

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2017

Public Authority: Chief Constable of Thames Valley Police

Address: Police Headquarters

Oxford Road

Kidlington

Oxfordshire

OX5 2NX

Decision (including any steps ordered)

1. The complainant requested copies of correspondence between various parties and Thames Valley Police, relating to complaints about a local resident. Thames Valley Police would neither confirm nor deny holding the information, citing the exemptions at section 30 (investigations and proceedings) and section 40 (personal information) of the FOIA.
2. The Commissioner's decision is that Thames Valley Police was entitled to rely on section 30(3) to neither confirm nor deny holding the requested information.
3. The Commissioner requires no steps to be taken.

Background

4. The complainant is a journalist who is looking into a suspicious fire at a property. He says that he has been informed that, prior to the fire, local residents had informed Thames Valley Police and the letting agent of concerns they had about anti-social behaviour by the resident of the property.

Request and response

5. On 25 April 2017, the complainant wrote to Thames Valley Police (TVP) and requested information in the following terms:

"This request asks for correspondence between the residents of [location specific information redacted], [name of letting agency redacted] and Thames Valley Police.

1) Please provide all correspondence between residents of [address redacted] and Thames Valley Police. With relation to [crime reference number redacted]

2) Please provide all correspondence between Thames Valley Police and [name of letting agency redacted]. With relation to [crime reference number redacted]

3) Please provide all correspondence between the residents of [address redacted] and the Relevant Neighbourhood Team at Thames Valley Police. With reference to any concerns regarding risks posed by the occupant of [address redacted] [timescale redacted].

4) Please provide all correspondence between [name of letting agency redacted] and the relevant Neighbourhood Team at Thames Valley Police. With reference to any concerns regarding risks posed by the occupant of number [address redacted], [timescale redacted]."

6. TVP responded on 23 May 2017 and would neither confirm nor deny whether it held the requested information, citing the non-disclosure exemptions at section 30(3) (investigations and proceedings) and 40(5) (personal information) of the FOIA.
7. Following an internal review, TVP wrote to the complainant on 27 June 2017, upholding its original response.

Scope of the case

8. The complainant contacted the Commissioner on 5 July 2017 to complain about the way his request for information had been handled. He felt it was in the public interest for TVP to at least confirm or deny whether it had taken action in response to the concerns he believed residents had expressed to it.

9. The Commissioner has considered in this decision notice whether TVP was entitled to rely on section 30(3) of the FOIA to neither confirm nor deny whether it held the requested information. As her decision is that TVP was entitled to rely on section 30(3) to neither confirm nor deny holding the information, it has not been necessary for the Commissioner to consider its application of section 40(5).
10. Nothing within this decision notice (including hypothetical examples) should be taken as implying that TVP does or does not hold the requested information.

Reasons for decision

11. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. However, there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the FOIA allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.
12. A public authority can only refuse to confirm or deny whether it holds the information, if doing so would in itself reveal information that falls under an exemption.
13. The decision to use a neither confirm nor deny response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point, and main focus in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
14. A public authority will need to use the neither confirm nor deny response consistently, over a series of separate requests, regardless of whether it holds the requested information. This is to prevent refusing to confirm or deny being taken by the requester as an indication of whether or not information is in fact held.
15. It is sufficient to demonstrate that either a hypothetical confirmation, or a denial would engage the exemption. In other words, it is not necessary to show that both confirming and denying information is held would engage the exemption from complying with section 1(1)(a) of the FOIA.

Section 30 – investigations and proceedings conducted by public authorities

16. Section 30(3) of the FOIA provides an exclusion from the duty to confirm or deny whether information is held in relation to any information which, if held, would fall within any of the classes described in sections 30(1) or 30(2) of the FOIA.
17. Consideration of section 30(3) of the FOIA involves two stages; first, the information described in the request must fall within the classes described in sections 30(1) or 30(2). Secondly, the exemption is qualified by the public interest. This means that if the public interest in the maintenance of the exemption does not outweigh the public interest in confirming or denying whether information is held, then confirmation or denial must be provided.
18. In this case, TVP said that the information described in each of the four questions, if held, would be exempt from disclosure by virtue of sections 30(1)(a) and (b).
19. Section 30(1)(a)(i) of the FOIA provides an exemption for information which has at any time been held for the purposes of an investigation with a view to ascertaining whether a person should be charged with an offence. The Commissioner considers that the phrase "*at any time*" means that information can be exempt under section 30(1)(a)(i) if it relates to an ongoing, closed or abandoned investigation. It is therefore not necessary for an investigation to be 'live' at the time the request is received, for section 30(1)(a)(i) to be engaged.
20. Information held for the purposes of a police investigation will generally fall within the description at section 30(1)(a)(i) of the FOIA. In this case, the complainant framed his request by specific reference to a crime reference number which he said related to the incident he was asking about. The Commissioner therefore accepts that the information described in the request, if held, would be held by TVP for the purposes of an investigation and so would be within the class described in section 30(1)(a)(i). The Commissioner is satisfied that the exemption provided by section 30(3) of the FOIA is, therefore, engaged.

Public interest test

21. As section 30 is a qualified exemption, it is subject to the public interest test. In this case, confirmation or denial must be provided unless, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
22. In reaching a conclusion on the balance of the public interest, the Commissioner has considered what public interest there is in TVP

confirming or denying whether it holds the requested information. The Commissioner also considered whether confirmation or denial would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.

23. The complainant set out what he considered to be the public interest in TVP complying with his request:

"... the landlord (a housing agency) was notified on more than one occasion of the antisocial behaviour of a tenant ... Nothing was done. [The residence] belonging to this tenant was then set alight, endangering the lives of residents, many of them young children... In my personal opinion, if this housing agency did nothing despite warnings, they have some responsibility for this. Furthermore, this housing agency continues to manage hundreds of premises around [location redacted]. If they are ignoring concerns from residents about their wellbeing this is a serious issue. If this is the case, I believe intervention will prevent another incident from happening.

I already have evidence that residents made the housing agency aware of the problem, and that they raised concerns with the police...what I am trying to determine is if Thames Valley Police also approached the housing agency."

24. The Commissioner considers that the public interest in openness, transparency and accountability would, to some extent, be served by TVP confirming or denying whether it holds the requested information. This is because it would give some indication of whether information provided to the police had been acted on.
25. However, the Commissioner also considers that confirming or denying would not allow reliable conclusions to be drawn as to why TVP had or had not acted on any information that may have been supplied to it by concerned residents. As a hypothetical example, if its response to question 1 was to confirm that information is "held" and to question 2, a denial that information was held, this could indicate that the letting agent was not contacted by TVP about concerns received from local residents, which could suggest a failure of policing. Equally, it could suggest that the quality of any intelligence received was insufficient to merit further investigation. Furthermore, a denial that no information is held in respect of question 2 would not necessarily equate with the letting agent not having been contacted by TVP, merely that there had been no "correspondence" between them.
26. Thus, while the Commissioner acknowledges the general public interest in promoting openness, transparency and accountability by public authorities, she finds that confirmation or denial would give no particular

insight into what action TVP did or did not take regarding any complaints or concerns it might have been notified of. Therefore, she accords limited weight to the public interest in confirming or denying for this purpose.

27. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the act of confirming or denying whether the requested information is held could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.
28. TVP explained that the act of confirming or denying would reveal information about particular, identifiable individuals if any were held. The information request was for specific, detailed information linked to a location and a well-publicised incident. The tenant would be easily identifiable by anyone with local knowledge and might be targeted and the focus of unwarranted public exposure if it was perceived (rightly or wrongly) that he was involved in criminal activity. If local tensions were inflamed as a result, this would inevitably impact on TVP's policing responsibilities and on its ability to investigate alleged criminal activity.
29. The Commissioner accepts that there is some possibility that confirmation in response to the request could disclose information about an identifiable individual, the tenant of the property which caught fire, and reveal whether or not he had been the subject of complaints by neighbours.
30. The Commissioner is of the view, however, that more significant is the perception that the act of confirming or denying could create about how likely it is that cooperation with TVP will remain confidential. She considers that, due to the specificity of the request, there is a real possibility that, if it was confirmed or denied that information was held, it could be inferred from TVP's response whether or not one or more local residents had complained to TVP about the tenant, and that they would be capable of being identified, particularly by someone with local knowledge.
31. Clearly, the public perception that particular individuals may have liaised with TVP regarding the tenant could have serious consequences for those individuals, ranging from feelings of distress, to harassment, to threats to their safety.
32. Following on from this, the Commissioner considers that the act of confirming or denying in this case could create a perception among the wider public that individuals who cooperate with TVP (or any police

force) risk having this fact disclosed into the public domain, and that communications with the police may prove not to be truly confidential. Clearly, it is vital that TVP is able to give a guarantee of confidentiality to anyone who wishes to complain or give evidence to it or who may be willing to cooperate with it about criminal matters.

33. If the credibility of such guarantees is undermined by disclosures of this nature, this would be likely to disrupt the flow of information and intelligence to TVP, and there would be an inevitable impact on its ability to conduct efficient and well evidenced criminal investigations which would be strongly against the public interest.
34. Given the detail specified in the wording of the request, the Commissioner considers that confirmation or denial in this case would give rise to a perception that TVP is not able to guarantee confidentiality to its sources of information and that this would very likely result in disruption to the future flow of information to the police, thereby jeopardising future investigations. There is a very significant public interest in avoiding that outcome and it is a factor in favour of maintenance of the exemption in this case of considerable weight.

Conclusion

35. The Commissioner considers that there is some public interest in TVP confirming or denying whether it holds the requested information, based around the general principles of public authorities being open, transparent and accountable. However, she considers there is significant public interest in favour of maintaining the exemption in order to avoid jeopardising the flow of information to TVP, and thereby protect the investigative process. Accordingly, her finding is that the public interest in the maintenance of the exemption outweighs the public interest in confirmation or denial. Consequently, TVP was not obliged to confirm or deny whether it holds the information requested by the complainant.

Right of appeal

36. 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

37. 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.
38. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF