

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 April 2020

Public Authority: Chief Constable of Hampshire Constabulary
Address: Mottisfont Court
Tower Street
Winchester
Hampshire
SO23 8ZD

Decision (including any steps ordered)

1. The complainant requested CCTV footage relating to a murder investigation.
2. Hampshire Constabulary refused the request on the grounds that section 30 (investigations and proceedings) and section 40 (personal information) of the FOIA applied.
3. The Commissioner's decision is that Hampshire Constabulary was entitled to rely on section 30(1)(a) of the FOIA to refuse the request.
4. She requires no steps to be taken as a result of this decision.

Request and response

5. On 1 November 2019, the complainant wrote to Hampshire Constabulary and requested information in the following terms:

"The Appellant, [name redacted], has been seeking to challenge by judicial review, the failure or refusal by the Chief Constable of Hampshire Police, the Respondent, to disclose original CCTV footage said to be relevant to his appeal against his conviction for murder. Andrews J refused permission to apply for judicial review. She held the application was totally without merit ("TWM") so that the Appellant was not entitled to renew his application at an oral hearing."

"Subsequently, in December 2012 the Appellant made an application to the Criminal Cases Review Commission ("the CCRC") to refer his conviction to the Court of Appeal Criminal Division. To support his application to the CCRC, the Appellant requested (for the first time) the original CCTV footage from which extracts were produced by the prosecution at his trial and assembled in a compilation disc played to the jury at trial. It is his case that the original footage is relevant to the question whether or not he left home in sufficient time to have committed the murder before he arrived at his place of work that evening. It is therefore relevant to the safety of his conviction and his alibi for the relevant time. The Appellant has obtained a preliminary report from an expert expressing a positive view on this question but he has asked to see the original CCTV footage given issues as to the quality of the compilation footage."

REQUEST

Disclose CCTV footage referred to above".

6. The request was made using the 'whatdotheyknow' website.
7. Hampshire Constabulary responded on 1 November 2019, refusing to confirm or deny whether the requested information was held, by virtue of section 40(5) (personal information) of the FOIA.
8. Following an internal review, Hampshire Constabulary wrote to the complainant on 26 November 2019, revising its position. It confirmed that the information was held, but that it was exempt from disclosure by virtue of:
 - section 30(1)(a) (investigations and proceedings); and
 - section 40(2) (personal information).

Scope of the case

9. The complainant first contacted the Commissioner on 26 November 2019 to complain about the way his request for information had been handled.
10. The Commissioner understands from his subsequent correspondence that he disputed Hampshire Constabulary's application of section 30 of the FOIA, in particular its consideration of the public interest in favour of non disclosure.
11. He told the Commissioner:

"They said this:

'The material held is effectively part of an ongoing legal appeal process and any disclosure would prejudice the decision of the judiciary.'

How would prejudice be caused to the judiciary?"

12. During the course of the Commissioner's investigation, Hampshire Constabulary confirmed it held information within the scope of the request. It explained:

"... this FOI request relates to material held by Hampshire Constabulary in connection with a murder".

13. It also confirmed its application of sections 30(1)(a) and 40(2) to that information.
14. The analysis below considers the Hampshire Constabulary's application of exemptions to the requested information.

Reasons for decision

Section 30 Investigations and proceedings

15. Section 30 of the FOIA states 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".

16. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently held and used for this purpose.
17. Consideration of section 30(1)(a) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public

interest in maintaining the exemption outweighs the public interest in disclosing the information.

Is the exemption engaged?

18. The first step is to address whether the requested information falls within the class specified in section 30(1)(a) of the FOIA.
19. The Commissioner has issued guidance on section 30¹ which states that section 30(1)(a) can only be claimed by public authorities that have a duty to investigate offences.
20. The Commissioner's guidance describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the guidance says:

"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged.

Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it.

It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence...."

21. In this case it is not in dispute that the individual named in the request was convicted of murder.
22. Hampshire Constabulary recognised, in its correspondence with the Commissioner, that the request relates to an element of the appeal legal process involving the individual named in the request.
23. Hampshire Constabulary confirmed that the requested information comprises material which was seized in the course of a criminal investigation.
24. In that respect, Hampshire Constabulary told the Commissioner:

"This was a murder investigation and the CCTV was obtained in connection with this case".

¹ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

25. Section 30 of the FOIA is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. In order for the exemption to be applicable, information must be held for a specific or particular investigation and not for investigations in general. The Commissioner is satisfied that in this case the withheld information relates to a specific investigation, namely a murder investigation.
26. As a police force, Hampshire Constabulary clearly has a duty to conduct criminal investigations by virtue of its core function of law enforcement. The Commissioner is therefore satisfied that it has the power to carry out investigations of the type described in section 30(1)(a).
27. With reference to the wording of the request, and mindful of the arguments provided by Hampshire Constabulary, the Commissioner is satisfied that the requested CCTV footage was held in relation to an investigation conducted by Hampshire Constabulary of the type described in section 30(1)(a). She is therefore satisfied that the exemption provided by section 30(1)(a) is engaged.

The public interest test

28. Section 30(1)(a) is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of the FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

29. The complainant did not put forward any arguments in favour of disclosing the information.
30. In its correspondence with the complainant, Hampshire Constabulary told him:

"... we don't believe there are any factors supporting disclosure".

31. Similarly, with respect to the requested information, Hampshire Constabulary told the Commissioner:

"We don't believe there are any public interest arguments since this was a criminal investigation which went before the judiciary and resulted in a murder conviction. This is effectively unused material..."

Public interest arguments in favour of maintaining the exemption

32. Arguing in favour of withholding the requested information, Hampshire Constabulary told the complainant:

"Whilst there is information already in the public domain about this case, disclosure is likely to hinder the ongoing appeal process. As such, it is our decision that the public interest lies in the non-disclosure of the requested information".

33. In its submission to the Commissioner, Hampshire Constabulary acknowledged that, at the time of the request, the investigation was complete and the offender had been convicted in 2010. It explained:

"The information requesting [sic] relates to a murder investigation which at the time received extensive media coverage".

34. In favour of withholding the requested information, Hampshire Constabulary told the Commissioner:

"This is material held in connection with a murder. ... The evidence was put before a jury and they reached a guilty verdict... We don't believe that disclosure of the material will benefit the public in any way ...".

35. Moreover, it said:

"The information held by Hampshire Constabulary contains information which, if it were released into the public domain would compromise the integrity of any future activity in relation to Murder investigations".

Balance of the public interest

36. In accordance with her guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
37. 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 a case such as this, where this exemption is found to be engaged, is whether the disclosure of the requested information 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.
38. The Commissioner recognises that there is a general public interest in promoting transparency, accountability, public understanding and

involvement in the democratic process. FOIA is a means of helping to meet that public interest, so it must always be given some weight in the public interest test.

39. She recognises that, in addition to the general public interest in transparency and accountability, and any public interest arising from the issue concerned, there may be a specific public interest in disclosing the information in question. However, it is also noted that the complainant did not offer any rationale in support of his view that the information should be placed in the public domain through the FOIA.
40. In the circumstances of this case, the Commissioner has accorded significant weight to the arguments surrounding the public interest in protecting the ability of Hampshire Constabulary to conduct effective investigations. In that respect, she has taken into account that the requested information was obtained by Hampshire Constabulary in connection with a murder investigation.
41. She is also mindful that, while the murder trial resulted in a conviction, the information under consideration in this case is subject to an ongoing appeal process.
42. Although restricted in what she is able to say due to the nature of the withheld information, she accepts that it would not be in the public interest to disclose information that impacted negatively on the integrity of future investigations by disclosing the nature of the CCTV footage captured.
43. Having considered the issues in this particular case, the Commissioner is satisfied that section 30(1)(a) has been applied appropriately and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
44. As the Commissioner has concluded that this exemption is properly engaged in respect of all the withheld information she has not considered the other exemption cited in relation to the same information.

Right of appeal

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

46. 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.
47. 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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Wycliffe House
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