

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2016

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information relating to the Metropolitan Police Service (the "MPS") investigation into the death of Sandra Rivett and the subsequent disappearance of Lord Lucan. The MPS has confirmed that it holds information but has found it to be exempt from disclosure under sections 30(1) (investigations and proceedings) and section 40(2) (personal information) of the FOIA. The Commissioner's decision is that it was entitled to rely on section 30(1). No steps are required.

Background

2. The complainant previously made the same request on 12 May 2014 and the Commissioner considered it in decision notice FS50548394¹. In that notice the Commissioner upheld the citing of section 30(1).
3. Lord Lucan has now been presumed dead under the terms of the Presumption of Death Act 2013².

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1040772/fs_50548394.pdf

² <http://www.legislation.gov.uk/ukpga/2013/13/notes/division/2>

4. The summary and background to this Act explains how people left behind by a "missing person" may need to use various procedures to deal with various aspects of that person's property and affairs. It explains that:

"The Act will introduce into the law of England and Wales a new court based procedure enabling those left behind to obtain a declaration from the High Court that the missing person is to be deemed to have died... The missing person's property will pass to others in the same way as if the missing person had died and been certified dead in the normal way and his or her marriage or civil partnership will end as a marriage or civil partnership ends on death".

Request and response

5. On 3 February 2016, the complainant wrote to the MPS and requested information in the following terms:

"I originally submitted this request in 2014 but I am now resubmitting it in the light of today's decision by the High Court to grant a death certificate in relation to Lord Lucan.

I think the granting of the certificate means there are no data protection issues as far as Lord Lucan is concerned.

The resubmitted request is as follows:

Can you please supply copies of all documents, transcripts and photographs held by the Metropolitan Police which in any way relates to the force's investigation into the death of Sandra Rivett who died on 7 November 1974 and or the subsequent disappearance of Lord Lucan, the missing peer who is now presumed dead and who has been widely linked to Ms Rivett's death.

Please note that I am only interested in information which was generated between period 7 November 1974 and 31 December 1984.

I note that section 30(1) of the Freedom of Information Act does not apply to historical information and I note the changes introduced by the Constitutional Reform and Governance Act 2010.

The documentation held by the Metropolitan Police will include but will not be limited to crime scene photographs, artist impressions, witness statements, investigating officers note books, internal communications, and maps as well as documentation and or material relating to the hunt for and or possible sightings of Lord Lucan. Lord Lucan has been pronounced dead so I do not anticipate any data protection implications as far as he is concerned. Please feel free to redact the names and addresses of any witnesses and police officers who are still alive but please do not exclude details of people who are now deceased".

6. The MPS responded on 24 February 2016. It maintained the same position taken for the complainant's request of 12 May 2014, relying on sections 30(1) and 40(2). This was on the basis that the murder investigation remained open and under regular review.
7. Following an internal review the MPS wrote to the complainant on 25 April 2016. It maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 27 April 2016 to complain about the way his request for information had been handled. He commented on his request being substantially the same as the previous request made, but added that the circumstances had recently "*changed the situation significantly [sic]*" because of a: "*... decision by the High Court - earlier this year - to pronounce Lord Lucan dead*". He included an article from the BBC website³.
9. He also argued that the presumption of death meant there were no data protection issues as far as Lord Lucan was concerned and also that the MPS would no longer be pursuing evidence relating to Lord Lucan as he was presumed dead and that: "*it would not after all be in the public interest to pursue an individual who cannot be brought to trial*".
10. He also expressed dissatisfaction with the quality of the MPS's internal review. The Commissioner has commented on this in "Other matters" at the end of this notice.
11. The Commissioner will consider the citing of exemptions below.

³ <http://www.bbc.co.uk/news/uk-england-35481376>

Reasons for decision

Section 30 – investigations and proceedings

12. The Commissioner found this class based exemption to be engaged in the previous decision notice mentioned above and, because the information request in this case is the same, his position has not changed. He will not therefore revisit the previous arguments in engaging the exemption and instead will cover only the factors which have changed since then.

13. In support of its continuing position to withhold the requested information the MPS explained to the Commissioner:

"On Wednesday 3rd February 2016 George Bingham (son of Lord Lucan) applied under the Presumption of Death Act, which came into effect in 2014 to enable George Bingham to apply to have his father declared dead in order for him to inherit the family title. A death certificate was issued under the 2014 Presumption of Death Act allowing Lord Bingham to inherit the title as the 8th Earl. However, although a death certificate has been issued for Lord Lucan it changes nothing as far as the police investigation is concerned as the investigation remains on-going.

The investigation has never been closed as it is an unsolved murder therefore it is classed as opened and remains live and on-going subject to regular reviews as is the case with all unsolved murders. Any new significant information is considered and where there are advances in technology which may be relevant they are explored".

14. Section 30 is a qualified exemption so the Commissioner has also considered the balance of the public interests. He has focussed on whether the public interest balance has changed since the previous decision notice.

15. The arguments previously cited have all again been taken into account and remain valid. The only additional issues which the Commissioner considers to differ from these are:

- the further passage of time
- the presumed death of Lord Lucan

He will consider these two points below.

The further passage of time

16. The Commissioner's previous decision notice was issued in September 2014, almost 2 years ago, however, the Commissioner notes that the investigation still remains "live". The MPS has confirmed that the case:

"... remains an unsolved crime and is an on-going enquiry with the MPS Homicide and Serious Crime Directorate therefore it would not be appropriate to release any information in connection with the investigation as any response may expose police lines of enquiry, may alert any potential suspects as Lord Lucan is the main suspect but may not be the only suspect therefore any release of information not managed via MPS press releases could compromise the investigation and potentially could also lead to interferences of witnesses".

17. To accompany its submission it gave the Commissioner examples of three recent cases. These concerned a man who was arrested in January 2016 for the rape and murder of a girl in 1982, a missing woman who was assumed dead and was found 32 years later and witnesses who had come forward involving a death in 1976.
18. Taking the circumstances into account, the Commissioner does not find that the further passage of time in this case currently makes any difference to his previous conclusions in this case. The murder investigation remains "live" and under active review. He therefore concludes that this particular point does not change his previous findings.

The presumed death of Lord Lucan

19. When asking for an internal review the complainant argued that: *"the recent High Court ruling means information relating to Lord Lucan and or his whereabouts and or his movements after Sandra's death should be made available to the public"*. He was also of the opinion that the MPS would no longer be pursuing evidence relating to Lord Lucan as he was presumed dead and that: *"it would not after all be in the public interest to pursue an individual who cannot be brought to trial"*.
20. However, the MPS has advised: *"... although a death certificate has been issued for Lord Lucan it changes nothing as far as the police investigation is concerned as the investigation remains on-going"*.
21. Lord Lucan was the main suspect in the murder of Sandra Rivett and he has now been declared dead, which allows his title to pass down to his son. However, this point does not mean that the murder enquiry is now completed and that no more enquiries will be made or that the murder case is now closed. A Detective Inspector from Homicide and Serious

Crime Command at the MPS has confirmed, in respect of this current request, that: "*The investigation is still open and subject to regular reviews*". The Detective Inspector also confirmed that any information held about Lord Lucan is: "*... an integral part of our unsolved investigation*".

22. The Commissioner notes that although Lord Lucan may have been the main suspect, there may also have been other suspects. Furthermore, it is not known what evidence exists to link him or any other party with the crime and whether or not the passage of time and new techniques will mean that someone will be charged with the murder in the future. Although the Commissioner recognises that it is extremely unlikely that Lord Lucan will ever be charged, this does not mean that any information held about him will not be of continued importance to what continues to remain an unresolved investigation.

Balance

23. Whilst the Commissioner notes the complainant's view that the MPS will be unlikely to pursue any further lines of enquiry in respect of Lord Lucan, he notes that the MPS has confirmed that the investigation remains open.
24. The Commissioner accepts that the arguments put forward by the MPS and covered in the previous decision notice remain relevant and considers that they still all weigh heavily in favour of maintaining the exemption in this case. The changes of circumstances since that notice have not persuaded the Commissioner to change his view and he finds that the public interest still favours maintaining the exemption.
25. In light of his findings it has not been necessary to consider section 40(2).

Other matters

26. The complainant also made reference to the quality of the MPS's internal review. He advised that he was: "*left with the impression that the service has not carried out a thorough independent review as required by the FOI Act. Instead it has simply cut and paste comments from the previous ICO decision notice*".
27. In the Commissioner's view, if a public authority wishes to maintain its position on essentially the same matter then it is reasonable for it to revert to arguments previously relied on. Provided that the request has been re-read and reconsidered - and he has no reason to suspect otherwise on this occasion - and that the same arguments remain

relevant, then he considers this an appropriate and expedient manner in which to respond.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Carolyn Howes
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