

Our Ref: 004218/16



Freedom of Information Section
Nottinghamshire Police HQ
Sherwood Lodge, Arnold
Nottingham NG5 8PP

Tel: 101
Ext 800 2507
Fax: 0115 967 2896

12 January 2017

Dear

Request under the Freedom of Information Act 2000 (FOIA)

I write in connection with your request for information, which was received by Nottinghamshire Police on 13/06/2016.

Following receipt of your request searches were conducted within Nottinghamshire Police to locate the information you require.

RESPONSE

Under S 1 (1) (a) of the Freedom of Information Act 2000 (FOIA), I can confirm that Nottinghamshire Police does hold the information you have requested.

Please find below answers to your questions:-

I wish the following information is released to me The number of Special Constables in the last 36 months who have received some form of sanction for their driving behaviour. The sanction I refer to ranges from management advice to formal action.

The number of police officers, police staff and special constables:-

1. who have been referred back to the Force driving school for their driving standard.

No information held. There is currently no audit trail as to why individuals within Nottinghamshire have been referred back to driver training, this would normally follow an investigation by PSD or by line managers and the



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development request for an assessed drive would be forwarded to HR. HR do not record the reasons for the request as the vast majority are simply at the end of a five year authority which is due for renewal.

2. who have declared a conviction by a court for a motoring related conviction to the Force

None

3. the number of complaints from the public in the last three years alleging poor police driving behaviour.

51 complaints received in the last 36 months

How many of these complaints led to any form of disciplinary sanction.

None

4. The internal sanction imposed against Superintendent Helen Chamberlain for exceeding the speed limit following a speeding conviction at Nottingham Magistrates Court- 9th December 2010.

Nottinghamshire Police can neither confirm nor deny that it holds any information relevant to this request, as the duty in Section 1(1)(a) of the Freedom of Information Act 2000 does not apply by virtue of the following exemptions:

Section 31(1)(g)(2)(b) Law Enforcement
Section 40(5)(b)(i) Personal Information

31. – (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
- b) the apprehension or prosecution of offenders
- c) the administration of justice
- d) the assessment or collection of any tax or duty or of any imposition of a similar nature
- e) the operation of the immigration controls
- f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained
- g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)

- h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection 2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.

(2) The purposes referred to in subsection (1) g) to l) are –

- a) the purpose of ascertaining whether any person has failed to comply with the law
- b) the purpose of ascertaining whether any person is responsible for any conduct which is improper
- c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise
- d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on
- e) the purpose of ascertaining the cause of an accident
- f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration
- g) the purpose of protecting the property of charities from loss or misapplication
- h) the purpose of recovering the property of charities
- i) the purpose of securing the health, safety and welfare of persons at work, and
- j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1 (1) a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

40. – (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if –

- a) it constitutes personal data which do not fall within subsection (1), and
- b) either the first or second condition below is satisfied

(3) The first condition is –

- a) in a case where the information falls within any of the paragraphs a) to d) of the definition of “data” in section 1 (1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –
 - i) any of the data protection principles, or
 - ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A (1) of the Data Protection Act 1998 (which relate to manual data held by the public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7 (1) c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny –

- a) **does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and**
- b) **does not arise in relation to other information if or to the extent that either –**
 - i) **the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1 (1) a) would (apart from this**

Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A (1) of that Act were disregarded, or

- ii) by virtue of any provision of part IV of the Data Protection Act 1998 the information is exempt from section 7 (1) a) of that Act (data subject's right to be informed whether personal data being processed).**

Section 40 is an absolute exemption and therefore I am not required to consider the public interest in confirming whether information is held. It is evident in this case that confirmation or denial whether information is held would breach the data protection rights of the individual concerned. This is true regardless of whether any information is held or not as; if Nottinghamshire Police refused to confirm or deny only in those cases where information is held, then it may be reasonably concluded that information is held whenever an NCND response is used.

Section 31 is a class based qualified exemption and therefore I am required to consider the public interest in confirming whether this information is held.

Public Interest Test

Factors favouring confirmation/denial

The behaviour of Police Officers is always high on the public agenda. Disclosure of information pertaining to misconduct investigations involving Police Officers and staff would provide reassurance to the public that Officers and staff do not receive preferential treatment in matters of discipline and that effective investigations are conducted where wrongful behaviour is identified.

Disclosing information about investigations would provide a greater transparency in the investigating process and the actions of a public authority. It is clear that there is a public interest in public authorities operating in as transparent a manner as possible, as this should ensure they operate effectively and efficiently. Confirming the existence of an investigation could help to ensure that authorities do not overlook issues which they should investigate or that they have good reasons for not investigating.

This would provide an insight into the disciplinary processes utilised within the Police service and enable to public to have a better understanding of the effectiveness of the Police particularly in relation to the spending of public funds. This may also enhance public confidence in the Police Service.

There is a clear public interest in ensuring that public authorities do not act outside their authority by investigating matters which fall outside their remit. By making certain that public authorities confirm or deny whether information is held in relation to investigations, this should provide the necessary safeguards and satisfy the public interest in this matter.

Factors against confirming/denying information is held.

The interest of the public is best served by the non-disclosure of information which adversely affects the reputation of an individual e.g. whether they are involved in a police investigation. In this case the request specifically asks for information about a particular individual.

The public must be confident that Nottinghamshire Police are committed to ensuring that information provided by them will only be used for appropriate purposes and that the confidentiality of any information given will be maintained. Therefore they should be assured that Nottinghamshire Police would never confirm or deny the existence or otherwise of information that would breach confidentiality.

Where current or future law enforcement role of the force may be compromised by the release of information, then this is unlikely to be in the interest of the public. In this case, for the reasons outlined above, confirming or denying the existence of an investigation could jeopardise future police operations and compromise the future prevention and detection of crime.

There is an inherently strong public interest in public authorities carrying out investigations to prevent and detect crime. This ensures that offenders are brought to justice and that the necessary checks and balances are in place to safeguard public funds and resources. To allow the effectiveness of investigations to be reduced, as described in the harm above, is not in the public interest. Nottinghamshire Police need to be allowed to carry out investigations effectively away from public scrutiny until such times as the details need to be made public, otherwise it will be difficult for accurate, thorough and objective investigations to be carried out.

Providing information regarding investigations into alleged wrong doings of a particular Police Officer would obviously lead to the identification of that Officer and may compromise any subsequent criminal or misconduct proceedings. Should a disciplinary or criminal procedure fail as a result of a disclosure of information, the public may lose confidence in the ability of Nottinghamshire Police to bring offenders to justice. This will have a negative impact on the disciplinary process which could result in a reduction in the flow of information and evidence which would have a negative impact on Nottinghamshire Police's ability to carry out its core functions.

Balance Test

There is a public interest in the transparency of Policing and providing reassurance that any allegations/reports of Police personnel misconduct are dealt with appropriately, and in the accountability of the Police and how they operate.

Although confirmation of whether or not the requested information is held by the public authority might provide a greater transparency in the investigating

process, there are already a number of checks and balances on authorities to assess whether investigations are conducted appropriately. There are legal processes in place to ensure that all parties are given access to all the appropriate information at the time of any trial and subsequently through court records. In addition if a person feels that they have been treated inappropriately by the police there are clear processes in place to ensure that matters are investigated thoroughly and appropriately.

Releasing information outside of such a schedule could undermine the smooth running of these processes and would impact on future judicial proceedings. Therefore the wider public interest lies in protecting the ability of the public authority to conduct an effective investigation and consider the outcome.

There is also strong public interest in safeguarding the integrity of Police investigations. Confirming that information pertaining to misconduct investigations is held may undermine any potential current investigations and compromise any subsequent proceedings meaning that potential Officer and staff misconduct could go unpunished. There can be no public interest in compromising this process and the potential harm to current and/or future investigations outweighs any public benefit in disclosure of this information.

Any disclosure by Nottinghamshire Police that undermines investigations, no matter how generic, would undermine any trust or confidence individuals have in us.

In addition, there is also strong public interest in maintaining confidence in Nottinghamshire Police with regards to its handling of individuals' personal data. The release of information under Freedom of Information is a release into the public domain and not just to an individual. The exemption identified at Section 40(5)(b)(i) of the Freedom of Information Act is specifically provided so that personal data cannot be confirmed nor denied as being held if doing so would breach any of the data protection principles. Since the confirmation or denial that disciplinary action had or had not been taken against a named Officer would, in itself, constitute disclosure of personal information, the decision must be to neither confirm nor deny that information is held. Confirmation or denial as to whether this information was held would breach the 1st principle of Data Protection in that such a disclosure would not be fair to the individual concerned.

Therefore, at this moment in time, it is our opinion that for these issues the balance test favours neither confirming nor denying that information is held. This decision should not be taken as evidence that the information you requested exists or does not exist.

Complaints Rights

Your attention is drawn to the enclosed review procedure, which details your right of complaint.

Copyright

Nottinghamshire Police in complying with their statutory duty under Sections 1 and 11 of the Freedom of Information Act 2000 (FOIA) to release the enclosed information will not breach the Copyright, Designs and Patents Act 1988.

However, the rights of the copyright owner of the enclosed information will continue to be protected by law. Applications for the copyright owner's written permission to reproduce any part of the attached information should be addressed to the Force Solicitor, Nottinghamshire Police, Force Headquarters, Sherwood Lodge, Arnold, Nottinghamshire, NG5 8PP.

I would like to take this opportunity to thank you for your interest in Nottinghamshire Police.

Should you have any further enquiries concerning this matter, please write or contact the Freedom of Information Officer on telephone number 0115 9672507 or e-mail freedomofinformation@Nottinghamshire.pnn.police.uk quoting the above reference number.

Yours sincerely

Disclosure Officer

Are you dissatisfied with your response?

Nottinghamshire Police has a duty to implement a complaints process in relation to Freedom of Information Act requests. If you are not content with our response, you may appeal, this process is known as an 'Internal Review'

Internal reviews are intended to be a fair and impartial means of reviewing the original request process.

You can appeal about your request if you:-

- Disagree with the Forces interpretation of your request;
- Believe the Force hold more information than has been disclosed to you;
- Disagree with the application of exemptions;

How do I appeal?

All appeals should be made in writing and sent to:-

Information Management
Nottinghamshire Police
Force Headquarters
Sherwood Lodge
Arnold
Notts
NG5 8PP

or alternatively freedomofinformation@nottinghamshire.pnn.police.uk

To deal with your appeal as quickly as possible please provide the unique identification number provided with your response and the reasons for your appeal.

Once we have received your request for appeal, your FOI response will be reviewed in full to identify any problems in the disclosure.

The review will be undertaken by someone different from, and preferably senior to, the original decision maker and this should be completed within 20 working days from receipt, in exceptional circumstances it may be extended by a further 20 working days.

What if I'm still not satisfied?

You can appeal to the Information Commissioner. You can contact the Information Commissioner Office at the following:-

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate)

E-mail: casework@ico.org.uk