



June 2019

### **Freedom of Information Request Reference N°: FOI 001519/19**

I write in connection with your request for information received by the Norfolk and Suffolk Constabularies on the 23<sup>rd</sup> April 2019 in which you sought access to the following information:

I'm a reporter with Newsquest's Data Investigations Unit and I'm hoping to obtain information relating to the number of police officers and staff arrested between 2015 and 2019 to date.

I'd like to know the following, please:

- 1 The number of police officers arrested between 2015 and 2019, with figures broken down for each year.
- 2 The number of police staff arrested between 2015 and 2019, with figures broken down for each year.

For each arrest, please provide:

- 3
  - A The rank/role of the arrested person
  - B Years in service
  - C Date of arrest
  - D Details of the offence the individual was arrested on suspicion of
  - E The outcome of the criminal investigation, including the outcome of any prosecution where applicable
  - F The outcome of any other investigation into the matter - please specify who conducted the investigation (i.e. internal within the force, the IPCC, etc) and the end result of that investigation

Please structure the response for question 3 a-f within an Excel spreadsheet with the columns 'Date of Arrest - Officer or Staff - Rank/Role - Years in Service - Offence - Criminal outcome - Other outcome'.

### **Response to your Request**

The response provided below is correct as of 14<sup>th</sup> May 2019.

Norfolk and Suffolk Constabularies have located the following information as relevant to your request.

The Joint Professional Standards Department has undertaken research of arrests of Police Officers, Police Staff and Members of the Special Constabulary between 1<sup>st</sup> January 2015 and 23<sup>rd</sup> April 2019. Please see below:-

## Q1 &amp; 2

Year	Number of Arrests
<b>NORFOLK – Police Officers &amp; Members of the Special Constabulary</b>	
2015	9
2016	4
2017	0
2018	1
2019 (to 23 <sup>rd</sup> April)	0
<b>NORFOLK – Police Staff</b>	
2015	1
2016	0
2017	1
2018	1
2019 (to 23 <sup>rd</sup> April)	0
<b>SUFFOLK – Police Officers &amp; Members of the Special Constabulary</b>	
2015	1
2016	3
2017	3
2018	1
2019 (to 23 <sup>rd</sup> April)	1
<b>SUFFOLK – Police Staff</b>	
2015	1
2016	1
2017	2
2018	1
2019 (to 23 <sup>rd</sup> April)	0

All investigations have been conducted by the Professional Departments. There are two cases relating to Officers which have been supervised by the Independent Office for Police Complaints (IOPC).

## Q3

Year	Rank	Offence	Criminal Outcome	Conduct Investigation Outcome
<b>NORFOLK – Police Officers &amp; Members of the Special Constabulary</b>				
2015	Constable	Misconduct in public office	No further action	Dismissed at hearing
2015	Constable	Possess indecent images	Conviction at court	Dismissed at hearing
2015	Special Constable	Theft	No further action	Resigned whilst under investigation
2015	Constable	Common assault	No further action	No action
2015	Constable	Forgery Attempted fraud	Found not guilty at court	Dismissed at hearing
2015	Constable	Child cruelty	No further action	No action

2015	Inspector or above	Misconduct in public office	No further action	Management advice issued
2015	Constable	Exposure	No further action	Resigned whilst under investigation
2015	Constable	Theft	Conviction at court	Dismissed at hearing
2016	Sergeant	Excess alcohol Fail to provide specimen of breath	Conviction at court	Dismissed at hearing
2016	Constable	Historical sexual touching	No further action	No action
2016	Constable	Rape Harassment	No further action	Management action relating to additional matters
2016	Constable	Excess alcohol	Conviction at court	Dismissed at hearing
2018	Sergeant	Common assault	No further action	No action
<b>NORFOLK – Police Staff</b>				
2015	Staff	Misconduct in public office Data Protection Act offence	Caution for DPA offence	Final written warning issued
2017	Staff	Drunk & disorderly	Conviction at court	Resigned whilst under investigation
2018	Staff	Harassment	No further action	Management action given
<b>SUFFOLK – Police Officers &amp; Members of the Special Constabulary</b>				
2015	Constable	Misconduct in public office Data Protection Act offence	No further action	Written warning issued
2016	Constable	Attempt to pervert the course of justice	Conviction at court	Dismissed at hearing
2016	Constable	Rape False imprisonment Common assault Coercive/controlling behaviour	No further action	Final written warning issued
2016	Constable	Excess alcohol	Case withdrawn at court – no evidence offered	Dismissed at hearing
2017	Special Constable	Attempt to pervert the course of justice	No further action	No action
2017	Constable	Rape	No further action	Management advice in relation to additional matters
2017	Special Constable	Exempt – section 31	No further action	Ongoing
2018	Special Constable	Affray	No further action	Resigned whilst under investigation
2019	Constable	Exempt – section 31	Ongoing	Ongoing
<b>SUFFOLK – Police Staff</b>				
2015	Staff	Common assault	Conviction at court	Management action
2016	PCSO	Misconduct in public office	No further action	Dismissed at hearing
2017	Staff	Harassment Data Protection Act offence Theft	Cautioned for malicious communications and theft	Resigned whilst under investigation
2017	Staff	Excess alcohol	Conviction at court	Dismissed at hearing
2018	Staff	Common assault	No further action	Dismissed at hearing

The exact date of the arrest, along with the length of term of service of the officer or member of staff, has not been provided due to exemptions within the Act. Additionally, where a case is ongoing, the reason for arrest has also not been provided. The specific exemption is:-

- **Section 40(2) Personal Information**
- **Section 31(1)(g) Law Enforcement, by virtue of section 31(2)(a)(b)**

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at section 1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at section 1(1)(b) is to disclose information that has been confirmed as being held.

Section 17 of the Freedom of Information Act 2000 required that Norfolk Constabulary, when refusing to provide such information (because the information is exempt) is to provide you, the applicant, with a notice which:-

- (a) States that fact
- (b) Specifies the exemption(s) in question and
- (c) States (if that would not otherwise be apparent) why the exemption(s) applies.

Section 40 is an absolute class based exemption and there is no requirement to consider the public interest.

Section 31 is a qualified prejudiced based exemption and there is a requirement to consider the harm in disclosure and conduct a public interest test.

**Section 40** is an absolute; class based exemption and applies to third party personal data. This would not be released under the FOIA unless there is a strong public interest. This is because any release would breach the Principles contained within Article 5(1) of the GDPR and Part 2 of the Data Protection Act 2018.

One of the main differences between the Data Protection Act and the Freedom of Information Act is that any information released under FOI is released into the public domain, not just to the individual requesting the information. As such, any release that identifies an individual through releasing their personal data, even third party personal data, is exempted unless there is a strong public interest in its release. The public interest is not what interests the public but what benefits the community as a whole.

Personal data is defined under the Data Protection Act as data that is biographical in nature, has the applicant as its focus and/or affects the data subject's privacy in his or her personal, professional or business life.

Principle (a) of Article 5(1) states that information must be processed fairly, lawfully and in a transparent manner. The information pertains to special category data owing to the fact it relates to information concerning investigations, which could identify a person's involvement with an offence. Lawfulness refers to occasions where disclosure would not breach statute or common law obligations.

In this case we consider the Human Rights Act 1998. Members of the Constabulary would not expect details to be processed in response to an FOI request, which may inadvertently identify their involvement with an offence. The provision of the requested details would significantly increase the likelihood of individuals being identified due to the level of information already provided in the response. The Constabularies therefore consider it would be in breach of their Human Rights Act by disclosing these details which may identify those involved and therefore disclosure would not be lawful.

With regards to the fairness aspect, the processing of information should be in a manner that individuals would reasonably expect, not in a way that could result in unjustified adverse effects on them. In this case, the individuals would have a reasonable expectation that information would not be processed if it resulted in their identification. This is also relevant to victims as identifying the suspect would increase the likelihood of identifying their victims. The Constabularies have a duty to ensure data is processed in accordance with Data Protection Legislation. We feel in this occasion, it would not be fair to process this data outside of usual policing processes.

FOIA disclosures are to the world at large and will remain in the public domain indefinitely. Therefore, provision of this information would exceed the original Policing requirement for the processing of the information and would not be lawful or fair to the individuals in question.

It is for these reasons outlined above; that I feel the principle would be breached by this disclosure and the Section 40 exemption remains in place. I am not obliged to consider any further principle in my arguments.

This is an absolute, class-based exemption and, as such, there is no requirement to consider the public interest test.

### **Section 31**

Section 31(1)(g) 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 the exercise by any public authority of its functions for any of the purposes specified in subsection (2).

(2) The purposes referred to in subsection (1)(g) 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

### **Evidence of Harm**

The Constabularies are charged with enforcing the law, preventing and detecting crime and protecting the communities we serve. Disclosing details of ongoing investigations would impact on the effectiveness of police procedures and investigations thereby hindering the prevention and detection of crime.

### **Section 31 – factors favouring disclosure**

The disclosure of details relating to investigations involving Police Officers and Police Staff would provide the public with reassurance that the Constabularies take all reports of crimes seriously and that these are managed appropriately, ensuring all relevant enquiries are undertaken. Additionally, the disclosure of investigation details would increase public confidence and could result in more people coming forward with information. This would assist investigations and lead to more successful prosecutions.

Investigations are conducted using public funds therefore disclosing information provides transparency of the way public money is used.

### **Section 31 – factors against disclosure**

Information relating to specific investigations which have not resulted in a prosecution is rarely provided under the FOI Act as it could lead to the identification of those involved, including victims, witnesses and suspects. It is vital that information continues to be received from victims and witnesses when carrying out investigations and they may be reluctant to provide information if they believe that details relating to the investigation could be released, via an FOI request.

Releasing the details under the FOIA and, therefore making the information public, could hinder any current or future investigations undertaken by the Constabularies.

#### Balance Test

Any investigations which relate to Police Officers or Police Staff, including the way in which these are conducted, will be of significant public interest. Therefore providing the details would show openness and transparency which are fundamental elements of the Freedom of Information Act. Where victims and witnesses have confidence that enquiries are being appropriately managed they would be more likely to come forward and report incidents. However, significant public funds are required to carry out investigations therefore the Constabularies would not release details that could hinder this process.

Information regarding arrests and prosecutions will be publicised by the Corporate Communications Department as appropriate or where information may be sought from the public. This information would be managed during the criminal justice process whereas FOI disclosures remain in the public domain indefinitely. These investigations remain ongoing and details have not been released at this time.

It is therefore our opinion that the balance lies in non-disclosure, at this time. This serves as a refusal notice under section 17(1) of the FOI Act by virtue of the exemption at section 31.