



Decision Notice 169/2024

Calls to 101 number: waiting times

Authority: Police Service of Scotland
Case Ref: 202400022

Summary

The Applicant asked the Authority for information relating to waiting times for calls made to its 101 number. The Authority withheld the information requested under various exemptions in FOISA. The Commissioner investigated and found that the Authority was not entitled to withhold the information requested. He required the Authority to disclose the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 31(1) (National security and defence); 35(1)(a) and (b) (Law enforcement); 39(1) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 15 June 2023, the Applicant made a request for information to the Authority. Among other things, they asked for:

“For each day since 1st January 2022 to 14th June 2023:

(A) the average time for a call to 101 be answered by a call handler

...

(D) the longest wait for a call to 101 to be answered by a call handler.”

2. The Authority responded on 14 August 2023, withholding the information requested under sections 31(1), 35(1)(a) and (b), and 39(1) of FOISA on the grounds that disclosure would adversely affect public safety and have a negative impact on both national security and law enforcement. The Authority provided links to the information it published on its website, broken down by month for [2022](#)¹ and [2023](#)².
3. On 23 August 2023, the Applicant wrote to the Authority requesting a review of its decision on the basis that they did not accept its reasons for applying the exemptions specified, and they considered the public interest favoured disclosure of the information. In particular, the Applicant considered that:
 - 101 is a non-emergency service
 - the information requested would not relate to the deployment of officers in the field, including counter-terrorism officers
 - disclosure of the information requested would not provide insight to individuals attempting to evade the law or harm national security
 - other public and emergency services published similar information in response to information requests
 - in all the circumstances, disclosure of the information requested would have a negligible impact on public safety, national security and law enforcement
 - the Authority had itself raised concerns about the impact of cuts on staff workload and response time.
4. The Authority notified the Applicant of the outcome of its review on 23 October 2023, fully upholding its original decision. The Authority accepted that 101 is primarily a non-emergency number, but explained that:
 - a portion of calls received to 101 were emergencies and would be dealt with on that basis
 - it has single, finite staff resource to deal with all calls and incidents
 - disclosing information permitting the inference of resourcing levels (and points of pressure) in its service centres would enable individuals to calculate when its resources were under greatest strain and to potentially plan criminal and/or terrorist activities accordingly.
5. On 5 January 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that they were dissatisfied with the outcome of the Authority’s review for the reasons set out in their review request and because they did not agree that historic resourcing data would enable conclusions to be drawn on future operational policing matters.

¹ <https://www.scotland.police.uk/about-us/what-we-do/how-we-are-performing/call-handling-reports-2022/december-2022-call-handling-reports/>

² <https://www.scotland.police.uk/about-us/what-we-do/how-we-are-performing/call-handling-reports-2023/>

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 7 February 2024, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld and the case was subsequently allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Section 35(1)(a) and (b) – Law enforcement

10. Section 35(1)(a) of FOISA exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime. As the Commissioner's [guidance on the exemptions in section 35](#)³ highlights, the term "prevention or detection of crime" is wide ranging encompassing any action taken to anticipate and prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could mean activities in relation to specific (anticipated) crime or wider strategies for crime reduction and detection.
11. Section 35(1)(b) of FOISA exempts information if its disclosure would, or would be likely to, prejudice substantially the apprehension or prosecution of offenders. As the Commissioner's guidance also states, there is likely to be a considerable overlap between information relating to "the apprehension or prosecution of offenders" and that relating to "the prevention or detection of crime".
12. The Commissioner considers that section 35(1)(b) of FOISA relates to all aspects of the process of identifying, arresting or prosecuting those suspected of being responsible for criminal activity. Again, this term could refer to the apprehension or prosecution of specific offenders or to more general techniques (such as investigative processes and use of police intelligence).
13. There is no definition of "substantial prejudice" in FOISA, but the Commissioner considers the authority would have to identify harm of real and demonstrable significance, which would be likely, at least, to follow disclosure, and more than simply a remote possibility.
14. The exemptions in section 35(1) are subject to the public interest test in section 2(1)(b) of FOISA.

³ <https://www.itspublicknowledge.info/sites/default/files/2022-04/BriefingSection35LawEnforcement.pdf>

The Authority's submissions

15. On its [website](#)⁴, the Authority describes its 101 number as a non-emergency number, designed to improve public access to the police, which enables individuals to contact local police, obtain crime prevention advice or report a crime not requiring an emergency 999 response.
16. While the Authority accepted that the 101 number is intended to be a non-emergency 'service', it argued that a proportion of 101 calls are emergency calls and that regardless of the nature of the call to its call centres it has a single, finite staff resource to deal with all calls and incidents.
17. The Authority stated that the withheld information identified individual days and dates where 101 call times were at their highest on average and at their longest (i.e. periods where call centres, and therefore police resource, were stretched or under pressure).
18. On this basis, the Authority submitted that those wishing to commit crime could identify (with some accuracy) specific days or dates when they were more likely to be successful and to avoid detection. The Authority provided a specific example in relation to the withheld information to support this argument.
19. The Authority further submitted that it proactively published the requested information as a monthly aggregate, which it considered provided the public with useful information while maintaining the integrity of its service.
20. In summary, the Authority contended that disclosure of the information requested would increase the likelihood of criminals being able to commit crime without detection which would, by extension, substantially prejudice its ability to prevent or detect crime and apprehend and prosecute offenders.

The Applicant's submissions

21. As 101 is a non-emergency service, the Applicant considered that disclosure of the withheld information would not provide any useful insight to those attempting to evade the law, given it did not, in their view, relate to the deployment of officers or individuals in the field
22. The Applicant also submitted that other public services (including other emergency services) published similar information in response to requests for information and that the Authority had overstated the risks of disclosure.

The Commissioner's view

23. The Commissioner has considered all of the submissions made to him by the Authority and the Applicant.
24. The request (submitted on 15 June 2023) covers 1 January 2022 to 14 June 2023. The Commissioner notes that the information being sought is by no means in the distant past and is (for more recent dates) virtually contemporaneous with the request.
25. The withheld information enables comparisons to be made regarding the average and longest call waiting times to the Authority's 101 number on a daily basis across an

⁴ <https://www.scotland.police.uk/about-us/how-we-do-it/call-handling/non-emergencies/frequently-asked-questions/>

approximately 18-month period. If, as the Applicant suggests, they wish to understand “the pressures facing the service over time”, this is exactly the information required.

26. However, disclosure under FOISA is not just to the Applicant. It is to the public at large, which must (inevitably) include those intent on committing crime or otherwise causing harm.
27. While 101 is, unlike 999, a “non-emergency” number, the Commissioner accepts as reasonable the Authority’s argument that at least some of the calls are crime related.
28. The Commissioner has considered information publicly available on the Authority’s website⁵ regarding the nature of calls made to its 101 number. He has also carefully reviewed the Authority’s submissions and the withheld information. Having done so, he does not accept that the withheld information, if disclosed, could be turned into actionable intelligence by those wishing to commit crime. This is for the following reasons:
 - due to the way the 101 service operates, the withheld information would not permit a geographical breakdown of that information to be produced (e.g. at city or town level)
 - calls to 101 include calls to individual officers, departmental enquiries (e.g. relating to firearm licences, custody enquiries, lost property enquiries, freedom of information enquiries and calls to different forces (e.g. the British Transport Police)
 - 101 call handling delays relate to business operations (i.e. busy periods in the call centre), not to the dispatch, or presence, of operational officers to, or in, any particular location at any particular time.
29. In all of the circumstances, the Commissioner does not accept that the withheld information could, if it were disclosed, be used to predict potential weaknesses in the Authority’s operational capacity to anticipate, detect or respond to future reports of crime in any particular location at any particular time.
30. In the Commissioner’s view, disclosure of the withheld information would be of no value to those intent on engaging in criminal activity. He therefore does not consider that disclosure of the withheld information would compromise the Authority’s ability to prevent and detect crime and to apprehend and prosecute offenders.
31. Having considered the Authority’s submissions and the withheld information in detail, the Commissioner considers that the harm that the Authority claimed would follow disclosure of the withheld information is not of real and demonstrable significance.
32. In all the circumstances, the Commissioner concludes that the exemptions in section 35(1)(a) and (b) of FOISA are not engaged because disclosure of the withheld information would not, or would not be likely to, prejudice substantially the prevention or detection of crime or the apprehension or prosecution of offenders.
33. As the Commissioner has found that the exemptions in section 35(1)(a) and (b) were incorrectly applied to the withheld information, he is not required to go on to consider the public interest test in section 2(1)(b) of FOISA.
34. As the Commissioner is not satisfied that the Authority was entitled to rely on the exemptions in section 35(1)(a) and (b) of FOISA for withholding all of the information covered by the

⁵ <https://www.scotland.police.uk/about-us/how-we-do-it/call-handling/non-emergencies/read-this-before-you-call-101/> and <https://www.scotland.police.uk/about-us/how-we-do-it/call-handling/non-emergencies/frequently-asked-questions/>

Applicant's request, he is required to go on to consider the application of the exemption in section 31(1) that the Authority also relied upon.

Section 31(1) – National security and defence

35. Section 31(1) of FOISA provides that information is exempt information if exemption from section 1(1) is required for the purpose of safeguarding national security.
36. The expression "national security" is not defined in FOISA. The Commissioner considers the phrase covers matters such as defence of the realm; the prosecution of war; the disposition of armed forces; nuclear weapons; security and intelligence services, and potential threats to the economic wellbeing of the UK (including terrorism, espionage and subversion).
37. It should be noted that section 31 of FOISA specifies that information is exempt from disclosure if exemption is required for the purposes of safeguarding national security, a condition which has a narrower scope than information which simply relates to national security. (See the [Commissioner's briefing on section 31\(1\)](#)⁶).

The Authority's submissions

38. The Authority submitted that its arguments in relation to the exemptions in section 35(1)(a) and (b) of FOISA applied equally to the exemption in 31(1). That is:
 - were the withheld information disclosed, those intent on committing terrorist activity could use it to identify (with some accuracy) specific days or dates when they would be more likely to be successful and to avoid detection
 - disclosure of the withheld information would therefore provide those individuals or groups with a tactical advantage when planning or carrying out terrorist activities so as to maximise the destruction and disruption caused.
39. The Authority further explained that the UK faces a serious and sustained threat from violent extremists, greater in scale and ambition than any terrorist threats in the past, and disclosure of the withheld information would place individuals and the public at serious risk.

The Applicant's submissions

40. The Applicant argued that disclosure of the withheld information would have a negligible impact on national security given it did not relate to (i.e. reveal) the deployment of officers, including counter-terrorism officers, in the field and would therefore provide no useful insight to those wishing to harm national security.
41. In all, the Applicant considered the risks from disclosure had been overstated by the Authority.

The Commissioner's view

42. Having carefully considered the withheld information and the submissions made, the Commissioner does not accept that disclosure of the withheld information would result in, or be likely to result in, the harm claimed by the Authority.
43. The exemption in section 31(1) of FOISA is not subject to a test of substantial prejudice, but exemption must still be "required". The Commissioner would expect some link to be demonstrated between disclosure and national security being compromised.

⁶ https://www.foi.scot/sites/default/files/2023-05/BriefingSection31NationalSecurityandDefence_25.5.23.pdf

44. For the reasons rehearsed earlier relating to the exemptions in section 35(1)(a) and (b) of FOISA, the Commissioner does not accept that the withheld information could, if it were disclosed, be used by those with terrorist intent to predict potential weaknesses in the Authority's operational capacity in any particular location at any particular time.
45. The Commissioner also does not consider that the Authority has provided sufficiently persuasive or specific evidence to demonstrate a tangible link between disclosure of the withheld information and national security being compromised.
46. The Commissioner fully understands the importance of the exemption contained in section 31(1) of FOISA. However, the Authority has failed to persuade the Commissioner that, in this case, exemption from section 1(1) is required for the purpose of safeguarding national security.
47. Consequently, the Commissioner is not satisfied that the Authority was entitled to withhold the information under the exemption in section 31(1) of FOISA. As the Commissioner is not satisfied that the information is exempt from disclosure under section 31(1), he is not required to consider the public interest test in section 2(1)(b).
48. As the Commissioner is not satisfied that the Authority was entitled to rely on the exemption in section 31(1) of FOISA for withholding all of the information covered by the Applicant's request, he is required to go on to consider the application of the exemption in section 39(1) that the Authority also relied upon.

Section 39(1) – Health, safety and the environment

49. Section 39(1) of FOISA states that information is exempt information if its disclosure under FOISA would, or would be likely to, endanger the physical or mental health or the safety of an individual. This is a qualified exemption and is subject to the public interest test required by section 2(1)(b) of FOISA.
50. As the Commissioner notes in his [briefing on the exemption](#)⁷, section 39(1) does not contain the usual harm test. Instead of the "substantial prejudice" test found in many other harm-based exemptions in Part 2 of FOISA, this exemption refers to the "endangerment" of health or safety. This test is less demanding than the "substantial prejudice" test.
51. The Commissioner's view is that the term "endanger" is broad enough to apply where there is a (direct or indirect) threat to the safety of a person which would foreseeably arise in the future, as well as immediate harm, since the exemption does not specify that any threat should be imminent before it applies.
52. The Commissioner believes that, for endangerment to be considered likely, however, there must be some well-founded apprehension of danger, such that the prospect of harm could reasonably be regarded as a distinct possibility.
53. The Commissioner's briefing on the exemption sets out that it may be a single individual whose health or safety is likely to be endangered by the disclosure of information or it may be a group of people.

⁷ https://www.foi.scot/sites/default/files/2023-07/BriefingSection39HealthSafetyandtheEnvironment_2023.pdf

The Authority's submissions

54. The Authority submitted that the exemption in section 39(1) of FOISA applied to both members of the public and police officers dealing with reports of criminal activity.
55. The Authority explained that it responded to a substantial number of violent crimes each year, which includes serious and organised crime.
56. As rehearsed earlier, the Authority submitted that disclosure of information enabling the identification of pinch points in resourcing would increase the risk of violent crime being committed successfully, which would lead to a direct increase in violence against members of the public.
57. The Authority argued that disclosure of the withheld information would therefore make the prevention of crime more difficult, which would also increase the likelihood of harm to members of the public.
58. The Authority also submitted that if periods of decreased police resourcing were targeted by criminals, there would be an increased possibility of police officers having to attend crimes and incidents with fewer resources in suboptimal conditions. The Authority explained that this would directly place officers and staff at risk, as they would be more vulnerable when dealing with violent crimes or individuals.

The Applicant's submissions

59. As rehearsed earlier, the Applicant considered that the Authority had overstated the risks from disclosure.

The Commissioner's view

60. The Commissioner has to be satisfied that the health or safety of individuals would, or would be likely to, be endangered as a direct result of the disclosure of the withheld information.
61. The Commissioner has considered the Authority's submissions carefully and has taken seriously the risk of harm to members of the public and to police officers that the Authority claimed would, or would be likely to, follow disclosure of the withheld information.
62. However, the Commissioner is not satisfied that the Authority has adequately evidenced that disclosure of the withheld information would, or would be likely to, endanger the health or safety of any individual or group of people.
63. For the reasons rehearsed earlier, the Commissioner is not persuaded that there is a tangible link between busy times in the Authority's call centre and the deployment of (or the ability to deploy) operational officers in any particular location at any particular time.
64. The Commissioner is therefore not satisfied that the health or safety of individuals would, or would be likely to, be endangered as a direct result of the disclosure of the withheld information.
65. The Commissioner recognises that the standard of harm required for the exemption in section 39(1) of FOISA to apply is lower than the substantial prejudice required for the exemptions in section 35(1)(a) and (b) to apply. In other words, section 39(1) only requires that the health or safety of individuals would, or would be *likely* to, be endangered as a direct result of the disclosure of the withheld information.

66. However, in all of the circumstances, the Commissioner is not persuaded that the harm claimed by the Authority has some realistic prospect or degree of likelihood of occurring.
67. Consequently, the Commissioner is not satisfied that the Authority was entitled to withhold the information under the exemption in section 39(1) of FOISA. As he is not satisfied that the information is exempt from disclosure under section 39(1), he is not required to consider the public interest test in section 2(1)(b).

Decision

The Commissioner finds that, in respect of the matters specified in the application, the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that the Authority wrongly withheld the information requested under the exemptions in sections 31(1), 35(1)(a) and(b) and 39(1) of FOISA. By doing so, it failed to comply with section 1(1) of FOISA.

The Commissioner requires the Authority to disclose the withheld information to the Applicant by **30 September 2024**.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

David Hamilton
Scottish Information Commissioner

15 August 2024

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –
 - ...
 - (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.
 - ...
- ...

31 National security and defence

- (1) Information is exempt information if exemption from section 1(1) is required for the purpose of safeguarding national security.
- ...
- ...

35 Law enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-
 - (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders;
 - ...
- ...

39 Health, safety and the environment

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, endanger the physical or mental health or the safety of an individual.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
- (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

- (2) An application under subsection (1) must -
- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c);
and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).