

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2013

Public Authority: Office of the Police & Crime Commissioner for Cleveland

Address: Cleveland Police Headquarters
Ladgate Lane
Middlesbrough
TS8 9EH

Decision (including any steps ordered)

1. The complainant requested a copy of an investigation report relating to allegations of professional misconduct against the former Chief Constable for Cleveland Police, Sean Price.
2. The Commissioner's decision is that the public authority was entitled to withhold the report on the basis of the exemption at section 31(1)(b) FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 11 October 2012, the complainant wrote to the public authority and requested information in the following terms:

'I would like to ask for the outstanding information held on Sean Price's alleged gross misconduct which will now not be heard at a disciplinary given his dismissal last week..

*My reading of the request is that it would cover the investigation report....To be clear, I wouldn't be seeking all the background evidence.'*¹

5. The public authority responded on 14 December 2012. It claimed that the requested information was exempt from disclosure on the basis of sections 31(1)(b) FOIA and 31(1)(g) FOIA. The public authority waived its right to conduct an internal review because it considered that the decision to apply exemptions had been subjected to close scrutiny at the highest level.

Scope of the case

6. On 17 December 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He claimed that a similar investigation report regarding a former North Yorkshire Chief Constable had been disclosed the year before. He also claimed that the former Police Authority for Cleveland (i.e. the body that preceded the public authority) had obtained confirmation that gross disciplinary proceedings could go ahead because these would not prejudice any ongoing criminal inquiry. He reiterated that he was not seeking information on any ongoing criminal inquiry.
7. The scope of the investigation therefore was to determine whether the public authority was entitled to withhold the information within the scope of the request (the disputed information) on the basis of sections 31(1)(b) and 31(1)(g).

Reasons for decision

The disputed information

8. The disputed information is a report (dated 18 July 2012) of an investigation conducted by the former Chief Constable of Warwickshire Police, Keith Bristow on behalf of the Independent Police Complaints Commission (the IPCC) into allegations of professional misconduct

¹ This clarification was provided on 12 November 2012.

against Sean Price, former Chief Constable for Cleveland Police and Derek Bonnard, former Deputy Chief Constable for Cleveland Police.²

Section 31(1)(b)

9. Information which is not exempt from disclosure by virtue of section 30 is exempt on the basis of section 31(1)(b) if its disclosure would, or would be likely to, prejudice the apprehension or prosecution of offenders.
10. Section 31(1)(b) is a prejudice based exemption. This means that in order to engage the exemption, there must be likelihood that disclosure would cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:
 - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the disputed information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the disputed information and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure '*would be likely*' to result in prejudice or disclosure '*would*' result in prejudice. In relation to the lower threshold (*would be likely*), the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.

² Former Chief Constable Sean Price was reportedly sacked in October 2012 following the investigation. See, <http://www.bbc.co.uk/news/uk-england-tees-21931774> However, former Deputy Chief Constable Derek Bonnard was not dismissed until March 2013 after the request, which was made on 11 October 2012. See, <http://www.bbc.co.uk/news/uk-england-tees-21931774>

11. The public authority explained that apart from the disciplinary process which resulted in the dismissal of the former Chief Constable, there was an ongoing criminal investigation (code-named, Operation Sacristy) into allegations of corruption at the public authority.³ It explained that the Operation Sacristy team had made strenuous representations to the effect that premature disclosure of the report would seriously prejudice the ongoing criminal investigation. The team specifically submitted that disclosure could lead to contamination of evidence as witness accounts could be tailored or witnesses interfered with. Adverse publicity could be generated from disclosure which would prejudice any future criminal proceedings. It would also prejudice ongoing misconduct proceedings against other police officers including the former Deputy Chief Constable. Premature disclosure could also lead to actions against the public authority for defamation, breach of convention rights⁴ such as the right to a fair trial and right to private and family life by the police officers potentially subject to criminal proceedings.
12. The Commissioner does not accept that the possibility of actions against the public authority under the ECHR for defamation is an interest that the exemption at section 31(1)(b) seeks to protect. The wording of the exemption is clear; the intention is to protect the disclosure of information which would, or would be likely to, prejudice the *apprehension or prosecution of offenders*.
13. However, the Commissioner accepts that the alleged prejudicial effect to the ongoing criminal investigation code-named Operation Sacristy relates to the applicable interests in section 31(1)(b) because prejudice to the investigation would consequently also prejudice the apprehension or prosecution of offenders. To the extent that the prejudice to other ongoing misconduct allegations could consequently prejudice the apprehension or prosecution of offenders, the Commissioner accepts that it relates to the applicable interests in section 31(1)(b). He also finds that there is a causal link between prejudice to Operation Sacristy and the disclosure of the disputed information.
14. With regard to the third criterion, the Commissioner had to consider whether the higher threshold of the likelihood of prejudice was met. As mentioned, the public authority submitted that disclosing the report

³ See, <http://www.bbc.co.uk/news/uk-england-tees-21013872>

⁴ European Convention of Human Rights (ECHR)

would prejudice Operation Sacristy, the ongoing criminal investigation into allegations of corruption at Cleveland Police.

15. It is clear that Operation Sacristy is directly linked to the investigation conducted by the IPCC into allegations of professional misconduct against the former Chief Constable and the former Deputy Chief Constable for Cleveland Police. The Commissioner accepts that premature disclosure of the report would prejudice the apprehension or prosecution of offenders. The report is very detailed and includes transcripts of interviews. It is highly likely that disclosure could infringe on the right of individuals to a fair trial. Disclosing information which is highly likely to generate adverse publicity about the individuals concerned (i.e. individuals likely to be prosecuted) would prejudice their right to a fair trial and therefore equally prejudice the ability to successfully prosecute them. Although the former Chief Constable, Sean Price, was sacked following the conclusion of the IPCC's investigation, the report relates to other individuals (including the Deputy Chief Constable, Derek Bonnard) who could also be prosecuted following Operation Sacristy. The former Deputy Chief Constable, it should be noted, had not been dismissed at the time of the request. The Commissioner also accepts that disclosure is highly likely to lead to contamination of evidence because witness accounts could be tailored or interfered with.
16. Whether or not a similar report had previously been disclosed by another public authority is not a sufficiently strong reason for disclosing the disputed information in this case. In the Commissioner's view, the circumstances of this case clearly demonstrate that the exemption at section 31(1)(b) was correctly engaged. In addition, conducting the misconduct investigations at the same time as the criminal investigation does not, in the Commissioner's view, suggest that the Police Authority for Cleveland was satisfied that there would be no prejudice to the ongoing criminal investigation if the investigation report was subsequently disclosed.
17. The fact that the misconduct proceedings were not being conducted in public would have been crucial to any decision to simultaneously conduct a criminal investigation. It is difficult to see how revealing details of the misconduct proceedings would not have had a prejudicial effect on the criminal investigation. In any event, the exemption is engaged because of the likelihood of prejudice to the apprehension and prosecution of offenders and *not* solely because it would prejudice the ongoing criminal investigation. As mentioned, disclosure could infringe on the right of individuals to a fair trial and clearly, that would undermine the successful prosecution of the individuals who have been

charged with committing offences following the completion of Operation Sacristy.

18. The Commissioner therefore finds that the exemption at section 31(1)(b) was correctly engaged in relation to the disputed information.

Public Interest Test

19. The exemption at section 31(1)(b) is subject to a public interest test. The Commissioner must therefore also consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure.

Public authority's arguments

20. The public authority recognised that there is a public interest in providing the fullest possible account of the IPCC's investigation. It acknowledged the general public interest in disclosing the disputed information for reasons of accountability and transparency in the expenditure of public funds.
21. The public authority however explained that because the disputed information was still 'live' in the sense of it being part of an ongoing major large scale, complex and wide-ranging criminal investigation, there was a very strong public interest in not damaging the integrity of the investigation by disclosing the disputed information.
22. It was also not in the public interest to infringe the right to a fair trial of the individuals who could potentially be charged following the conclusion of the criminal investigation. Infringing their right to a fair trial would undermine their prosecution and is therefore not in the public interest.
23. The public authority therefore concluded that on balance, there was a very strong public interest in maintaining the exemption at section 31(1)(b).

Balance of the public interest

24. The Commissioner agrees with the public interest arguments in favour of disclosure. Given the gravity of the allegations and the seniority of those accused, he considers that there was a strong public interest in disclosing the disputed information. The public is entitled to know full details of how the conduct of the highest ranking officials in Cleveland Police may have brought the force to disrepute.
25. However, the Commissioner accepts that there is a very strong public interest in ensuring that the prosecution of individuals following the

completion of Operation Sacristy is not undermined by the disclosure of the disputed information. Clearly, serious allegations of professional misconduct were made which resulted in the dismissal of the former Chief Constable, Sean Price. It is therefore very much in the public interest to ensure that any future prosecutions resulting from those allegations are not prejudiced. The public is entitled to also expect that those who have committed offences are successfully prosecuted. It would not be in the public interest if the disclosure of the disputed information resulted in the unsuccessful prosecution of offenders.

26. The Commissioner is therefore satisfied that on balance, the public interest in maintain the exemption outweighed the public interest in disclosing the disputed information.
27. In view of the above, the Commissioner did not consider the applicability of the exemption at section 31(1)(g).

Right of appeal

28. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF