

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 12 May 2009

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

Summary

The complainant requested a copy of the senior investigating officer's report relating to an investigation into alleged abuse of the honours system that took place following allegations made in two newspaper articles published in April 1997. The public authority refused the request, citing the exemptions provided by sections 30(1)(a)(i) (information held for the purposes of investigations), 30(2) (information obtained from confidential sources), 38(1)(a) and (b) (endangerment to health and safety) and 40(2) (personal information). The Commissioner finds that the exemption provided by section 30(1)(a)(i) applied to all of the report. He has concluded that the public interest in relation to the majority of the information favours maintaining the exemption. This conclusion having been reached, it has not been necessary to go on to consider the other exemptions cited by the public authority in relation to these parts of the report. However for a limited amount of the report he has concluded that the public interest in maintaining the exemption does not outweigh the public interest in disclosure. He has further found that the other exemptions cited by the public authority are not engaged in relation to that part of the information and therefore the public authority is required to disclose it. The Commissioner has also found that the public authority breached the procedural requirements of sections 1(1)(b), 10(1), 17(1) and 17(3)(b) through its handling of the request. He also identified a new request that the complainant made at the internal review stage that the public authority did not respond to. In failing to respond to that request the public authority breached section 10(1) of the Act and he has ordered it to respond to that request.

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. The complainant made the following information request on 29 November 2006:

"I believe that in 1997 the Metropolitan Police carried out an investigation into possible breaches of the 1925 Honours (Prevention of Abuses) Act and Derek Laud..."

I would like to receive a copy of the Chief Investigating Officer's report relating to this investigation.

If this is not possible then I would like to receive any detailed summary of the investigation."

3. The public authority responded to the requests initially on 14 December 2006 and stated that the response would be delayed due to the files that were relevant being held in a storage facility outside London. The complainant responded to this on 14 December 2006 and stated correctly that the information being held in a storage facility outside London is not a valid reason to delay responding to a request. The public authority did not specifically confirm that the Senior Investigating Officer's report relating to the investigation in question was held. No reference was made to the second request for a summary of the investigation.
4. The public authority responded substantively on 29 January 2007. This response refused the requests, with the public authority citing sections 30 (investigations), 38 (health and safety) and 40 (personal information). The refusal notice did not specify which subsections of these exemptions were relevant. A generalised 'harm test' was included, which was presumably intended to be relevant to section 38. No description for why sections 30 and 40 were believed to be engaged was given. The public interest was referred to, but no separate conclusion on the balance of the public interest in connection with sections 30 and 38 was given. Again this response did not reference the request for a summary of the investigation.
5. The complainant responded to this on 29 January 2007 and requested that the public authority carry out an internal review of the handling of the requests. At the same time he made a further request for "a copy of the file that you have located". In relation to the report, the complainant made the following points in favour of disclosure:
- the complainant believed that any information considered exempt could be redacted and the remainder of the information disclosed;
 - the complainant believed that any information disclosing the identity of informants could be redacted;
 - the complainant did not accept that the emergence of new information leading to this investigation being reopened was a realistic possibility;
 - the complainant believed that a particular public interest existed in information relating to an investigation about alleged abuse of the honours system and that this public interest would be greater than in information about, for

- example, a routine burglary;
 - given how unusual an investigation into alleged abuse of the honours system would be, the complainant questioned what harm could result through the disclosure of techniques used in such an investigation.
6. The public authority responded with the outcome to the review on 7 March 2007. The refusal of the report was upheld. However the public authority did provide a summary of the investigation. The public authority did not address the additional request for a copy of the investigation file made on 29 January 2007.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner initially on 8 March 2007. The complainant disputed the reasoning given by the public authority for the refusal of the report and stated that he did not believe that the public authority had adequately addressed the arguments set out in his request for internal review.
8. The Commissioner's investigation and decision has focussed on the Senior Investigating Officer's Report. He has also made a finding in relation to the new request made by the complainant on 29 January 2007. The Commissioner has not made a decision about the request for the summary of the investigation as one was released at the internal review stage.

Chronology

9. The Commissioner contacted the public authority initially on 22 October 2008. The basis for the complaint was set out and it was noted that the requests had been for one of the following:
- the Chief Investigating Officer's report, or
 - any detailed summary of the investigation.
10. The refusal notice had referred to one file held in the central repository but had not specified which request this information conformed to. The public authority was asked to clarify what information was held that fell within the scope of the requests.
11. In connection with the exemptions cited, the public authority was asked to respond to the following:
- Section 30
 - Specify the relevant subsection and explain how the information in question conforms to the class specified in that subsection. It was anticipated that section 30(1)(a)(i) or (ii) was most likely to be relevant, but the refusal notice had also quoted section 30(2). If 30(2) was believed to be engaged, the public

- authority was asked to be specific as to how the information in question relates to the obtaining of information from confidential sources.
- State why the public interest is believed to favour the maintenance of the exemption. The public authority was advised that the following are factors that the Commissioner would expect to be relevant when considering where the balance of the public interest lies in connection with section 30(1):
 - The stage of the investigation
 - What information is already in the public domain?
 - The significance of the information
 - The age of the information
 - Section 38
 - Specify the relevant subsection of section 38(1); (a) health and / or (b) safety.
 - State how the endangerment would occur, including to whom it would occur, and why it would, or would be likely, to occur as a result of disclosure of the information in question, being specific as to whether endangerment would occur as a result of disclosure, or whether it would be likely to occur.
 - State why the public interest is believed to favour the maintenance of this exemption.
 - Section 40
 - It was noted that the refusal notice had cited section 40(1) rather than 40(2), but that it appeared more likely that 40(2) would be the correct subsection. The public authority was asked to respond confirming whether the correct subsection was section 40(2) and, if so, specify to whom the personal data relates and why disclosure of it would breach any of the data protection principles.
12. The public authority responded to this on 21 November 2008 and confirmed that at the time of the requests it held a report written by the senior investigating officer. The public authority specified subsection 30(1)(a)(i) and stated that an investigation was carried out to ascertain whether a person should be charged with an offence in connection with the alleged abuse of the honours system.
13. The public authority maintained that section 30(2) was engaged. Its reasoning for this was that information had been provided to it in connection with the investigation which is the subject of the request from sources *“all of whom would have expected a degree of confidence”*.
14. The public authority also addressed the balance of the public interest, stating that the case was closed in 1999 after a decision was made by the Crown Prosecution Service (the “CPS”) that there was insufficient evidence for a prosecution. The public authority stated that there was a chance that the investigation in question could be reopened if new evidence came to light. On the issue of what information was in the public domain at the time of the request, the public authority indicated that it had been unable to locate any relevant media coverage available online.

15. On the issue of the significance of the information, the public authority indicated its concern about political issues arising through disclosure given the more recent high profile investigation into alleged abuse of the honours system. However, the public authority also stated that the information here relates to an investigation that was less complicated and involved less prominent individuals than the more recent investigation. The public authority also stressed that the decision of the CPS not to pursue a prosecution was not a negative reflection on the investigation, or those responsible for conducting it, rather this was based entirely on the lack of available evidence.
16. The public authority further indicated that it was concerned about the impact that it believed could result through disclosure on the provision of information to the police in connection with other investigations. The public authority believed that potential sources of information could be discouraged from providing information to it if they were concerned about the possibility that this information could be disclosed at some later stage.
17. On the issue of the citing of section 38, the public authority specified both subsections 38(1)(a) (endangerment to health) and (b) (endangerment to safety). Its basis for this was that disclosure of the identity and involvement in the investigation of those individuals who provided information to the police would be likely to endanger the health and safety of those individuals. The public authority did not explain the nature of this endangerment or why it would be likely to occur as a result of disclosure of the information in question here.
18. The public authority acknowledged that the correct subsection of section 40 was 40(2) and that this should have been specified in the refusal notice rather than section 40(1). The public authority indicated that the personal data in question related to witnesses and suspects and that disclosure of this information would breach the first data protection principle, which states that personal data shall be processed fairly and lawfully, and the sixth data protection principle, which states that personal data shall be processed in accordance with the rights of data subjects as provided by the Data Protection Act 1998.
19. The public authority also provided the Commissioner with a copy of the senior investigating officer's report.

Findings of fact

20. The public authority holds a report written by the senior investigating officer of the investigation of alleged breaches of the 1925 Honours (Prevention of Abuses) Act that followed the April 1997 newspaper articles.

Analysis

Procedural matters

Section 1

21. As explained in the analysis section below, the Commissioner has concluded that some of the requested information should have been disclosed to the complainant. In failing to disclose that information to the complainant the public authority breached section 1(1)(b) of the Act.

Section 10

22. In failing to disclose the information within the report that the Commissioner has concluded should have been released within 20 working days of the request, the public authority breached section 10(1) of the Act.
23. In the refusal notice the public authority referred only to 'one file' that it held that was relevant. However it did not confirm or deny whether the report was held until the internal review stage. Whilst the public authority did remedy this error, in failing to provide the confirmation that the report was held within 20 working days it breached section 10(1) of the Act.
24. The public authority did not recognise the further request for a copy of the whole investigation file that the complainant made on 29 January 2007 within the letter requesting an internal review of the earlier requests. This request remains outstanding and in failing to respond to it within 20 working days the public authority breached section 10(1). The Commissioner has ordered remedial steps in this regard at the end of this notice.

Section 17

25. The refusal notice was provided outside 20 working days. In failing to provide a valid refusal notice within 20 working days of receipt of the request, the public authority did not comply with the requirement of section 17(1).
26. The public authority failed at either the refusal notice or internal review stage to specify the relevant subsections of the exemptions cited or to adequately explain why these exemptions were believed to be engaged. In so doing, the public authority failed to comply with the requirement of sections 17(1)(b) and (c).
27. The public authority failed to adequately address why the public interest was believed to favour the maintenance of the exemptions provided by sections 30(1)(a)(i) and 38(1)(a) and (b) at either the refusal notice or internal review stage. In so doing, the public authority failed to comply with the requirement of section 17(3)(b).

Exemption

Section 30

28. Section 30 provides a class based exemption. This means that if the information in question conforms to the class specified in the relevant subsection of section 30, the exemption will be engaged. The public authority has cited subsections 30(1)(a)(i) and 30(2). Section 30(1)(a)(i) provides an exemption for information held by the public authority at any time for the purposes of an investigation with a view to it being ascertained whether a person should be charged with an offence. In order for this exemption to be engaged the information must be held for a specific or particular investigation, not for investigations in general, and it continues to be applicable even after an investigation has been completed. This point was made by the Information Tribunal in *Toms v the Information Commissioner* (EA/2005/0027) in which it stated:

“... for the exemption to apply, the information in question must be held for the purpose of any investigation which the public authority has a duty to conduct, that is, a specific or particular investigation with which the public authority is concerned. The exemption would not appear to relate to, for example, the manner in which, or the procedure according to which, investigations in general are, or should be, conducted by a public authority...” (paragraph 6)

The Tribunal went on to say that:

“...it appears from the wording of section 30(1) that if this information is subject to the exemption, it will remain so even if the particular purpose or purposes for which the information was retained for is or are no longer material, justified or required, such as would be the case, for example, with an investigation which had resulted either in a decision not to prosecute or in a prosecution which had been completed.” (paragraph 6)

29. Section 30(2) provides an exemption for information that conforms to the class specified in section 30(1)(a) or (b) and that relates to the obtaining of information from confidential sources.
30. Turning first to 30(1)(a)(i), only those public authorities with duties and powers to carry out investigations of the kind described in this subsection may cite this exemption. In considering whether this exemption is engaged, it is necessary firstly to consider whether the public authority has powers to carry out investigations of this kind. As the public authority in this case is a police force, it is clear that it does have such powers.
31. In order to reach a conclusion as to whether this exemption is engaged, it is necessary to consider whether the investigation that the information in question relates to conforms to the description in section 30(1)(a)(i) and whether the information can be accurately characterised as having been held for the purposes of this investigation. The Commissioner is satisfied that the investigation to which this information relates can be accurately characterised as conforming to the

class specified in section 30(1)(a)(i) on the basis that the information in question records the following.

- In response to an allegation made in a newspaper the public authority went through a process of gathering information with the aim of establishing if these allegations were accurate.
 - The information records that these allegations were made against specific, named individuals suggesting that the investigation at the stage that the information in question was recorded aimed to establish whether these individuals should be charged with an offence.
 - The information records that the investigation aimed to establish whether an offence had been committed under the Honours (Prevention of Abuses) Act 1925.
32. As to whether this information was at any time held for the purposes of this investigation, the public authority has not explained the purpose for which this report was prepared. The public authority did, however, refer to this report having been held as part of the “*registered crime file*” relating to this investigation. Had the request of 29 November 2006 covered the entirety of this file, the Commissioner is unlikely to have questioned whether specific items within this file had been held for the purposes of the investigation. The content of the report constituting the information falling within the scope of the complainant’s request also clearly relates to the investigation. On the basis that the public authority has stated that the report was held within a file relating to the investigation and that the content of the report clearly relates to the investigation, the Commissioner accepts that this information was held at the time that it was recorded for the purposes of the investigation referred to above.
33. The Commissioner has concluded both that the investigation in question conforms to the description in section 30(1)(a)(i) and that the information falling within the scope of the request was held for the purposes of this investigation. This information is, therefore, within the class specified in section 30(1)(a)(i) and this exemption is engaged.
34. Turning secondly to section 30(2), the conclusion above means that the information conforms to the first part of the class specified in this exemption in that it was recorded for the purposes of an investigation falling within subsection 30(1)(a)(i). The second condition that must be met for this exemption to be engaged is that it must relate to the obtaining of information from confidential sources.
35. The explanation from the public authority on this point was that the sources of information provided to the public authority in connection with this investigation would have “*expected a degree of confidence*”. Having reviewed the report, the Commissioner does not believe that the individuals who provided information to the public authority in connection with this investigation would fall within the class of information source referred to as confidential within this exemption. The suggestion of the public authority here appears to be that all sources of information gathered in pursuit of an investigation can be characterised as confidential. The Commissioner does not accept this argument and will only

accept that a source of information can be accurately defined as confidential where there is specific, detailed and convincing reasoning to support this.

36. As already suggested, it would be necessary for such reasoning to go beyond an undefined expected degree of confidence that the public authority appears to believe would be held by all sources of information. An example of this would be a covert human intelligence source, where the nature of the relationship between the source of the information and the police force to which the information is supplied clearly supports characterisation as a confidential source. The Commissioner would also note on this point that the Explanatory Notes to the Freedom of Information Act 2000 refer explicitly to confidential sources as 'informers' in connection with section 30(2). In this case, the Commissioner does not accept that the information in question relates to the obtaining of information from a confidential source and the exemption provided by section 30(2) is not, therefore, engaged.

The public interest

37. Having established that the exemption provided by section 30(1)(a)(i) is engaged, the Commissioner must go on to consider the public interest test as set out in section 2(2)(b) of the Act.
38. Whilst section 30(1)(a)(i) provides a class based exemption and prejudice is not a relevant issue when considering whether this exemption is engaged, the nature of the prejudice that may result through disclosure, its magnitude and the likelihood of it arising is relevant when considering where the balance of the public interest lies. The Commissioner considers that in addition to the content of the withheld information the following points are pertinent when identifying which public interest arguments are relevant and how much weight to attribute to them:
- 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.

This is in line with the direction provided by the Information Tribunal in the case *Toms v The Information Commissioner* (EA/2005/0027) where it stated that:

"In striking the balance of interest, regard should be had, inter alia, to such matters as 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, and the significance or sensitivity of the information requested." (paragraph 8).

- **The stage of the investigation**

39. The investigation was closed and had been for approximately eight years at the time of the refusal and internal review. Whilst the public authority referred in the

refusal notice to the investigation being “*unresolved*”, in correspondence with the Commissioner the public authority acknowledged that this was not correct and that the investigation was, in fact, resolved in 1999 when the CPS decided not to prosecute. Where disclosure would cause disruption to an ongoing investigation, the public interest in avoiding this disruption would carry significant weight. In this case the investigation is closed so no such public interest exists.

40. The public authority has, however, stated that there is a possibility of the investigation being reopened should new evidence come to light. The complainant believes that the possibility of new evidence coming to light and the investigation being reopened is “*grossly implausible*” and has made the valid point that the public authority produced no evidence in support of this suggestion. Neither has the public authority provided any evidence in support of this point in its correspondence with the Commissioner.
41. In relation to any information which is subject to the exemption provided by section 30(1)(a)(i) but where the investigation in question is complete, the Commissioner accepts the basic premise of the argument that an investigation could be reopened if new evidence came to light and that avoiding disruption resulting through disclosure to a reopened investigation would be in the public interest. However, the weight that this factor carries when considering the balance of the public interest will vary from case to case. Where, for example, the information was held for the purposes of an investigation that resulted in a successful prosecution 20 years previously, the likelihood of the investigation being reopened would be remote, and the weight of this as a public interest factor in favour of maintenance of the exemption minimal. At the opposite end of the scale would be an investigation that, whilst closed at the time of the request, was recent and had ended inconclusively and where the public authority was able to present specific evidence of the likelihood of new evidence coming to light. The likelihood of the investigation being reopened in such a case would be high and the public interest in avoiding disruption to the reopened investigation would correspondingly carry considerable weight in favour of maintenance of the exemption.
42. In this case, whilst the investigation ended without any prosecution taking place, this was approximately eight years prior to the refusal of the request. The Commissioner is aware that there have been more recent but unrelated allegations of abuses of the honours system involving different individuals. Whilst an argument could conceivably be made that this increases the likelihood of a review and re-opening of earlier cases of a similar nature, such as this one, the public authority has not put forward this argument. In fact the public authority has advanced no evidence suggesting that there is any real likelihood of new evidence coming to light or the case being re-opened. Therefore whilst the Commissioner does not dismiss the argument of prejudice to the investigation as irrelevant because it technically remains a possibility, he has attributed minimal weight to this argument given that it appears very unlikely to be re-opened.

- **Information in the public domain**

43. The investigation by the public authority was triggered by two April 1997

newspaper articles, indicating that the allegations were the subject of media coverage at that time. The Commissioner has located no evidence, however, that information about the public authority's investigation was available in the public domain at the time of the request.

44. The report constituting the information in question here does include content that rehearses the newspaper coverage that triggered the investigation. Were it the case that the information in question entirely, or largely, consisted of information already available in the public domain via the newspaper coverage, the argument that prejudice counter to the public interest would occur through disclosure of this information would be weakened. The report does, however, go significantly beyond the details of the newspaper coverage in that it sets out the steps taken by the public authority during the investigation. The Commissioner also considers that there is a difference between information reported in the press and evidence supplied to the police in the context of an investigation. In particular he notes that the report includes information supplied by witnesses which makes explicit statements about third parties and is attributed to those witnesses.
45. Any public interest factor in favour of maintenance of the exemption would not, therefore, be reduced in weight to any significant degree due to information disclosed through the initial newspaper coverage. Also, given the lack of information available in the public domain via newspaper coverage at the time of the request, the argument can be made that disclosure would be in the public interest as it would contribute further to public knowledge and understanding about this investigation.

- **The significance or sensitivity of the information**

46. In the Information Tribunal case *Guardian v the Information Commissioner and Avon and Somerset Police* (EA/2006/0017) the discussions of the Tribunal mainly centred on the significance of the information in terms of what it implied about the integrity and probity of the investigation. The Tribunal indicated that had the information in that case revealed that the investigation had lacked integrity and probity, this would have been a decisive public interest factor in favour of disclosure. The Tribunal also made the following point about investigations relating to prominent public figures that is of some relevance to this case:

“if there were evidence to support a suspicion that a prominent public figure had been shown improper favour, there would be an overwhelming interest in telling the public.” (paragraph 34)

47. Taking direction from this Tribunal case, the Commissioner has reviewed the information with a view to what this suggests about the integrity and probity of the police investigation. The information in question here is a report about the investigation, rather than being the entirety of the information held by the public authority in connection with this investigation. The Commissioner is satisfied that it does not suggest that the investigation was carried out other than with integrity and probity and there is no valid argument that the public interest favours disclosure on this basis.

- **Age of the information**

48. In *Guardian v the Information Commissioner and Avon and Somerset Police* (EA/2006/0017) the Tribunal stated the following on the issue of the age of information:

“The passage of time was a double-edged argument, whichever side wielded the sword. It probably reduced the risks of prejudice to future investigations but it similarly weakened the legitimate public interest in knowing more of the background facts.” (paragraph 36)

49. A significant period of time had elapsed since the information was recorded prior to the refusal of the request, approximately eight years, so the risk of any prejudice resulting through the disclosure of this information is probably reduced. Whilst in some cases the passage of time may mean that the legitimate public interest in information relating to this investigation is reduced the Commissioner does not consider this to be the case in this instance, particularly given the lack of information available in the public domain and the gravity of the allegations.

- **Additional factors**

50. In addition to those factors recognised by the Tribunal as relevant when considering where the balance of the public interest lies in connection with section 30(1), the Commissioner has considered what further factors are relevant in this specific case. To the extent that they not covered above, the arguments advanced by the complainant and the public authority are considered here.
51. The complainant suggested that a particular public interest existed in an investigation into abuse of the honours system that would not exist in relation to an investigation of a routine burglary. The Commissioner agrees that the public interest in general in an investigation relating to abuse of the honours system would be higher than in an investigation of a more routine nature given that such an investigation would be likely to relate to allegations made about those at senior levels of the government and that transparency is likely to contribute to greater public confidence in the investigation. It would enable the public to reach a more informed view about the thoroughness and impartiality of the investigation.
52. In recent years the public authority has carried out a further investigation into allegations of abuse of the honours system. Although this investigation was unrelated to the investigation to which this notice relates, the more recent investigation became very high profile as a result of intense media interest. When considering the balance of the public interest in relation to this case, it is necessary to consider what relevance the more recent investigation has here. This point follows on from the complainant's point about the overall significance and public interest in investigations into alleged abuse of the honours system. Much of the media coverage was informative, rather than sensationalist, in that it sought to inform its audience of the facts of the subject of the coverage. This informative media coverage can be interpreted as an indicator of a legitimate public interest in and concern about investigations into allegations of abuse of the honours system.

53. However, although the media coverage mentioned above may serve as evidence of public concern and a need for more transparency and accountability surrounding similar cases such as this one, it is important to consider the circumstances of this particular case and the information that is the subject of the specific request. The Commissioner notes that in contrast to the more recent allegations, he has not been supplied with specific evidence of widespread and ongoing public concern in relation to the particular investigation in question in this case.
54. Notwithstanding the comments above, having reviewed the report the Commissioner is satisfied that disclosure in this case would make available in the public domain information that further explains the facts behind the alleged abuse of the honours system. He considers that, given the seriousness of the allegations and the significant public role that the individuals in question have played in society, there is a significant public interest in greater transparency in this case. He therefore affords this argument some weight.
55. The outcome of the investigation by the public authority was that a decision was made by the CPS not to proceed with a prosecution. Disclosure would provide additional information about the evidence that was made available to the CPS to inform its decision not to prosecute. This again has some weight though it is relevant to note that disclosure would not explain the decision made by the CPS.
56. In the refusal notice the public authority suggested that disclosure could lead to prejudice counter to the public interest through disclosing details of investigative techniques. The complainant disputed the validity of this argument on the basis that an investigation of alleged abuse of the honours system would be highly unusual and the techniques employed in such an investigation would be unlikely to be used in other types of investigations. Having reviewed the information in question, the Commissioner does not consider that it reveals specific investigative techniques. It does not, for example, reflect particular forensic techniques that, if known, may prejudice future investigations. Given that this argument made by the public authority is not supported by the content of the information in question here, the Commissioner does not believe that this carries any weight as a public interest factor in favour of maintenance of the exemption in this case.
57. The public authority further argued that disclosure here could restrict the flow of information to it in future as potential sources of information may be discouraged from coming forward if they anticipate that the information that they provide could later be disclosed by virtue of the Act. The Commissioner accepts the basic premise of the argument that some potential sources of information are more likely to be discouraged from coming forward if the public authority were to release the information identifying witnesses and the details they have provided in this case. The Commissioner also recognises that the restriction of the flow of information to the police would harm their ability to investigate future cases. In this case, given that the report contains information obtained from witnesses and that those witnesses are identified this is a factor that carries significant weight in favour of maintenance of the exemption.

58. When considering this argument the Commissioner notes the approach of the Information Tribunal in the case *Kelway v the Information Commissioner* EA/2008/0037 in which it stated the following:

“...we find that [the chilling effect on investigations is] weaker because the relevant witness statements are those of persons involved with technical aspects of the investigation whilst carrying out their professional duties” (paragraph 73).

In this case some of the individuals who are identified as having provided information to the police are civil servants who have provided statements to the police due to their expertise about the honours system, rather than any personal involvement in or relation to the crimes alleged. The Commissioner believes that the such witnesses are less likely to be discouraged from providing information to the police on a professional basis as a result of disclosure of their contributions a number of years later. Nevertheless he recognises that the provision of information to the police is not a routine requirement for those civil servants. In other words it is not central to their day to day work, in contrast to forensic experts who are regularly required to provide witness statements. Therefore, whilst they may not be as easily dissuaded from coming forward as a member of the public, the Commissioner still regards this as a real possibility. In view of this the Commissioner is satisfied that this argument should be given considerable weight in this case.

59. The complainant raised the possibility of disclosing a redacted copy of the report. Whilst the Commissioner recognises that removing the names and any other information that could identify individuals who provided information to the police may resolve the section 40(2) concern and the issue of disrupting the flow of information to the police, he does not believe that this would be a practical possibility in this case. In order to ensure that there is no possibility of identifying any individual through the report it would be necessary to remove not only names, but also much of the content of the report. The Commissioner believes that the remainder of the content would be denuded to the point that there would be no significant public interest in the disclosure of this.

Conclusion

60. The arguments advanced by the public authority in favour of maintenance of the exemption lacked detail and in some cases the Commissioner has found that these have no validity. Nevertheless the Commissioner has recognised the significance of the argument that disclosing the report would likely restrict the flow of information to the force. If this were to occur it is likely to substantially prejudice future investigations. The Commissioner has also recognised the significance of some of the arguments in favour of disclosure, particularly for example the fact that greater transparency is likely to increase public confidence in the thoroughness of the investigation. In this case he considers that, in relation to paragraphs 1 to 14 and 22 to 42 of the report, the arguments in favour of maintaining the exemption outweigh those in favour of disclosure.

61. However, in relation to paragraphs 15 to 21 of the report, the Commissioner has reached a different conclusion. These parts of the report provide factual background about the honours system and do not include any information acquired by the police from any third party. The factor in favour of maintenance of the exemption relating to the restriction of the flow of information to the police does not, therefore, apply in relation to these paragraphs. In the absence of this factor, the Commissioner concludes that the public interest in maintenance of the exemption does not outweigh the public interest in disclosure of the information contained in paragraphs 15 to 21.

Section 38

62. As the section 30(1)(a)(i) conclusion in relation to paragraphs 1 to 14 and 22 to 42 of the report is that this information should not be disclosed, it has not been necessary to consider sections 38(1)(a) and (b) or 40(2) in relation to these paragraphs. The following analysis of sections 38(1)(a) and (b) and 40(2) relates solely to paragraphs 15 to 21 of the report.
63. Section 38(1)(a) and (b) provides that information is exempt if disclosure would, or would be likely to, endanger the health and safety of any individual. This exemption is qualified by the public interest. This means that the information should be disclosed if the public interest favours this despite the endangerment to health and safety.
64. The public authority specified both section 38(1)(a) (endangerment to health) and 38(1)(b) (endangerment to safety), but did not explain the nature of this endangerment or why this would be likely to occur as a result of disclosure. In the absence of such an explanation from the public authority and on the basis that paragraphs 15 to 21 of the report do not refer to any individual, the Commissioner concludes that this exemption is not engaged.

Section 40

65. Section 40(2) provides an exemption for information that constitutes personal data and the disclosure of that personal data would breach any of the data protection principles. As noted above, this analysis relates solely to paragraphs 15 to 21 of the report. These paragraphs do not directly refer to any individual, or contain any other information through which an individual could be identified. The information in these paragraphs does not, therefore, constitute personal data and the Commissioner concludes that this exemption is not engaged.

The Decision

66. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that the exemption provided by section 30(1)(a)(i) was applied and appropriately maintained in relation to paragraphs 1 to 14 and 22 to 42 of the senior investigating officer's report. However, in relation to paragraphs 15 to 21 of this report, the Commissioner finds that the public interest

arguments in favour of maintaining the exemption do not outweigh those in favour of disclosure. The Commissioner also finds that the exemptions provided by sections 30(2), 38(1)(a) and (b) and 40(2) are not engaged in relation to these paragraphs. Therefore in failing to disclose paragraphs 15 to 21 to the complainant within 20 working days the public authority breached sections 1(1)(b) and 10(1) of the Act.

67. The Commissioner further finds that the public authority failed to comply with the procedural requirements of sections 17(1) and 17(3)(b), in its handling of the request.
68. The Commissioner also finds that in failing to identify and respond to the new request made on 29 January 2007 the public authority breached section 10(1) of the Act.

Steps Required

69. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
70. Disclose paragraphs 15 to 21 of the chief investigating officer's report and respond to the complainant's request of 29 January 2007 for a copy of the investigation file by either disclosing the requested information or issuing a refusal notice compliant with section 17(1) of the Act.
71. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

72. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
73. When giving the outcome to the internal review, the public authority gave no explanation for this outcome. Paragraph 39 of the section 45 Code of Practice states the following:

“The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue.”
74. The internal review response from the public authority did not reflect that a reconsideration of the request conforming to the description above took place. The Commissioner would advise the public authority that a response giving the

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outcome to an internal review should state the reasoning for why the initial refusal was upheld and should reflect that there has been a genuine reconsideration of the request.

Right of Appeal

75. 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

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 12th day of May 2009

Signed

**Jo Pedder
Senior Policy Manager**

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

Legal Annex

Section 1

Section 1(1) 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, and

(b) if that is the case, to have that information communicated to him.”

Section 10

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

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 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, 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 disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

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 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.”