

Our Ref: 004624/15



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

Tel: 101
Ext 800 2507
Fax: 0115 967 2896

05 August 2015

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 13/07/2015.

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

Please find below answers to your questions:-

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 could you tell me of your awareness of legal advice if any given to operational commanders of Nottinghamshire Police in aiding and abetting bailiffs in evicting Mr Tom Crawford from his home at 3 Fearn Chase, Carlton, on 2 July if no legal advice was sought or given to any Police commander please indicate.

Nottinghamshire Police attended on the above date as part of normal policing duties to prevent a breach of the peace and facilitate peaceful process. Nottinghamshire Police Legal Services' Solicitor attended all planning processes and checked the legality of the process and advised accordingly.

Please indicate the level of supervision and knowledge of the operation, e.g. assistant chief constable, chief constable, divisional commander etc.

Both Chief Constable and Assistant Chief Constable had knowledge of the Operation and the supervision was a Gold Commander who was a Chief

Inspector. (Alteration to original response – this should read Chief Superintendent)

Please indicate any external public requests for a police presence and source, e.g. Bailiff firm, institution, etc

The County Court Bailiffs requested a presence to prevent a breach of the peace as they carried out their duty.

Please indicate how many helicopters were used and who gave authority for their use in the operation

No Police helicopters were used.

Please indicate what press media and planning was used in relation to the operation, and by whom requested and authorised.

No advance notice was given to the press regarding the operation.

Please indicate any legal limitations of the police action as given in briefings to officers before the operation

Nottinghamshire Police intend to publish the Operational Order in relation to Op Whooper at a future date.

Please see below the information taken from the Order.

Convention Rights, Article or Protocol affected by this Operational Order	Applicable
Article 2: The Right to Life.	Yes
Article 3: Prohibition of Torture.	No
Article 4: Prohibition of Slavery and Forced Labour.	No
Article 5: Right to Liberty and Security.	Yes
Article 6: Right to a Fair Trial.	Yes
Article 7: No Punishment without Law.	Yes
Article 8: Right to Respect for Private and Family Life.	Yes
Article 9: Freedom of Thought, Conscience and Religion.	Yes
Article 10: Freedom of Expression.	Yes
Article 11: Freedom of Assembly and Association.	Yes
Article 12: The Right to Marry	No
Article 13: The Right to an Effective Remedy	Yes
Article 14: Prohibition of Discrimination.	Yes
Article 16: Restrictions of Political Activity of Aliens.	No
Article 17: Prohibition of Abuse of Rights.	No
Article 18: Limitation on Use of Restrictions on Rights.	No
First Protocol, Article 1: Protection of Property. (The "peaceful enjoyment of possessions").	Yes
First Protocol, Article 2: Right to Education. (Subject to UK Reservation).	No
First Protocol, Article 3: Right to Free Elections.	No

Legislation

Breach of the Peace

'Breach of the peace' is an ancient common law concept which is of importance to police officers, providing a number of powers:

- (1) to arrest;
- (2) to intervene and/or detain by force;

To prevent any action likely to result in a breach of the peace in both public and private places; *Thomas v Sawkins* (1935) 99 JP 295.

'A breach of the peace is committed whenever harm is done, or is likely to be done to a person, or, in his presence to his property, or, whenever a person is in fear of being harmed through an assault, affray, riot or other disturbance'.

Court orders/evictions/bailiffs

Officers attending private premises with officials may have to enter with them to prevent a breach of the peace whilst a Court Order of some type

is being enforced. In those circumstances:

(i) personally check that the order is valid - a careful check may avoid problems.

(ii) do not enter the premises if there is no threat of a breach - unless invited voluntarily by a lawful occupier.

Powers of Arrest

ANY PERSON (including a police officer) can arrest:

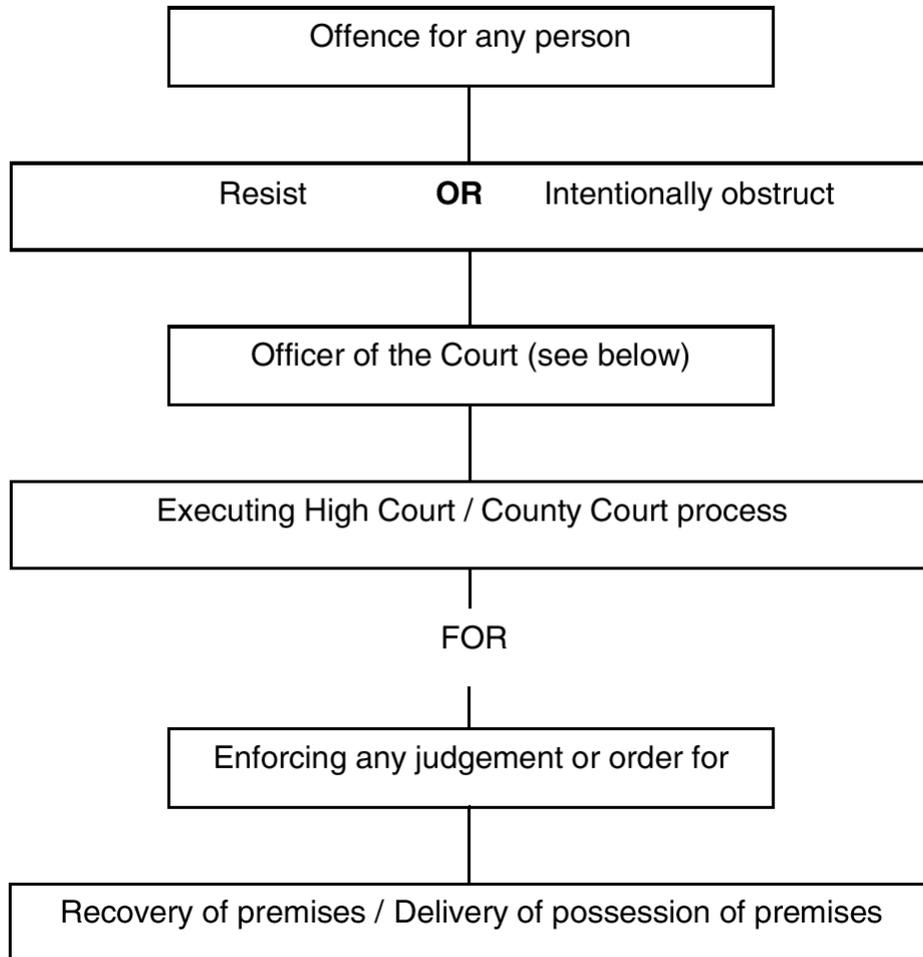
(a) where a breach of the peace is committed by the person arrested in the presence of the person making the arrest; OR

(b) where the person making the arrest reasonably believes that such a breach will be committed in the immediate future by the person whom he has arrested, although no breach has occurred at that stage; OR

(c) where a breach of the peace has been committed by the person arrested and the person making the arrest reasonably believes that a renewal of it is threatened.

OBSTRUCTION OF COURT OFFICERS

Section 10, Criminal Law Act 1977



POWER OF ARREST

PC in uniform (or Court Officer) may arrest (without a warrant) person who is, or whom

he/she with reasonable cause suspects to be guilty of the offence (preserved power).

N.B.

'Officer of the Court': Any Sheriff, Under Sheriff, Deputy Sheriff, Bailiff or Officer of a Sheriff or Officer of the County Court.

Warning to be given to Individual

“You have been requested to leave this area by an Officer of the Court who is executing process for possession which has been issued by a court.

Is there anything I can reasonably say or do which will get you to comply with the instruction of the Court Officer?

If you do not obey his direction it may make you liable to arrest.”

Give a short time, depending on the circumstances to allow the person to leave

“I am arresting you for the obstruction of a Court Officer executing process for possession”.

CAUTION

"You do not have to say anything. But it may harm your defence if you do not mention when questioned something, which you later rely on in Court. Anything you do say may be given in evidence."

Section 50 Police Reform Act 2002 - Persons acting in an anti-social manner

If a constable in uniform has reason to believe that a person has been or is acting in an anti-social manner; has reason to believe that a constable may require that person to give their name and address to the constable when required to do so. Any person who fails to give their name and address or gives a false/inaccurate name and address is guilty of an offence.

Notes

Anti-social Manner is described under Section 1 Crime and Disorder Act 1998 (in relation to Anti-Social Behaviour Orders).
Anti-social behaviour may have been committed in public or private.
In the event a person is required to give their name and address to a constable a P.O. Box number is not sufficient. Requires the provision of a correct name and address.

The meaning of ‘anti-social manner’

‘Anti-social manner’ refers to a person acting in a manner that caused, or was likely to cause harassment, alarm or distress to one or more persons not of the same household as that person

The meaning of 'harassment'

Harassment means to subject someone to constant and repeated physical and/or verbal persecution.

The meaning of 'alarm'

Alarm means a frightened anticipation of danger.

The meaning of 'distress'

Distress means to cause trouble, pain, anguish or hardship.

These terms are not defined in the Act and are therefore given in their ordinary meanings.

These words should be seen in context with the term 'likely to be caused'. What may distress a vulnerable person may not distress others. The conduct has to be seen in its full context. Remember that a third party, (not the one subjected to the behaviour), may experience distress, alarm or harassment.

Note: There is no power to require a date of birth within this legislation. The officer should consider the context of the incident they are dealing with before acting i.e. the prevailing circumstances. For example, what may be more 'acceptable' behaviour outside a football game on a Saturday afternoon will probably not be acceptable outside a sheltered housing scheme in the early hours of the morning. This legislation can include third parties, i.e. those person(s) who the anti-social behaviour is not directed at. For example, the residents inside the sheltered accommodation affected by the anti-social behaviour of persons acting outside. The behaviour does not need to be directed at the people who are caused alarm or distress, to fall within the legislation.

Mode of Trial and Penalty

Summary fine - arrest without warrant

Section 241 Trade Union and Labour Relations (Consolidation) Act 1992 - Intimidation/annoyance by violence/otherwise

Notes

A protestor who prevents workmen from progressing with construction work can be charged under Section 241 of the Trade Union and Labour Relations (Consolidation) Act 1992 with wrongfully and without lawful authority hindering them in their work with a view to compelling them to abstain from work. The application of this section is not just confined to the context of trade disputes.

A person must be prevented from working or likely to be prevented or intended to be prevented from doing an act that they are legally entitled to do (including working).

It is vital that this evidence is obtained before arrest. An option would be to use the EGT to record (video or audio) a victim statement. A written statement can then be obtained afterwards.

VERBAL WARNINGS

Warning for Senior Officer to Protestor

“YOU ARE PREVENTING, LIKELY TO PREVENT OR DELIBERATELY TRYING TO PREVENT (name person) FROM DOING SOMETHING WHICH HE/SHE HAS A LEGAL RIGHT TO DO (state action). I REQUIRE YOU TO STOP WHAT YOU ARE DOING. FAILURE TO DO SO MAY MAKE YOU LIABLE TO ARREST.”

Arresting Officer to Individual

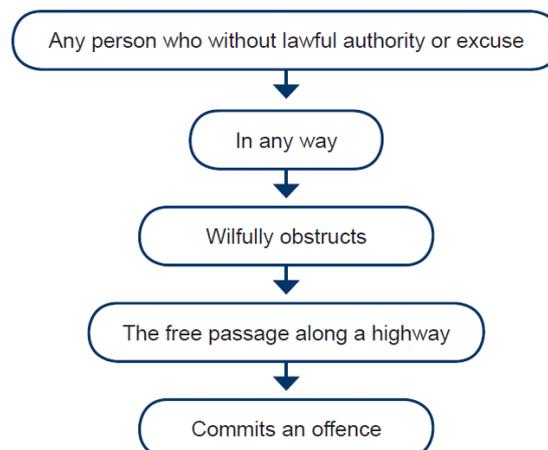
“YOU HAVE BEEN ASKED TO STOP THIS ACTION. IS THERE ANYTHING I CAN REASONABLY SAY OR DO TO MAKE YOU STOP?”

Allow a short amount of time, depending on the circumstances, to give the person the opportunity to stop their action.

“YOU ARE COMMITTING THE OFFENCE OF WRONGFULLY AND WITHOUT LEGAL AUTHORITY HINDERING THIS PERSON FROM WORKING, OR SPECIFICALLY (state act) WITH A VIEW TO COMPELLING HIM/HER FROM ABSTAINING FROM WORK. I AM THEREFORE ARRESTING YOU.”

CAUTION

Wilful obstruction of the Highway-Section 137 Highways Act 1980



Meaning of 'highway'

A common law interpretation of 'highway' is provided in (Lang v Hindhaugh [1986]RTR 271) as: 'highways are anywhere that the public has a right to pass and re-pass, either on foot or with animals or in vehicles'. This definition should be applied to section 328 Highways Act 1980, for further understanding.

Warning

"I believe you are wilfully obstructing the highway without lawful authority or excuse contrary to section 137 of the Highways Act. I am warning you to stop/remove the obstruction [describe the obstruction]. If you do not stop/remove the obstruction, it may be necessary for me or another officer to [arrest you] [report you]."

Wording upon arrest (Section 24 and section 28 PACE/Code G)

"I am arresting you on suspicion of wilfully obstructing the highway without lawful excuse contrary to section 137 of the Highways Act 1980, because you ignored a warning to stop/remove the obstruction and it is necessary to arrest you to prevent you causing an unlawful obstruction of the highway."

In cases where you requested the person's name and address with a view to reporting for summons or other disposal, explain why you cannot ascertain their real name and/or address, or you have reasonable grounds to doubt whether the name and address they gave you is their real name and address, and you therefore believe their arrest is necessary to ascertain their real name and/or address. **PACE Caution**

When explaining why a person's arrest is necessary it is not sufficient to just repeat the words in section 24(5) PACE/PACE Code G2.9 by saying, for example: "I believe your arrest is necessary to prevent you from causing injury to others." You need describe particular actions, behaviour, information and or other circumstances relating to them which give you the grounds to believe that their arrest is necessary for one or more of the statutory reasons set out in section 24(5) PACE as follows:

- To ascertain name and address – by explaining why you need to arrest them to ascertain their real name and address
- causing physical injury to self or others – by explaining why you believe they will cause injury and to whom unless they are arrested
- suffering physical injury – by explaining why you believe they will suffer injury unless they are arrested
- causing property loss or damage – by explaining why you believe they will cause property loss/damage and the property affected unless they are arrested

causing unlawful obstruction of the highway – by explaining why you believe they will cause unlawful obstruction unless they are arrested.

Please indicate any risks identified by prior assessment to Mr Crawford and his family.

Nottinghamshire Police do not hold this information. Any risk assessment as above would be the responsibility of those conducting the eviction. As the Police were responsible for keeping the Queen's peace and not the eviction itself, the Police risk assessment was limited to this role.

Please indicate the policy limit if any of action implemented when assisting court bailiffs to be used by Nottinghamshire Police to its officers before or during the operation.

Nottinghamshire Police intend to publish the Operational Order in relation to Op Whooper at a future date.

Please see below the information taken from the Order.

“Policing Role

The need for Police attendance at any event will principally be based upon the need to discharge the service's core functions, namely:

- To protect life and property.
- To minimise and detect crime and disorder.
- To minimise breaches of the peace.
- Traffic regulation (only within statutory powers).
- Activation of contingency plans in the event of an emergency / threat to life.

Policing Style (from current intelligence)

The Policing style in relation to this event will be one of ENGAGEMENT to prevent Crime and Disorder.

Principally we are in place to prevent a breach of the peace and minimise crime and disorder. To that end, officers from the PSU's will be deployed into cordons enabling a safe and sterile working area so the bailiffs and security teams are relatively un-hindered.

It is possible that persons opposed to the eviction will arrive on scene and protest and that the nature of these protestors could involve some civil disobedience. Peaceful protest will be facilitated and officers will be approachable, professional and polite at all times.

Officers will continually provide updates through the chain of command to enable the policing style to be constantly reviewed and assessed.

Intervention Policy

Whilst the police presence is to facilitate the actions of partner agencies, serious breaches of the law will not be tolerated and will be dealt with in a proportionate manner. Our intention is graduated and we will:

- 1) Enable the event to pass peacefully preferably without arrests
- 2) Secure and preserve evidence for future prosecution
- 3) Arrest, where the necessity threshold is met, any person who is reasonably suspected of seeking to break the law, and by so doing:
 - causing a physical risk to themselves or others;
 - compromising the safety or security of any person involved in the operation”

“Police Officers will be in attendance to minimise the risk of crime and disorder, maintain the Queen’s Peace and assist the Court officials and their agents in going about their lawful business. They should minimise disruption to other residents caused by the action and facilitate lawful peaceful protest where it develops.

They are not there to effect the repossession of the property and should only step in where unlawful activity takes place or to protect life or limb.

The Neighbourhood Police Team will actively engage with local residents to provide reassurance by carrying out a leaflet drop as soon as the bailiffs knock on the door of the subject premises and conducting high visibility patrols throughout.”

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