detriment of another who may not be in receipt of similar levels of protection".*

*The nature of the prejudice*

55. Cheshire Constabulary told the complainant:

*"To reveal information which exposes levels of protection to those intent on causing harm would increase the risk of harm to those individuals and to others who may be caught up in an attack, such as Royal Family staff and members of the public".*

*The likelihood of the prejudice occurring*

56. With respect to the limb of the exemption it considers applies in this case, Cheshire Constabulary told the complainant:

*"The release of the information requested would endanger the physical health of individuals concerned".*

57. However, in correspondence with the Commissioner it said that any disclosure 'would be likely' to result in prejudice to the health and safety of protected individuals.

*Is the exemption engaged?*

58. The Commissioner takes the view that the phrase "would or would be likely to" prejudice or endanger means that there should be evidence of a significant risk to the physical or mental health or the safety of any individual.
59. In this case the Commissioner's view is that, even at the lower level of likelihood, Cheshire Constabulary has not evidenced a significant risk to the physical health or safety of an individual. In the circumstances of this case and given the nature of the relevant information held, he does not accept that disclosure would expose the levels of protection afforded to any member of the Royal Family or others. He therefore finds that Cheshire Constabulary has failed to demonstrate a causal link between the disclosure of the withheld information and endangerment.
60. Accordingly he finds that the section 38 exemption is not engaged in this case.

## Right of appeal

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61. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

62. 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.
63. 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 .....**

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**