



Altogether Better Policing

Information Rights and Disclosure
Digital Data and Technology Command
Police Headquarters
Aykley Heads
Durham
County Durham
DH1 5TT

Web Site: www.durham.police.uk

E-mail: freedomofinformation@durham.police.uk

Phone: 0191 3752582



**Request to Durham Constabulary under the Freedom of Information Act
Received on 11/07/2022 Our Ref: FOI/677/22**

Date: 09/08/2022

Your request:

To it may concern could you tell me how under the freedom of information act we can access your investigation into beer gate, because clearly something has gone off that shouldn't have. When Mr Starmer travels from London to Durham and is clearly seen drinking a bottle of beer with others that is out of order so I'd like to see your investigation and his defence.

Response:

I have interpreted your request as you asking for a copy of the investigation report into the above matter.

I can confirm that the information requested is held by Durham Constabulary.

Durham Constabulary is not required by statute to release the information requested.

This response serves as a Refusal Notice under Section 17 of the Freedom of Information Act 2000 (the Act).

The disclosure of this information is being refused by virtue of the following exemptions:

- 1. Section 30(1)(a)(i)(ii) - Investigations and proceedings**
- 2. Section 40(2)(3A)(a) - Personal Information**

Section 30 (1) (a) of the Act allows an authority to exempt information where it has, at any time, been held for the purpose of a specified criminal, other investigations or proceedings; and where it relates to the obtaining of information which was obtained or recorded for the purpose of specified investigations or proceedings.

Your request relates to an investigation which Durham Constabulary has a duty to investigate. An investigation has been carried out and an official statement with details of its findings has already been published by Durham Constabulary, I have included a link below for your reference:

[Durham Constabulary press statement](#)



Altogether Better Policing

Information Rights and Disclosure
Digital Data and Technology Command
Police Headquarters
Aykley Heads
Durham
County Durham
DH1 5TT

Web Site: www.durham.police.uk

E-mail: freedomofinformation@durham.police.uk

Phone: 0191 3752582



Section 40(2)(3A)(a) has also been applied because, to disclose personal information in relation to your request could publicly reveal information about an individual or individuals, thereby breaching the right to privacy afforded to persons under the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR).

Section 30(1)(a)(i)(ii) is a class based qualified exemption, and I am therefore required to conduct a Public Interest Test (PIT).

Section 40(2)(3a)(a) is an absolute exemption and there is no requirement to evidence harm or conduct a public interest test.

Section 30(1)(a) (i)(ii) of the Act provides:

(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it

Public Interest Test

The public interest is not what interests the public but what will be of greater good if released to the community as a whole.

It is not in the public interest to disclose information that may compromise a public authority's ability to complete any investigation where disclosure may jeopardise future criminal proceedings linked to this or any other investigation.

Considerations favouring disclosure

Release of the requested information would reinforce Durham Constabulary's commitment as an open and transparent organisation. Disclosure would also reassure the general public that Durham Constabulary has appropriate methods and practices in place when dealing with such investigations.

Considerations favouring non-disclosure

By its very nature, any information held relating to investigations is sensitive in nature.

The exemption under Section 30 is concerned with preserving the safe space that can be critical to the investigation and prosecution process. It is designed to protect the independence of the judicial and prosecution process by preserving the criminal court as the sole forum for the determination of guilt.

Durham Constabulary will never disclose information that could identify sensitive investigative activity and therefore undermine future investigations. To do so would



Altogether Better Policing

Information Rights and Disclosure
Digital Data and Technology Command
Police Headquarters
Aykley Heads
Durham
County Durham
DH1 5TT

Web Site: www.durham.police.uk

E-mail: freedomofinformation@durham.police.uk

Phone: 0191 3752582



hinder the prevention and detection of crime, as well as prejudice Durham Constabulary's ability to fairly conduct investigations.

Balance Test

After weighing up the competing interests I have determined that the disclosure of the above information would not be in the public interest. I consider that the benefit that would result from the information being disclosed does not outweigh the considerations favouring non-disclosure.

Durham Constabulary has already published an official statement of its findings and we believe that this satisfies the public interest. I have already provided a link to this statement above.

Section 40(2)(3A)(a) of the Act provides:

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

(a) it constitutes personal data which does not fall within subsection (1), and

(b) the first, second or third condition below is satisfied.

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

(a) would contravene any of the data protection principles

Section 3 of the Data Protection Act 2018 confirms that information which relates to an identified or identifiable living individual is Personal Data.

The Freedom of Information Act provides an exemption for Personal Data and this is known as the section 40 exemption.

Where the request is seeking access to third party personal data the Section 40(2) exemption may be engaged.

In order to apply the Section 40(2) exemption, the disclosure of the requested information must satisfy either the first, second or third conditions as defined by subsections 3(A), 3(B) and 4(A) of the Data Protection Act 2018.

The first condition ensures that the exemption would apply in circumstances where the disclosure of the information would breach any of the Data Protection Act 2018 principles.

There are six Data Protection principles specified within Article 5(1) of the General Data Protection Regulation (GDPR).

In this instance I have decided that the disclosure of the information would be incompatible with the first Data Protection principle which requires that personal data shall be: *"processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency)";*



Altogether Better Policing

Information Rights and Disclosure
Digital Data and Technology Command
Police Headquarters
Aykley Heads
Durham
County Durham
DH1 5TT

Web Site: www.durham.police.uk

E-mail: freedomofinformation@durham.police.uk

Phone: 0191 3752582



Under the Data Protection Act 2018, the disclosure of personal data is considered to be lawful if:

- a. There is a legitimate interest in the disclosure of that personal data.
- b. The disclosure of the personal data is necessary to meet that legitimate interest.
- c. The disclosure would not cause unwarranted harm to the data subject.

Durham Constabulary accept that there is a legitimate interest in the disclosure of the requested information, however the processing of personal data is governed by legislation and as such, the Durham Constabulary has a legal obligation to take appropriate steps to protect personal data.

Publishing more personal information than is necessary to satisfy the public interest would impair the ability of Durham Constabulary to fulfil its legal obligations.

Please note that Durham Constabulary's response to your request is unique and should not be used as a comparison with any other Force response you receive.

COMPLAINT RIGHTS

Your attention is drawn to the below link to our website, which details your right to complain:

[Freedom of Information Requests \(contensis.com\)](http://www.durham.police.uk/contensis.com)

If you have any further enquiries concerning this matter, please write or contact me on the above telephone number.

I hope this is of assistance to you.

Yours sincerely
Freedom of Information Decision Maker
Information Rights and Disclosure Unit