

Our Ref: 216.2016-17

Date: 15 June 2016

Roger Little
roglizzie@btinternet.com



Police and Crime
Commissioner
North Yorkshire



Dear Mr Little,

FREEDOM OF INFORMATION REQUEST REFERENCE NO: 216.2016-17

I write in connection with your request for information which was received by North Yorkshire Police on 02 June 2016. I note you seek access to the following information:

I am requesting information regarding the detail leading to the police decision not to prosecute a man who self-confessed to illegally setting three pole traps in North Yorkshire Dales National Park.

Specifically:

- 1. What detailed procedure was followed to decide on the preferred course of action?*
- 2. What evidence was taken into account to arrive at the decision?*
- 3. Whose ultimate responsibility is it within North Yorkshire Police or the Crown Prosecution Service to make the decision to prosecute or not?*

Extent and Result of Searches to Locate Information

To locate the information relevant to your request searches were conducted within North Yorkshire Police.

I can confirm that the information you have requested is held by North Yorkshire Police.

Decision

I have today decided to disclose the located information to you.

1 & 3) The procedure followed by North Yorkshire Police officers when deciding on the preferred course of action is the Adult Prosecution Procedure. This decision is taken in line with the Gravity Matrix Factor for Adults and the Adult Simple Caution Guidance which is published by the Ministry of Justice. Please follow the hyperlinks below for access to these documents;

<http://www.northyorkshire.police.uk/CHttpHandler.ashx?id=10020&p=0>

<https://www.gov.uk/government/publications/simple-cautions-guidance-for-police-and-prosecutors>

Information in relation to the relationship between the police and the Crown prosecution Service can be found on the College of Policing Authorised Professional Practise website under the Prosecution and Case Management Section;

<http://www.app.college.police.uk/app-content/prosecution-and-case-management/charging-and-case-preparation/>

Officers refer to the Directors Guidance on Charging (5th Edition) which clarifies where the police can take a charging decision or where they must refer the case to the Crown Prosecution Service;

https://www.cps.gov.uk/publications/directors_guidance/dpp_guidance_5.html

2) I am not obliged to answer this part of your request pursuant to the following Freedom of Information Act exemptions; Section 30(1)(a) Investigations and Proceedings Conducted by Public Authorities and Section 40(2) Personal Information.

Section 17 of the Act requires North Yorkshire Police, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states (if that would not otherwise be apparent) why the exemption applies. Please refer to the relevant exemption headers below for further context.

Section 30(1)(a) – Investigations and proceedings conducted by public authorities

This exemption applies because the information you have requested is only held for the purposes of an investigation into ascertaining whether a person/persons should be charged with an offence.

Section 30 is a qualified, class-based exemption, which requires that I conduct a public interest test to balance the legitimate interests of the public in knowing the information against the interests of non-disclosure.

Public Interest Test

Reasons for Disclosure

The disclosure of this information would lead to a better informed public and this may encourage individuals to provide information to the police in the future. The disclosure of the evidence or what it entailed would highlight where the police resources were targeted and the public are entitled to know how public funds are spent, particularly in the current economic climate.

Reasons against Disclosure

The information requested is held by North Yorkshire Police for the purposes of an investigation. The disclosure of such information could prejudice the investigation. Unwarranted third party involvement could hinder the prevention or detection of crime and a subject's right to a fair trial could be undermined. Information within an evidence package may have been supplied confidentially, to go against this could damage the force's reputation and in future, persons would be less likely to provide the force with information in doubt that it would be disclosed to the world.

Balancing Test

Although there is public interest in the way the Police force investigate crime, the public have already been informed of how the incident has been handled;

<http://www.northyorkshire.police.uk/16817>.

There is also a strong public interest in the prevention and detection of crime therefore if the disclosure of the requested information was likely to hinder or prejudice an investigation then in my belief the requested information should be withheld.

PROTECT PERSONAL

After considering the reasons for and against disclosure, it is my opinion that the reasons for non-disclosure outweigh the reasons for disclosure.

Section 40 – Personal Information

I am exempting the provision of an answer to question 2 pursuant to Section 40(2) of the Freedom of Information Act 2000 (the Act).

Where an individual can be identified by such data, releasing it would clearly breach the first data protection principle of being 'fair' to the data subject.

Section 40(2)(b) is an absolute class based exemption, which does not require a public interest test, but requires the balancing of the legitimate interests of the public against the interests of the individual under the first Data Protection Principle (that of 'fairness'.)

The type of information you have requested contains personal information which can only be disclosed to the individual concerned. This exemption applies because the right given under the Act to request official information held by public authorities does not apply to the personal data of third parties where disclosure of that information would not be fair to the individual, and where there is no legitimate public interest in disclosure.

In all the circumstances of this instance it has been determined that the duty to the individual under the Data Protection Act 1998, and the public interest in maintaining the exemption from disclosure of personal information held by the force in such cases, outweighs the public interest in disclosure.

Releasing personal details to a person other than the data subject would not only breach the data subject's Data Protection rights it may also breach the obligations placed on an authority under the European Convention on Human Rights.

Pursuant to Section 17(1) of the Act this letter acts as a refusal notice under the Freedom of Information Act 2000 in relation to your request.

Please note that systems used for recording information are not generic, nor are the procedures used locally in capturing the data. It should be noted therefore that this force's response to your questions should not be used for comparison purposes with any other responses you may receive.

Complaint Rights

Your attention is drawn to the attached sheet which details your right of complaint.

If you have any queries concerning this request, please contact me quoting the reference number above.

Yours sincerely

Robert Bates
Legal Officer (Civil Disclosure)
Joint Corporate Legal Services
Enc

PROTECT PERSONAL

COMPLAINT RIGHTS

Are you unhappy with how your request has been handled or do you think the decision is incorrect?

You have the right to require the North Yorkshire Police to review their decision.

Prior to lodging a formal complaint you are welcome and encouraged to discuss the decision with the case officer that dealt with your request.

Ask to have the decision looked at again –

The quickest and easiest way to have the decision looked at again is to telephone the case officer that is nominated at the end of your decision letter.

That person will be able to discuss the decision, explain any issues and assist with any problems.

Complaint

If you are dissatisfied with the handling procedures or the decision of the North Yorkshire Police made under the Freedom of Information Act 2000 (the Act) regarding access to information you can lodge a complaint with the North Yorkshire Police to have the decision reviewed. North Yorkshire Police must be notified of your intention to complain within 2 months of the date of its response to your Freedom of Information request. Complaints should be made in writing and addressed to:

Force Solicitor and Head of Legal Services
North Yorkshire Police
Newby Wiske Hall
Northallerton
North Yorkshire
DL7 9HA

In all possible circumstances the North Yorkshire Police will aim to respond to your complaint as soon as practicable but within 20 working days.

The Information Commissioner

After lodging a complaint with the North Yorkshire Police if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at www.informationcommissioner.gov.uk. Alternatively, phone or write to:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Phone: 01625 545 700