

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 June 2020

**Public Authority:** Chief Constable of Northamptonshire Police

**Address:** Wootton Hall  
Wootton Hall Park  
Northampton  
NN4 0JQ

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to the death of a named individual.
2. Northamptonshire Police refused to disclose the requested information within the scope of the first part of the request, citing sections 27(1) (international relations), 30(1) (investigations and proceedings conducted by the public authority) and 40(2) (personal information) of the FOIA.
3. It refused to confirm or deny holding the requested information within the scope of the second part of the request, citing sections 30(3) and 40(5) of the FOIA.
4. The Commissioner investigated Northamptonshire Police's handling of the second part of the request.
5. The Commissioner's decision is that Northamptonshire Police was entitled to rely on section 30(3) and that, in all of the circumstances of the case, the public interest favoured maintaining the exemption.
6. The Commissioner requires no steps to be taken as a result of this decision.

## Background

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7. The request for information relates to the death of Harry Dunn following a collision outside RAF Croughton in Northamptonshire in August 2019<sup>1</sup>.
8. On 13 October 2019, Northamptonshire Police confirmed that its investigation into the fatal accident was ongoing<sup>2</sup>.
9. On 15 October 2019, the BBC website<sup>3</sup> reported a spokesperson for the family saying:

*"If we're not satisfied, then we'll go to a judicial review and ask a High Court judge to review it all."*

## Request and response

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10. On 1 November 2019, the complainant wrote to Northamptonshire Police and requested information in the following terms:

*"Provide all correspondence between you and the FCO [Foreign and Commonwealth Office] regarding death of Harry Dunne.*

*Provide all information held which relates in any way to Dominic Raab/the Foreign Office asking Northamptonshire Police to delay telling Harry Dunn's family that the woman involved in the crash that killed their son had left the UK".*

11. The request was made using the 'whatdotheyknow' website.
12. Northamptonshire Police responded on 29 November 2019. It refused to provide the requested information within the scope of the first part of the request, citing the following exemptions:
  - section 27(1) (international relations);

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<sup>1</sup> <https://www.bbc.co.uk/news/uk-england-northamptonshire-50249290>

<sup>2</sup>

<https://www.northants.police.uk/news/northants/news/news/2019/october-19/update-on-the-death-of-harry-dunn/>

<sup>3</sup> <https://www.bbc.co.uk/news/uk-england-northamptonshire-50051935>

- section 30(1) (investigations and proceedings conducted by public authorities);
  - section 40(2) (personal information).
13. By virtue of the following exemptions, Northamptonshire Police refused to confirm or deny that the requested information within the scope of the second part of the request was held:
- section 30(3) (investigations and proceedings conducted by public authorities);
  - section 40(5) (personal information).
14. Following an internal review, Northamptonshire Police wrote to the complainant on 20 December 2019 maintaining its original position.

### **Scope of the case**

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15. The complainant contacted the Commissioner on 12 February 2020 to complain about the way his request for information had been handled.
16. He told the Commissioner:
- "The exemption ncnd was not correctly applied".*
17. In light of the above, the Commissioner considered his complaint was about Northamptonshire Police's handling of the second part of the request for information.
18. As is her practice, the Commissioner wrote to the complainant at the start of her investigation, setting out the scope. She told him that her investigation would look at whether Northamptonshire Police was entitled to rely on exemptions as a basis for neither confirming nor denying whether it held the information requested in the second part of the request.
19. In the absence of the complainant indicating that he disagreed with that scope within the timeframe set out by the Commissioner, she progressed her investigation on that basis.
20. Accordingly, the analysis below considers whether Northamptonshire Police was entitled to neither confirm nor deny holding information:
- "... which relates in any way to Dominic Raab/the Foreign Office asking Northamptonshire Police to delay telling Harry Dunn's family that the woman involved in the crash that killed their son had left the UK".*

## Reasons for decision

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### *Neither confirm nor deny*

21. Section 1(1)(a) of the 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.
22. The decision to use a neither confirm nor deny response will not be affected by whether a public authority does, or does not, 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.
23. 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 requesters as an indication of whether or not information is, in fact, held.
24. 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.
25. The Commissioner first considered Northamptonshire Police's application of section 30(3) to the requested information.

### *Section 30 investigations and proceedings*

26. Section 30(3) of the FOIA states:

*"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)".*

27. 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.

28. The Commissioner considers that, in its correspondence with the complainant, Northamptonshire Police relied to a large degree on the requested material being self-evidently exempt.
29. During the course of her investigation, Northamptonshire Police confirmed that it was aware of the claim for judicial review at the time of the request.
30. In its submission to the Commissioner, Northamptonshire Police confirmed that it was relying on the information within the scope of the second part of the request, if held, being exempt by virtue of subsection (1) of section 30.

31. Section 30(1) 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,*

*(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has the power to conduct, or*

*(c) any criminal proceedings which the authority has power to conduct."*

32. Describing the request as *"very broad and all-encompassing"* Northamptonshire Police told the Commissioner that, if held, the information:

*"... would reveal material relevant to an ongoing investigation and judicial review".*

33. Subsection (1) can only be claimed by public authorities that have certain duties or powers to investigate offences and institute criminal proceedings. A duty is something that the public authority is obliged to do, whereas a power simply allows the public authority to do something. A public authority has discretion over whether it exercises its powers.
34. Having considered the wording of the request – and mindful of the context - the Commissioner is satisfied that the requested information, if held, would relate to investigations and proceedings conducted by Northamptonshire Police.

35. The Commissioner is therefore satisfied that the exemption provided by section 30(3) of the FOIA is engaged.

*Public interest test*

36. However, section 30(3) is a qualified exemption. Therefore, the Commissioner must consider the public interest test contained at section 2 of the FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming whether or not the requested information is held.
37. 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.
38. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.

*Public interest arguments in favour of confirming whether or not the requested information is held*

39. The complainant did not put forward any substantive arguments in favour of disclosure by way of confirmation or denial.
40. Northamptonshire Police acknowledged the public interest in confirming or denying that any information exists. In that respect, it told the complainant:

*"Confirming that information exists could promote public trust in providing transparency and demonstrating openness and accountability into how investigations take place".*

41. It also recognised that, in circumstances where an investigation is closed and proceedings have been completed, disclosure would give the public satisfaction that the investigation was conducted properly.

*Public interest arguments in maintaining the exclusion from the duty to confirm or deny whether the requested information is held*

42. Arguing in favour of maintaining the exclusion from the duty to confirm or deny in this case, Northamptonshire Police stressed the public interest in the integrity of police investigations and operations. In that respect, it told the complainant:

*"By neither confirming nor denying that information is held, any ongoing investigations will not be exposed and therefore will not be prejudiced or undermined. In addition confirmation that any information does exist could affect the forces future law enforcement capabilities which would hinder the prevention and detection of crime. In addition, Northamptonshire Police would never reveal who, what and when information about a particular individual is recorded as this would clearly undermine the law enforcement and investigative process".*

43. Northamptonshire Police cited a further public interest argument in maintaining the exclusion from the duty to confirm or deny whether the requested information is held in its correspondence with the Commissioner. It told her:

*"One of the foremost objectives of a judicial review is to hold the government accountable and it would not be in the public interest to jeopardise this process by publically confirming whether information is held relevant to the Judicial Review".*

44. In its submission, Northamptonshire Police was mindful that disclosure under the FOIA is effectively an unlimited disclosure to the public at large, without conditions. It also referred to the Commissioner's guidance, in particular regarding the importance of using a NCND response in a consistent manner.

45. In that respect, it told the Commissioner:

*"Northamptonshire Police continue to receive Freedom of Information requests concerning the tragic death of Harry Dunn".*

#### *Balance of the public interest*

46. 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.
47. This does not mean that public authorities should use a NCND response in a blanket fashion. They should base their decision on the circumstances of the particular case with regard to the nature of the information requested and with appropriate consideration given to the public interest test.

48. The Commissioner considers that there is clearly a public interest in the transparency and accountability of public authorities. She recognises that confirming or denying whether the requested information is held in this case would meet the public interest in transparency and accountability of Northamptonshire Police.
49. In considering the balance of the public interest in this case, the Commissioner recognises that there is a significant public interest in the need to prevent disclosures, by way of confirmation or denial, that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.
50. This goes to the heart of what the section 30 exemption is designed to protect.
51. The Commissioner also considers that significant weight has to be given to the need to protect Northamptonshire Police's ability to adopt a consistent approach when responding to similar requests in the future.
52. Having considered the issues in this particular case, the Commissioner's view is that the public interest arguments in favour of maintaining the refusal to either confirm or deny whether information is held outweigh those in favour of Northamptonshire Police issuing such a confirmation or denial.
53. Therefore, the Commissioner finds that Northamptonshire Police was entitled to rely on the refusal to confirm or deny provided by section 30(3) of the FOIA.
54. In light of her finding, the Commissioner has not gone on to consider whether Northamptonshire Police was also entitled to apply section 40(5) to the requested information within the second part of the request.



## Right of appeal

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55. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

56. 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.

57. 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 .....**

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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SK9 5AF**