

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24th September 2008

Public Authority: The Commissioner of the Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant requested all information held by the public authority relating to the discovery of a body in January 2006. The public authority initially refused the request under section 32 (court records) and stated that all relevant information had been passed to the Coroner. Following the intervention of the Commissioner, the public authority issued a reconsidered response in which it refused the request under sections 30 (investigations), 38 (health and safety), 40 (personal information) and 44 (statutory prohibition). The Commissioner finds that the public authority was correct in refusing the request under section 30. As this applies to the information falling within the scope of the request in its entirety, no conclusion was formed in relation to the other exemptions cited by the public authority.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 26 April 2006, the complainant made the following information request to the Metropolitan Police Service (MPS):

“All information you hold relating to Joyce Vincent, the woman found dead in her flat in Wood Green in January 2006.”

3. The public authority responded to this on 8 May 2006. This response refused the request, with section 32 (court records) of the Act cited. The refusal notice stated that all information falling within the scope of the request had been passed to Hornsey Coroner's Office. This refusal was later upheld in the internal review issued on 27 June 2006.

The Investigation

Scope of the case

4. Following the intervention of the Commissioner, the public authority altered its stance. The public authority acknowledged that it does hold information falling within the scope of the request, but that it considers that this information is exempt by virtue of sections 30 (investigations), 38 (health and safety), 40 (personal information) and 44 (statutory prohibition). The details of how this point was reached are given below in the Chronology section of this notice.
5. The complainant indicated that he wished the Commissioner to consider whether these exemptions were cited correctly. This notice covers both the initial refusal under section 32 and the exemptions cited by the public authority more recently.

Chronology

6. The Commissioner contacted the public authority initially on 27 September 2007. At this time, the public authority was asked to provide further explanation for its initial refusal of the request under section 32. Specifically, the public authority was asked to respond with details of all the recorded information falling within the scope of the request. The public authority was also reminded that the request was wide in scope in requesting all information relating to the individual named in the request (the “third party”). The public authority was also asked to detail what had been passed to the Coroner and whether a copy of this information had been retained. Finally, the public authority was asked to explain why this information had been passed to the Coroner.
7. The public authority responded on 11 December 2007 in the form of a letter to the complainant giving a reconsidered response to the request. This response confirmed that information was held by the public authority that fell within the scope of the request, but that this would not be disclosed as it was considered exempt by virtue of sections 30, 38, 40 and 44. A copy of the withheld information

was supplied to the Commissioner.

8. The reasoning of the public authority for each exemption cited was as follows:
 - Section 30(1)(a)(i)
9. The public authority stated that the information in question related to an investigation into the death of the third party and that this investigation was carried out with a view to it being ascertained whether a person should be charged with an offence.
 - Section 38
10. This exemption was applied in respect to photographs of the third party at the time of discovery as it was believed that disclosure would “*cause distress*” to the general public, particularly persons closely connected to the third party.
 - Section 40(2)
11. Included within the withheld information are personal data of individuals who participated in the investigation. The public authority believed that disclosure of this personal data would be in breach of the first, second and sixth data protection principles. The public authority believed that the disclosure would be unfair and thus in breach of the first principle, incompatible with the purposes for which this information was collected and thus in breach of the second principle and in breach of the “*right to privacy*” afforded by the Data Protection Act 1998 and thus in breach of the sixth data protection principle.
 - Section 44
12. The public authority believed that Article 8 of the Human Rights Act, which provides a right to respect for private and family life, acted as a statutory bar to disclosure in this case.
13. The Commissioner contacted the public authority again on 17 December 2007. Firstly, the public authority was asked to respond confirming its stance in relation to its initial refusal of the request under section 32, specifically whether it now accepted that this refusal was incorrect and not in compliance with the Act.
14. Secondly, it was again stressed to the public authority that the request was wide ranging in scope in that it asked for all information held relating to the third party. It was noted that the searches that the public authority had now carried out for information falling within the scope of the request appeared to have focussed on the police station responsible for the investigation. The public authority was asked to respond confirming that a thorough search had been carried out for information falling within the scope of the request. The Commissioner noted specifically the considerable media coverage this matter had attracted and suggested that information relating to this coverage may also be held.
15. Thirdly, the public authority was asked for more detail about its citing of section

30(1)(a)(i), specifically to what extent had an investigation been carried out with a view to it being ascertained whether a person should be charged with an offence. It was also asked to respond confirming whether its stance was that this exemption applied to all information it held within the scope of the request.

16. The public authority responded to this on 21 December 2007. Firstly, the public authority confirmed that it accepted that the initial refusal of the request with section 32 of the Act cited was incorrect and not in compliance with the Act.
17. Secondly, the public authority described the searches it had undertaken in order to locate all information held falling within the scope of the request. To this end, searches were undertaken of the records of the public authority held in Haringey Borough, MPS Record Management Branch directory and MPS crime reporting system. In connection with the specific issue of whether information was held that related to the extensive media coverage, the public authority confirmed that it held a document giving prepared answers to questions it was considered likely would be asked by the media. The public authority agreed to disclose this document to the complainant and this document is not dealt with further in this notice.
18. The public authority went on to confirm that it considered that the exemption provided by section 30(1)(a)(i) applied to the entirety of the withheld information and described the extent to which an investigation was carried out in this case. The public authority quoted the following from the MPS Homicide and Unexplained Death Operating Procedure:

“Remember, think murder until the investigation process proves otherwise.”

19. The public authority stressed that whilst its enquiries did not indicate any suspicious circumstances, an inquest recorded an open verdict. Where an open verdict is recorded, the public authority stated that it must remain open-minded and any further evidence coming to light would require investigation. Media coverage of this inquest states that it reached a verdict on 13 April 2006.
20. As stated below in the analysis section of this notice, the Commissioner's considerations of this matter have focussed on the public authority's citing of section 30. Whilst this exemption is class based, the prejudice that may result from disclosure is an issue of relevance when considering where the balance of the public interest lies. As part of considering what prejudice may result from disclosure, the Commissioner has researched the extent to which information about the death of the third party has been placed in the public domain through the media. The following is an example of the media coverage available online:

<http://news.bbc.co.uk/1/hi/england/london/4906992.stm>

“A woman's remains were found surrounded by unopened Christmas presents in a London bedsit two years after she is thought to have died, an inquest heard.

The TV and heating were still on when housing officers discovered the body of Joyce Vincent, 40, in her living room.

They had gone to the flat - a refuge for victims of domestic violence - to investigate thousands in rent arrears.

Police believe she died of natural causes probably in December 2003 and an inquest recorded an open verdict."

Much similar media coverage, recording the basic facts of the case, is available.

Findings of fact

21. The public authority does hold information falling within the scope of this request. This is contrary to the initial refusal, which stated that all information relating to the third party had been passed to Hornsey Coroner's Office.

Analysis

Procedural matters

Section 1

22. In the initial refusal notice, the public authority stated that all information related to the third party had been passed to the Hornsey Coroner's Office. It does not appear that at that stage the public authority had taken appropriate steps to identify all information held by it that fell within the scope of the request. In so doing, the public authority failed to comply with the requirement of section 1(1)(a) that it inform the requester that it held information falling within the scope of the request.
23. The Commissioner has considered whether the public authority has now undertaken appropriate steps to locate and identify all information falling within the scope of the complainant's request. A description of the searches undertaken by the public authority is given above at paragraph 17. The Commissioner notes that the information now located covers both the discovery of the third party's body and an earlier domestic incident involving the third party. The Commissioner accepts that the public authority has now located all information held by it that falls within the scope of the complainant's request. The Commissioner notes, however, that the public authority only undertook a search for information relating to the media coverage of the third party following prompting from his office and would stress to the public authority the particular importance of ensuring that appropriate steps are taken to identify all information relevant to the request in situations where, as in this case, the request is wide ranging in scope.

Section 17

24. When initially refusing the request, the public authority cited section 32. It has since accepted that this exemption does not apply to the information falling within the scope of the request and that it was cited in error. The public authority has

since relied upon the exemptions provided by sections 30, 38, 40 and 44. In failing to cite the correct exemptions when initially refusing the request, the public authority failed to comply with the requirement of section 17(1) that, where a public authority believes an exemption applies, it should specify the exemption in question and state why that exemption is considered to apply.

Exemption

Section 30

25. Section 30 is a class based exemption. In order to demonstrate that it is engaged it is simply necessary to show that the information being withheld has been held by the public authority for the purpose specified. In the case of section 30(1)(a)(i) the information in question must relate to an investigation which the public authority has a duty to investigate with a view to it being ascertained whether a person should be charged with an offence. Where this exemption is engaged, the public interest must favour the maintenance of the exemption over disclosure of the information. Where the public interest favours disclosure, the information in question should be disclosed despite the exemption being engaged.

An investigation with a view to it being ascertained whether a person should be charged with an offence?

26. Firstly, it should be considered whether the public authority has a duty to conduct such investigations. The Commissioner understands that both Coroners and the police have responsibilities in particular circumstances where an unexplained death occurs. Coroners are responsible for enquiries into unexplained deaths in order to identify the deceased and to establish the cause of death. They are not responsible for apportioning blame to another party that may be responsible for the death. Section 8 of the Coroners Act 1988 sets out the circumstances in which an inquest shall be held.
27. The police have a duty to investigate whether or not a criminal offence has occurred in the event of a sudden or unexplained death. If a criminal offence is found the police have a responsibility, together with the Crown Prosecution Service to bring those responsible to justice. He is satisfied that the public authority in this case had a duty to investigate.
28. Secondly, it is necessary to consider to what extent an investigation has been carried out in this case and whether this was with a view to a person being charged with an offence. Part of the process of ascertaining whether a person should be charged with an offence is investigating whether a crime has been committed. If the public authority carried out an investigation in this case with the intention of ascertaining whether a crime had been committed, the exemption will be engaged.
29. On the surface, it is questionable whether the involvement of the public authority in this case constituted an investigation. The public authority concluded that the circumstances of the death of the third party were non suspicious. No individual was arrested in connection with the death of the third party and no charges were

brought. The role of the public authority appears to have been limited to initial attendance at the scene and administrative work that followed. It appears that the public authority established early that no investigation was necessary. From this perspective, it could appear that section 30 is not engaged.

30. However, the argument of the public authority is that the process of establishing that the circumstances of the death of the third party were not suspicious and that further investigation, including arrests and charges, was not necessary in itself constituted an investigation. On this point, the Commissioner notes particularly the MPS Homicide and Unexplained Death Operating Procedure, which advises officers of the public authority to:

“...think murder until the investigation process proves otherwise.”

31. Not only does this indicate that part of the role of the public authority is to establish whether a crime has been committed, as opposed to merely investigating after it has been established that a crime has indeed been committed, this refers to the process of establishing whether a crime has been committed as, in itself, an investigation.
32. Turning to the content of the withheld information, this supports the argument that steps were undertaken by the public authority to establish the circumstances of the third party's death. The information in question includes witness statements from the officers who attended the scene. These record that the officers took such steps when attempting to ascertain how an individual may have been able to exit the third party's property other than through the main door and interviewing neighbours of the third party.
33. The Commissioner is satisfied that the steps taken by the public authority in response to the discovery of the third party's body did constitute an investigation into whether a crime had been committed and, therefore, with a view to ascertaining whether a person should be charged with an offence. The exemption is, therefore, engaged. In forming this conclusion, the Commissioner has noted that, despite the conclusion of the public authority in this case being that the circumstances of the death of the third party were not suspicious, the public authority followed its procedure in assuming that the circumstances were suspicious and carried out an investigation with the aim of establishing whether this assumption was correct. The description of the steps undertaken by the public authority included within the withheld information support the argument that these steps did constitute an investigation.
34. As well as information related to the investigation of the death of the third party, included within the withheld materials is information relating to an earlier domestic incident involving the third party. The Commissioner considered whether this information should be handled separately to the information directly related to the discovery of the third party's body and a distinct decision made as to whether the exemptions cited applied to this information. The Commissioner's conclusion on this point was that this information could be considered as part of the investigation into the death of the third party. In ascertaining whether an individual should have been charged with an offence in connection with the death of the

third party, the Commissioner considers it reasonable to conclude that the information recording the previous domestic incident was taken into account within the investigation conducted by the public authority. All the considerations and conclusions recorded here relate to the entirety of the information withheld.

The public interest test

35. Having established that the section 30 exemption is engaged, the Commissioner must go on to consider the public interest test as set out in section 2(2)(b) of the Act.
36. The Commissioner considers that the following factors are pertinent when identifying which public interest arguments in favour of maintaining the exemption are relevant and when carrying out the weighing exercise.
- the stage or stages reached in any particular investigation or criminal proceedings;
 - whether and to what extent the information has already been released into the public domain;
 - the significance or sensitivity of the information; and
 - the age of the information.

37. Stage of investigation

At the time of the request the Coroner's Court inquest had taken place and the investigation was complete. However, as noted above at paragraph 19, the Coroner recorded an open verdict and the public authority states that this verdict requires it to keep an 'open mind' with any new evidence that may come to light in future requiring investigation. Whilst it is apparent that the public authority concluded at an early stage that the death of the third party appeared not to be suspicious, the Commissioner recognises that the verdict of the coroner, as well as the unanswered questions resulting from the period of time between the death of the third party and the involvement of the public authority, indicates that a reopening of this investigation is a possibility.

38. Information already in the public domain

As mentioned previously there has been a significant amount of media coverage detailing the basic facts surrounding the third party's death. However the Commissioner is not aware that any of the information about the police investigation has been published, such as witness details or photographic evidence.

39. The significance or sensitivity of the information

Having reviewed the withheld information, the Commissioner is satisfied that it is both significant and central to the investigation carried out by the public authority. It includes witness details, operational policing records and photographic evidence.

40. **The age of the information**

The discovery of the body that the information relates to occurred in January 2006, 3-4 months before the date of the request. The Commissioner recognises that the information recording the discovery of the body reflects policing procedures and techniques that were current at the time of the request. In addition, given that the discovery of the body occurred only a short period before the date of the request, the possibility that new evidence and/or witnesses may have come to light is more likely than it would be had the investigation taken place many years earlier.

41. On the basis of the information available the Commissioner does not consider it particularly likely that this case would have been reopened at the time of the request. However, he is mindful that this remained a possibility, particularly given that the Coroner recorded an open verdict and that there were unanswered questions about why there was such a long period between the death of the third party and the notification of the public authority. Also, given that the death was relatively recent and the investigation and inquest took place only shortly before the date of the request, there is arguably a greater possibility of new witnesses or evidence coming to light than if the case was significantly older.
42. In addition, given the age and nature of the information, disclosure may harm future investigations. Releasing details about the way that the police investigations are carried out, the type of evidence gathered and details of witnesses is likely to undermine the police's ability to carry out future investigations. It may deter witnesses from coming forward if they believe that their identity or the information they supply will become available to the general public. Further, if details of what evidence is considered relevant were made available this may also assist people who are committing crime and/or are the subject of similar investigations evading detection.

Weighing the public interest arguments

43. The Commissioner considers that the relevant public interest arguments in favour of maintaining the exemption are as follows. There is a substantial public interest in ensuring that the police have the space to carry out their work. This is so that they can determine the most effective way in which to run investigations so that offenders can be apprehended and brought to justice. It is obviously in the public interest to ensure that individuals committing crime are caught and are subject to an independent prosecution process. As mentioned above, given the age of the information and its significance to the investigation and therefore the level of harm, the Commissioner has attributed substantial weight to this factor.
44. There is also a public interest in ensuring that the public have confidence in police investigations and in protecting the free flow of information to the police for the purpose of investigations. Such information is often crucial to apprehending offenders and resolving cases. Whilst the Commissioner appreciates that there may be circumstances where people can be compelled to supply information, it is also in the public interest to ensure that as far as possible they are willing to co-operate voluntarily with investigations and that they readily supply as much

information as they can to assist the police. Given the sensitivity and the age of the information as well as the fact that this material is not already known to the public the Commissioner also considers that this argument has significant weight.

45. Having determined that the arguments in favour of maintaining the exemption have considerable weight the Commissioner has balanced them against the arguments for disclosure.
46. The circumstances of the third party's death have been the subject of considerable media coverage. It is important to recognise that, information of interest to the public and what is in the public interest are not necessarily the same thing. Where, for example, the coverage focuses on the unusual circumstances of the death and particularly where it is sensationalist in tone, it would not be indicative of a valid public interest, rather this would be of interest to the public.
47. However, some of the coverage is of relevance to arguments in favour of disclosure, to the extent that it reflects a widespread concern about an issue of genuine public interest. In this case there is arguably a public interest in gaining a better understanding of and informing a debate about the implications for society of the circumstances surrounding the death of the third party, specifically how this went apparently unnoticed for two years. The Commissioner accepts that this is a valid public interest argument in favour of disclosure. However, having had the benefit of viewing the withheld information, he does not consider that it is of particularly significant weight in this particular case.
48. A universal public interest factor in favour of disclosure in any case is to enhance the transparency and accountability of the public authority. However the significance of this factor will obviously vary from case to case. The information withheld here shows the actions taken by the public authority in response to the situation in question. Disclosure of this information would contribute to greater public understanding of the work of the public authority and the Commissioner notes that this is a valid argument in favour of disclosure. He is however unaware of any suggestion that the standard of the investigation carried out by the public authority has been called into question. Nor does the Commissioner consider that the withheld information contains evidence to suggest that this is the case. Therefore, he has not given this factor particular weight in this instance.

Conclusion

49. The conclusion of the Commissioner in this case is that the public interest in the maintenance of the exemption outweighs that in the disclosure of the information requested. In coming to this conclusion, the Commissioner has noted public interest arguments in favour of disclosure. As well as the universal public interest in improving the transparency and public understanding of the work of the public authority, some of the media coverage is indicative of a serious and legitimate public interest in the circumstances investigated by the public authority. However, the Commissioner has found, given the content of the information, that these arguments are outweighed by the public interest in favour of maintaining this exemption. In this case the public interest in protecting the ability of the police

to conduct future investigations and to preserve the free flow of information from the public to the police is greater than the public interest in disclosure.

Sections 38, 40 & 44

50. As the Commissioner has concluded that the exemption provided by section 30(1)(a)(i) should be upheld in respect to the entirety of the information withheld, no conclusion has been reached in respect to the other exemptions cited by the public authority.

The Decision

51. The Commissioner's decision is that the public authority failed to comply with sections 1 and 17 of the Act when it initially responded to the complainant's request. However, the Commissioner also finds that the public authority was correct in its later application of the exemption provided by section 30(1)(a)(i) of the Act and the public interest in maintaining the exemption outweighed that in disclosure in this case.

Steps Required

52. Although the Commissioner has found that the public authority was in breach of the Act in its initial response, the public authority remedied this through its reconsidered response as described above at paragraph 4. The public authority is not, therefore, required to take any steps.

Right of Appeal

53. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk
Website: www.informationtribunal.gov.uk

54. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 24th day of September 2008

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

Section 1(1)(a) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request”

Section 17

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant 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.”

Section 30

Section 30(1) provides that –

“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, or
- (c) any criminal proceedings which the authority has power to conduct.”

Section 32

Section 32(1) provides that –

“Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- (c) any document created by-
 - (i) a court, or
 - (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.”

Section 38

Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

Section 40

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 44

Section 44(1) provides that –

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”