

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2018

Public Authority: Chief Constable of West Yorkshire Police
Address: Police Headquarters
PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested information about a review he believes is being carried out into the Yorkshire Ripper case. West Yorkshire Police would neither confirm nor deny holding information by virtue of section 30(3) (Investigations and proceedings) of the FOIA.
2. The Commissioner's decision is that West Yorkshire Police was entitled to rely on section 30(3) of the FOIA to neither confirm nor deny holding the information.

Background

3. The first two bullet points of this request are identical to a request for information from the same individual which the Commissioner has previously considered. The decision notice in that case (FS50633768) was issued on 7 June 2017¹.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014232/fs50633768.pdf>

Request and response

4. On 29 September 2017, the complainant wrote to West Yorkshire Police ("WYP") and requested information in the following terms:
 - "* Please disclose the name of the latest investigation into historical unsolved crimes linked by the Yorkshire Ripper;*
 - * Please disclose the name of the SIO;*
 - * Please disclose the number [of] officers working on the investigation and their ranks;*
 - * Please disclose the cost of the investigation;*
 - * Please disclose the number offences investigated;*
 - * Please disclose the number of arrests and, separately, the number of people interviewed under caution;"*
5. WYP responded on 30 October 2017. It would neither confirm nor deny holding the requested information, citing the exemption at section 30(3) (Investigations and proceedings) of the FOIA.
6. WYP confirmed this decision at the internal review, which it provided on 5 December 2017.

Scope of the case

7. The complainant contacted the Commissioner on 5 December 2017 to complain about the way his request for information had been handled. He believed there was a public interest in WYP being open and transparent about any current review of the Yorkshire Ripper case, given what he considered to be its poor handling of the original murder investigations.
8. The Commissioner has therefore considered WYP's application of section 30(3) of the FOIA to neither confirm nor deny whether it held the requested information and the associated public interest balancing test.

Reasons for decision

Section 30 – investigations and proceedings conducted by public authorities

9. Section 1(1)(a) of the FOIA requires a public authority to inform a requester whether it holds the information specified in the request. However, there are occasions when complying with the duty to confirm or deny under section 1(1)(a) would in itself disclose sensitive or potentially exempt information. In these circumstances, the FOIA allows

a public authority to respond by refusing to confirm or deny whether it holds the requested information.

10. Section 30(3) of the FOIA provides an exclusion from the duty to confirm or deny whether information is held in relation to any information which, if held, would fall within any of the classes described in sections 30(1) or 30(2) of the FOIA.

11. In this case, WYP has relied on section 30(3) on the basis that any information falling within the scope of the request, if held, would be exempt by virtue of sections 30(1)(a) and (b).

12. Sections 30(1)(a) and (b) of the FOIA state:

"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

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct..."

13. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1) if it relates to a specific ongoing, closed or abandoned investigation.

14. Consideration of section 30(3) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test: whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming or denying whether the public authority holds the information.

Is the exemption engaged?

15. The first step is to address whether, if WYP held information falling within the scope of the complainant's request, this would fall within the classes specified in section 30(1) of the FOIA.

16. Referring to the wording of the request and to the explanation provided by WYP, the Commissioner is satisfied that any information, if held, would be held in relation to investigation(s) into historic unsolved crimes linked to the Yorkshire Ripper and that it would fall within the class

described in section 30(1)(a)(i) (that is, it would be held for the purposes of an investigation into whether a person should be charged with an offence). The exemption provided by section 30(3) is, therefore, engaged.

The public interest test

17. The Commissioner must consider what public interest there is in confirmation or denial. She must also consider whether confirmation or denial would be likely to harm any investigation that WYP might be conducting, which would be counter to the public interest, and what weight to give to these public interest factors.
18. The purpose of section 30 is to preserve the ability of relevant public authorities to carry out effective investigations. Key to the balance of the public interest in a case where this exemption is found to be engaged is whether confirmation or denial could have a harmful impact on the ability of WYP to carry out effective investigations. Clearly it would not be in the public interest to jeopardise the ability of the police to investigate crime effectively.

Public interest arguments in favour of maintaining the exclusion of the duty to confirm or deny

19. WYP argued that the public interest in maintaining section 30(3) outweighed the public interest in confirming or denying whether it held the requested information.
20. WYP said that there is a lot of information in the public domain pertaining to the offences known to have been committed and allegedly committed by Peter Sutcliffe, including parts of the Byford Report², and that this goes some way to satisfying the public interest in transparency and accountability on the matter.
21. Confirming or denying that information is held in response to the request would disclose information as to the existence or otherwise of current criminal investigations relating to the Yorkshire Ripper murders, which is something that WYP said it had not previously done.
22. WYP explained that confirmation or denial as to the existence of such investigations would disclose what facts may or may not exist in relation to any criminal investigations linked to Mr Sutcliffe. This could assist any

² <https://www.gov.uk/government/publications/sir-lawrence-byford-report-into-the-police-handling-of-the-yorkshire-ripper-case>

other potential offenders to evade detection, putting the public at increased risk and potentially discouraging members of the public from providing intelligence to the police in order to assist with investigations.

23. WYP argued that confirmation or denial as to whether information exists could harm any investigation (by denying justice to those involved) or jeopardise such investigations from reaching a satisfactory conclusion, and this would clearly not be in the public interest.

Public interest arguments in favour of confirming or denying whether the public authority holds the information

24. Believing that an investigation was underway, the complainant argued that there was,

"...a compelling public interest in disclosure of the cost. The public rightly wants to know why information which has been available for several decades is only being acted on now and rightly want to know the cost of pursuing the new inquiry... Disclosure is capable of showing that police are now taking information given to Byford in 1980/81 seriously and acting on it. Non-disclosure only strengthens the belief that WYP have something to hide over their original investigation into the Yorkshire Ripper's crimes."

25. He stated that it has been reported that police are considering historical documents and that any lines of inquiry will be pursued, and that suspects, for example Peter Sutcliffe, will already be aware of this.
26. WYP acknowledged that confirming or denying whether it holds the requested information would, to some extent, inform the general public on a high profile matter and may satisfy any public interest in knowing whether Peter Sutcliffe or any other person, is being investigated in relation to certain historic offences.
27. WYP also acknowledged that confirmation or denial that the information exists could provide reassurance to the general public and a degree of transparency and accountability regarding whether or not public money is being spent appropriately in investigating historic offences.

Balance of the public interest arguments

28. The Commissioner considers that there is a public interest in transparency and accountability regarding money spent in relation to any criminal investigations into historical offences potentially committed by Peter Sutcliffe or other offenders.
29. The Commissioner also recognises a legitimate public interest in WYP confirming whether or not it is carrying out an investigation into any lines of enquiry arising from the Yorkshire Ripper case.

30. However, she recognises that a confirmation or denial in relation to any ongoing investigation (should one be underway) could be harmful to, and undermining of, any such investigation. She considers that disclosure of information that risks compromising a current or possible future police investigation would not be in the public interest, and that this is a factor that carries more weight than those favouring transparency.

Conclusion

31. Having considered the issues in this particular case, the Commissioner's view is that the public interest arguments in favour of maintaining the refusal to either confirm or deny whether information is held outweigh those in favour of WYP issuing such a confirmation or denial. Therefore, the Commissioner finds that WYP was entitled to rely on the refusal to confirm or deny provided by section 30(3) of the FOIA and to maintain the exemption.

Right of appeal

32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Samantha Bracegirdle
Senior Case Officer
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Wycliffe House
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