



## Freedom of Information Request Reference N°: FOI 002330-19

I write in connection with your request for information received by Suffolk and Norfolk Constabularies on 26 June 2019 which you sought access to the following information:

1. *“The number of reports of “upskirting” for each of the financial years 2016-17, 2017-18 and 2018-19*
2. *The date and any details held on the victim or perpetrator such as age or ethnicity involving prosecutions under the upskirting law, and whether it led to a conviction”*

### Response to your Request

The response provided below is correct as of 11 July 2019

Suffolk and Norfolk Constabularies have considered your request for information and the response is below.

1. A search has been completed of the Constabularies call system for all incidents recorded that contain the term 'Upskirt' within the call freetext. The total number of reports is provided in the table below.

| Year    | NORFOLK | SUFFOLK |
|---------|---------|---------|
| 2016/17 | 5       | 2       |
| 2017/18 | 6       | 1       |
| 2018/19 | 4       | 3       |

2. The offence 'HO Code 88/12 – Additional Voyeurism Offences (upskirting)' came into effect in April 2019, the information provided therefore relates to this date onwards.

There has been a total of two investigations recorded (1 in Norfolk and 1 in Suffolk), both of which are currently under investigation and consequently there are no outcomes recorded, although the Constabularies do not record conviction or prosecution information.

The victim and suspect details are as follows:

| Force   | Victim       |              |        | Suspect      |              |        |
|---------|--------------|--------------|--------|--------------|--------------|--------|
|         | Age          | Ethnicity    | Gender | Age          | Ethnicity    | Gender |
| Suffolk | Exempt       | Not recorded | Female | Exempt       | Not recorded | Male   |
| Norfolk | Not recorded |              |        | Not recorded |              |        |

Section 17 of the Freedom of Information Act 2000 requires that Norfolk and Suffolk Constabularies, when refusing to provide such information (because the information is exempt) is to provide you the applicant with a notice ban 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.

The information is exempt from disclosure by virtue of the following exemptions;

**Section 40(2) – Personal Information**

**Section 30(1) – Investigations**

Section 40 pertains 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. In this case the individuals would have a reasonable expectation that information would not be processed if it resulted in their identification, or equally led to an individually be wrongfully identified as a consequence.

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 a 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 30 is a qualified class-based exemption and I am therefore obliged to consider the public interest test.

### **Public Interest Test - Section 30 - Investigations**

(When applying a qualified exemption a public authority is required to consider whether 'in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information')

#### **Favouring Disclosure**

Investigations are expensive and use the resources provided from public funds. To disclose information about such cases would show to the public how we spend their money.

Such information would provide the general public with an understanding that we take such matters seriously and we ensure all offences are investigated thoroughly.

#### **Favouring Non-Disclosure**

Information that relates to an ongoing investigation will rarely be disclosed under the FOI Act if doing so would impede the investigative process. The Constabularies risk prejudicing this and future like investigations by providing vital information that could provide a tactical advantage over the Constabulary.

Where suspects, witnesses or the victim provides information through the course of the investigation, it is done so in the strictest of confidence for the purpose of which it was required. Provision of information that may identify an individual to the general public would breach that confidentiality, impeding any future assistance that individual can provide.

We are law enforcers and we aim to provide a sufficient and positive approach to the way we conduct our investigations, we would not want a disclosure of this nature to compromise this in any way.

#### **Balancing Test**

There is always a public interest in the provision of information that will identify where funds are being spent and that the Constabularies are effectively investigating offences.

However, there is a strong public interest in preserving the integrity of investigations and ensuring that individuals have confidence in approaching the Constabularies with any concerns they may have.

Having weighed up the factors favouring disclosure and those favouring non-disclosure, I have decided that the balance lies with non-disclosure.

***Police forces in the United Kingdom are routinely required to provide crime statistics to government bodies and the recording criteria is set nationally. However, the systems used for recording these figures are not generic, nor are the procedures used locally in capturing the crime data. It should be noted that for these reasons this force's response to your questions should not be used for comparison purposes with any other response you may receive.***

Should you have any further queries concerning this request, please contact Clair Pack, FOI Decision Maker, quoting the reference number shown above.

A full copy of the Freedom of Information Act (2000) can be viewed on the 'Office of Public Sector Information' web-site;

<http://www.opsi.gov.uk/>

Norfolk and Suffolk Constabularies are not responsible for the content, or the reliability, of the website referenced. The Constabulary cannot guarantee that this link will work all of the time, and we have no control over the availability of the linked pages.

Your Right to Request a Review of Decisions Made Under the Terms of the  
Freedom of Information Act (2000).

If you are unhappy with how your request has been handled, or if you think the decision is incorrect, you have the right to ask the Norfolk and Suffolk Constabulary to review their decision.

Ask Norfolk and Suffolk Constabularies to look at the decision again.

If you are dissatisfied with the decision made by Norfolk and Suffolk Constabularies under the Freedom of Information Act (2000), regarding access to information, you must notify the Norfolk and Suffolk Constabulary that you are requesting a review within 20 days of the date of its response to your Freedom of Information request. Requests for a review should be made in writing and addressed to:

*Freedom of Information Decision Maker  
Information Management Department  
Suffolk Constabulary  
Police Headquarters  
Martlesham Heath  
Ipswich  
Suffolk  
IP5 3QS  
OR  
Email: [information@suffolk.pnn.police.uk](mailto:information@suffolk.pnn.police.uk)*

In all possible circumstances Norfolk and Suffolk Constabulary will aim to respond to your request for us to look at our decision again within 40 working days of receipt of your request for an internal review.

The Information Commissioner.

After lodging a request for a review with Norfolk and Suffolk Constabulary, if you are still dissatisfied with the decision, you can apply 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.ico.org.uk](http://www.ico.org.uk) or contact them at the address shown below:

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