

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 July 2016

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested previously unpublished content from the report "*The Yorkshire Ripper Case: Review of the Police Investigation of the Case*". The Home Office refused to disclose this information and cited the exemptions provided by the following sections of the FOIA:
  - 31(1)(a) (prejudice to the prevention or detection of crime)
  - 31(1)(b) (prejudice to the apprehension or prosecution of offenders)
  - 31(1)(c) (prejudice to the administration of justice)
  - 38(1) (endangerment to health and safety)
  - 40(2) (personal information)
2. The Commissioner's decision is that sections 31(1)(a), (b) and (c) were cited correctly in relation to some of the content, but that other parts of the content should be disclosed. The Commissioner also finds that sections 38(1) and 40(2) were cited correctly in relation to some limited parts of the content. The Home Office is now required to disclose the withheld information, minus the content which he has found exempt.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information with the redactions described in paragraph 49.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the

Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 30 December 2015 the complainant wrote to the Home Office and requested information in the following terms:

*"Please provide copies of pages 49 (including) to 56 (including) of the Review of the Police Investigation of the Yorkshire Ripper case carried out by Lawrence Byford. The review was dated December 1981."*

6. The Home Office responded substantively on 26 February 2016. It refused the request and cited the exemptions provided by the following sections of the FOIA:

31(1)(a) (prejudice to the prevention or detection of crime)

31(1)(b) (prejudice to the apprehension or prosecution of offenders)

31(1)(c) (prejudice to the administration of justice)

38(1) (endangerment to health and safety)

40(2) (personal information)

7. The complainant responded on the same date and requested an internal review. The Home Office responded with the outcome of the review on 29 March 2016. The conclusion of the review was that the refusal of the request under the exemptions previously cited was upheld.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 4 April 2016 to complain about the refusal of his information request. The complainant indicated that he did not agree with the reasoning of the Home Office for the refusal of his request.

## Reasons for decision

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### Section 31

9. The Home Office cited sections 31(1)(a), (b) and (c). These sections provide exemptions where disclosure of the requested information would, or would be likely to, prejudice the prevention or detection of crime, the apprehension or prosecution of offenders and the administration of justice. Consideration of these exemptions involves two stages. First, the exemptions must be engaged as prejudice relevant to the processes described in these sections would be at least likely to result through disclosure. Secondly, these exemptions are qualified by the public interest, which means that if the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure, the information must be disclosed.
10. The Home Office has relied on the same reasoning for the citing of all of these exemptions and so they are covered jointly here. Covering first whether the exemptions are engaged, in order for the Commissioner to accept that prejudice would be likely to result, there must be a real and significant chance of prejudice occurring, rather than this being of remote likelihood. The question here is, therefore, whether disclosure of the information in question would result in a real and significant chance of prejudice relevant to the exemptions cited by the Home Office.
11. The information is a redacted part of a document dated December 1981 and titled "*The Yorkshire Ripper Case: Review of the Police Investigation of the Case*" (the Byford Report)<sup>1</sup>. The reasoning of the Home Office as it was explained to the ICO was that the information in question includes mentions of assaults that remain unsolved and it claimed that disclosure would risk undermining "...*any future investigations which may be initiated by alerting perpetrators of past crimes to current police activity*". The internal review response also referred to "*police methodologies*".
12. The Commissioner accepts first that this argument is relevant to the processes described in sections 31(1)(a), (b) and (c). The next step is to consider whether the likelihood of prejudice meets the threshold described above.

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<sup>1</sup> <https://www.gov.uk/government/publications/sir-lawrence-byford-report-into-the-police-handling-of-the-yorkshire-ripper-case>

13. From this point this analysis considers two separate parts of the withheld information:

- The main narrative content of the report.
- The photofit document and a document titled "*Other Possible Assaults Committed by Sutcliffe*".

*Main narrative content*

14. The withheld information includes a narrative concerning Sutcliffe's known crimes and the other assaults it is considered possible he committed. As to whether these exemptions are engaged in relation to this content, the arguments advanced by the Home Office were not detailed. No explanation was given as to how disclosure of the requested information would be likely to alert perpetrators to current police activity, nor how disclosure would place into the public domain details of police methodologies that are not obvious.
15. The reasoning of the Home Office concerned alerting those who may be guilty of these assaults to current police activity. However, the Commissioner's view is that there is nothing in the content in question here that could be taken as an indication as to whether or not there is any current police activity. Neither does the withheld information include any details of police methodologies that, in the Commissioner's view, it is necessary to withhold.
16. The Commissioner's view in supporting the withholding of some of the information under section 31 is based on the Review's confirmation of assaults that it is considered may have been committed by Sutcliffe. Once the names, as well as the photofit materials and the document giving details of the undetected assaults, have been redacted in line with his findings elsewhere in this notice, the Commissioner does not believe that the remaining content includes sufficient detail to enable the identification of particular assaults.
17. Once the names, as well as the photofit materials and the document giving details of the undetected assaults, have been redacted, the Commissioner's view is that disclosure of the remaining content would not be likely to result in prejudice relevant to sections 31(1)(a), (b) or (c).
18. For these reasons, in relation to the main narrative content of the withheld information, the finding of the Commissioner is that these exemptions are not engaged. At paragraph 3 above, the Home Office is now required to disclose that information.

*Photofit document and "Other Possible Assaults Committed by Sutcliffe"*

19. As noted above, the Home Office did not provide detailed reasoning for withholding information under section 31. However, having viewed the withheld information the Commissioner has identified an alternative basis for withholding these parts of the content.
20. The withheld content includes information relating to assaults for which Peter Sutcliffe has not been convicted and which he has not admitted to carrying out, but which it is believed may possibly have been committed by him. This information includes photofits compiled from witness descriptions and the aforementioned document titled "*Other Possible Assaults Committed by Sutcliffe*", which gives dates and brief details of the assaults and names of the victims.
21. As it has not been established that Peter Sutcliffe was the perpetrator of these assaults, the possibility remains that the actual perpetrator remains at large. The Commissioner accepts that disclosure of some of the withheld information could result in those individuals changing their behaviour in a way prejudicial to the processes described in sections 31(1)(a), (b) and (c).
22. Disclosure of this information could alert the perpetrator of any of these assaults that the police believe that the assault was likely to have been carried out by Peter Sutcliffe, so they are unlikely to be identified as the actual perpetrator. This could have the effect of emboldening them to commit other assaults in the belief that they would again be unlikely to be caught. The photofit materials would also provide some indication to any perpetrator other than Peter Sutcliffe what evidence the police hold about that crime and could result in them taking measures to avoid police detection, albeit it is recognised that the appearance of any such individual is likely to have changed significantly during the passage of time since the assaults were committed.
23. For these reasons, the Commissioner finds that sections 31(1)(a), (b) and (c) are engaged in relation to the photofit material and the document titled "*Other Possible Assaults Committed by Sutcliffe*". In relation to these materials it is necessary to go to consider the balance of the public interests.
24. In forming a conclusion on the balance of the public interests in relation to the materials that the Commissioner has found engage section 31, he has taken into account the general public interest in the openness of the Home Office, as well as specific factors that apply in this case.
25. Covering first factors in favour of disclosure of the information, in general the "*Yorkshire Ripper*" murders and the associated police

investigation are a matter of great public interest. The conclusions of the Byford report found various deficiencies in the police investigation that may have resulted in a delay in catching Sutcliffe and a failure to prevent his later murders and other assaults. In view of these findings, the Commissioner recognises that there is a very strong public interest in disclosure of the redacted content from the Byford report in order to add to public knowledge and understanding about this major police investigation.

26. As identified by the complainant, there is also a particular public interest in this case in information relating to other assaults linked to Sutcliffe, but in relation to which he was not charged. The Commissioner agrees that there is a strong public interest in full disclosure of information detailing the other assaults which he was suspected of involvement in. This would add to public knowledge about the possible extent of Sutcliffe's crimes and may result in improved understanding as to why he was not charged with those crimes.
27. Turning to the public interest in favour of maintenance of the exemptions, having found that the exemptions are engaged on the basis that it may result in changes to the behaviour of the perpetrators of the assaults in question if this was not Sutcliffe, the Commissioner must recognise the public interest in avoiding that outcome. There is a very weighty public interest in ensuring the person who committed those assaults is caught, hence there is also a weighty public interest in avoiding a disclosure that may jeopardise that outcome.
28. In conclusion, the Commissioner has recognised a very strong public interest in disclosure of all information relating to the police investigation of Sutcliffe's crimes, as well as a particular public interest in disclosure of the information concerning assaults to which he was possibly linked. However, elsewhere in this notice the Commissioner has already concluded that the majority of the information in question should be disclosed. Given this, he must recognise that the public interest in disclosure has already been partly satisfied.
29. In light of this, the Commissioner finds the public interest in avoiding the prejudice that would be likely to occur to be the most compelling factor. His conclusion is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and so the Home Office was not obliged to disclose this content.

### **Section 38**

30. In correspondence with the ICO, the Home Office confirmed that it was relying on section 38(1)(a) of the FOIA, which provides an exemption

for information the disclosure of which would, or would be likely to, endanger the physical or mental health of any individual. Similarly to section 31, considering whether this exemption applies involves two stages; addressing whether the exemption is engaged and considering the balance of the public interests.

31. The reasoning of the Home Office for citing this exemption was that disclosure would be likely to endanger the mental health of *"individuals and their families who were involved with the police investigations in the Yorkshire Ripper case"*. The Home Office stated that this exemption was cited in relation to *"some"* of the requested information, but did not specify which.
32. The Commissioner has taken the approach of considering this exemption in relation to the names of the victims of attacks that it is believed possible were committed by Sutcliffe, as well as to the content describing the details of those attacks. He has not considered this exemption in relation to names of confirmed victims of Sutcliffe as these have been disclosed elsewhere and the Commissioner assumes that the Home Office would not suggest that it is necessary to withhold those names in this case. In any event, the Commissioner can confirm that his conclusion in relation to names that are already in the public domain is that this exemption is not engaged.
33. The names of living individuals are covered below in the section 40(2) analysis. The Home Office stated that two individuals named in the withheld information as possible victims of Sutcliffe are deceased and this analysis concerns content relating to those two individuals.
34. Disclosure under the FOIA means that information is placed in the public domain. The Commissioner recognises that disclosure of this sensitive information about their late family member into the public domain would be distressing to the surviving relatives of that individual, both due to the loss of privacy about the incident and due to the very upsetting nature of content that records a violent attack on their late relative.
35. The next question is whether the Commissioner accepts that this distress would be to such an extent that it would be likely to endanger the mental health of the family members. It has been established by the Commissioner and the Information Rights Tribunal through previous cases that for this exemption to be engaged disclosure must have a greater impact than stress or worry. In this case, having been party to the content of the information, the Commissioner accepts that the level of the psychological impact of the disclosure of this information would go beyond mere stress or worry and so he finds that section 38(1)(a) is engaged in relation to these two names.

36. Having found that the exemption is engaged, it is necessary to go on to consider the balance of the public interest. In forming a conclusion here, the Commissioner has taken into account the public interest in avoiding endangering the mental health of any individual, as well as factors specific to this case.
37. The Commissioner has covered above in relation to section 31 the public interest in disclosure of information relating to the crimes of Peter Sutcliffe and, in particular, in relation to assaults that he is suspected of carrying out, but in relation to which it has not been definitively established that he was responsible. However, in relation to the two names in question here, his view is that the public interest in disclosure of this content is very limited. He does not believe that there would be any significant benefit to the public interest through the disclosure of the previously unpublished names of two individuals.
38. The public interest in the maintenance of the exemption is an important factor in any case where section 38(1)(a) is engaged as it is in the public interest to avoid endangering the health of any individual. As to the weight that this factor should carry in this case, the Commissioner found that endangerment to health *would be likely* to result. The Commissioner has reached this view from considering the content of the information and it seems reasonable to assume that any relative would be likely to be distressed by disclosure of the information, though the case would have been stronger if the Home Office had supplied specific evidence about the impact on the surviving relatives.
39. Despite the lack of specific evidence from the Home Office the Commissioner finds that there is a very significant public interest in protecting the relatives from the distress likely to be caused by disclosure. Given the lack of weighty public interest factors in favour of disclosure of this information, the Commissioner finds that the public interest in the maintenance of this exemption outweighs the public interest in disclosure and so the Home Office was not obliged to disclose the names of these two individuals.

## **Section 40**

40. The Home Office cited section 40(2), which provides an exemption for information that is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process, covering first whether the information in question is personal data and, secondly, whether the disclosure of that personal data would be in breach of any of the data protection principles.



41. As to whether the information constitutes personal data, section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as follows:

*"personal data' means data which relate to a living individual who can be identified:*

- a. from those data, or*
  - b. from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller".*
42. The information in question here consists of names of living individuals who were victims in assaults that may have been carried out by Peter Sutcliffe and that have not been disclosed elsewhere. Similarly to above, the Commissioner assumes that the Home Office did not intend to withhold names of living individuals that have been disclosed through previous publication of the majority of the Byford Report, and can confirm that, in any event, his view is that such information is not exempt by virtue of section 40(2). He is therefore only considering those names not already in the public domain.
43. As the information in question here is names, it clearly both identifies and relates to those individuals and so is their personal data according to section 1(1) of the DPA.
44. The next step is to consider whether disclosure of that personal data would breach any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully, and in particular on whether disclosure would be fair to the data subjects. In forming a conclusion on this point, the Commissioner has taken into account the reasonable expectations of the data subjects and the consequences of disclosure upon them. He has also considered whether there is any legitimate public interest in the disclosure of this information.
45. In relation to information that has not been disclosed for approximately 40 years, the Commissioner accepts that the data subjects would hold a strong expectation that this information would not now be disclosed. As to the consequences of disclosure upon the data subjects, his view is that disclosure into the public domain would be likely to be highly distressing to those individuals, particularly given the nature of the Byford Report.
46. Turning to whether there would be any legitimate public interest in the disclosure of this information, whilst section 40(2) is not a qualified exemption in the same way as some of the other exemptions in Part II of the FOIA, it is necessary for there to be a public interest element for

disclosure to be compliant with the first principle. The question here is whether any legitimate public interest in disclosure outweighs the factors against disclosure covered above.

47. The view of the Commissioner is that there is some legitimate public interest in the disclosure of this information owing to its subject matter, but similarly as in connection with section 38(1)(a) above, he is not of the view that this public interest applies with any significant weight in relation to the names of individuals. The Commissioner does not, therefore, believe that there is a legitimate public interest in favour of disclosure that outweighs the factors against disclosure covered above.
48. In conclusion, the Commissioner has found that the information in question is the personal data of an individual other than the requester and that the disclosure of this information would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) is, therefore, engaged and the Home Office was not obliged to disclose these names.
49. The effect of this notice is that the Home Office should disclose the requested information, but with the names of living or deceased individuals whose names have not been disclosed elsewhere in the Byford Report redacted and with the sections on photofits and "*Other Possible Assaults Committed by Sutcliffe*" also withheld.

## Right of appeal

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

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

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

51. 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.
52. 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 .....**

**Ben Tomes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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