

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 August 2022

Public Authority: The Independent Office for Police Conduct
Address: PO Box 473
Sale
M33 0BW

Decision (including any steps ordered)

1. The complainant requested information from the Independent Office for Police Conduct (IOPC), namely a report.
2. The IOPC withheld the information, citing sections 30(1) (investigations and proceedings) and 40(2) (personal information) of FOIA.
3. The Commissioner's decision is that the IOPC was entitled to rely on section 30(1)(a)(i) to withhold the information in its entirety.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 26 July 2021, the complainant wrote to the IOPC and requested information in the following terms:

“disclose the IOPC full report into death of [name redacted, date of death redacted]”.
6. The request was made using the 'whatdotheyknow' website.
7. The IOPC responded on 23 August 2021. It refused to provide the requested information, citing the following exemptions as its basis for doing so:
 - section 30 (investigations and proceedings)

- section 40 (personal information).
8. The complainant requested an internal review on 23 August 2021, albeit not providing the grounds of his complaint.

Scope of the case

9. Following earlier correspondence between the two parties and the ICO, the complainant contacted the Commissioner on 12 October 2021 to complain about the way his request for information had been handled by the IOPC.
10. In the circumstances, the case was accepted as an eligible complaint for consideration without an internal review.
11. It is accepted that the requested report relates to the death of an individual in police custody in 2012.
12. During the course of the Commissioner's investigation, by way of background to the matters under consideration, the IOPC told the Commissioner:
- "The matter was mandatorily referred to the IPCC [Independent Police Complaints Commission] as required under police complaints legislation and an investigation ensued...".
13. The IOPC also confirmed its application of sections 30(1)(a)(i) and 40(2) to the requested report.
14. The analysis below considers the IOPC's application of section 30(1) to the withheld report. If the Commissioner considers that it has been incorrectly cited, he will then consider whether section 40(2) applies.

Reasons for decision

Section 30 investigations and proceedings

15. Section 30 of FOIA states that:

"(1) 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) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
17. Consideration of section 30(1)(a)(i) 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 FOIA.
19. Explaining its application of section 30(1)(a) in this case, the IOPC told the complainant:

"The IOPC carried out its own investigation into this case in line with its functions under the Police Reform Act 2002. These include considering whether the investigation report indicates that a criminal offence may have been committed and referring to the CPS when it does.

As the IOPC is required to make these decisions, the information we hold about this investigation falls within the class of information covered by section 30".

20. Similarly, it told the Commissioner:

"The report falls within the class of information covered by section 30(1)(a)(i) because it is held by the IOPC for the purposes of an investigation it has a duty to conduct under paragraph 19 of Schedule 3 to the Police Reform Act 2002, with a view to it being ascertained whether a person should be charged with an offence".

21. 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 whether someone should be charged with an offence.

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

22. His guidance acknowledges that although the police are the most obvious users of section 30(1)(a), there may be other public authorities who have a duty to investigate offences which may lead to a suspect being charged.
23. In this case, the Commissioner is satisfied that the withheld information was held in relation to a specific investigation conducted by the IOPC of the type described in section 30(1)(a)(i) of FOIA. He is therefore satisfied that the exemption provided by section 30(1)(a)(i) is engaged.

The public interest test

24. Section 30(1)(a)(i) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
25. In accordance with his 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.
26. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations.
27. In applying the public interest test in a case such as this, where this exemption is found to be engaged, the Commissioner must consider whether the disclosure of the requested information could have a harmful impact on the ability of the IOPC to carry out effective investigations.
28. The Commissioner is mindful that the role of the IOPC is to investigate the most serious and sensitive incidents and allegations involving the police. While police forces deal with the majority of complaints against police officers and police staff, the Commissioner understands that police forces must refer the most serious cases to the IOPC.
29. Clearly, it is not in the public interest to jeopardise the ability of the IOPC to carry out such work effectively.

Public interest arguments in favour of disclosure

30. The complainant did not put forward any arguments in favour of disclosure.
31. Recognising a public interest in disclosure, the IOPC told the complainant:

"We accept that there is in general a legitimate public interest in publishing information about an investigation into the conduct of police officers, as this serves to inspire public confidence around the police complaints process. Providing an account of the IOPC's findings would enable the public to decide whether the matter has been properly investigated and would serve the public interest in openness and in accountability for decision making and the use of public funds".

Public interest arguments in favour of maintaining the exemption

32. Arguing in favour of maintaining the exemption, the IOPC told the complainant:

"There is a considerable public interest in ensuring that investigations, proceedings and prosecutions are conducted effectively. This requires the avoidance of prejudice either to particular investigations or proceedings, or to the investigatory and prosecution process more generally. In addition, the protection of individuals who co-operate with the police ensures that people are not deterred from making statements or reports by the fear that they may be publicised".

33. It also told him:

"Whilst our investigation is complete, further proceedings are being considered by the Coroner. Disclosure of this information prior to the Coroner's decision has the potential to pose a real risk of prejudice to any resulting proceedings. Such prejudice would be contrary to the interests of justice and harmful to public confidence in the IOPC and the police complaints system more generally".

34. The IOPC told the complainant that once the Coroner's decision has been made, and on completion of any related proceedings, a decision will be made about what information will be released to the public regarding its findings and conclusions.

35. It referred the complainant to its policy regarding the publication of its findings and conclusions, telling him:

"Our policy is designed to respond to the public interest in transparency and accountability while taking into account the competing public interest in preserving the confidentiality of investigations and the persons to whom they relate".

36. It argued that its commitment to publishing an account of the investigation at the appropriate time further reduces the public interest in compliance with his request.

37. In its submission, the IOPC told the Commissioner:

"Since our last correspondence with [the complainant], the Coroner has indicated that there will indeed be an inquest into [name redacted]'s death".

38. In support of its continued reliance on section 30 to withhold the requested report, the IOPC explained that the case remains as 'open' status on its case management system "and will do so at least until the inquest". It told the Commissioner:

"Our main concern is that the impending inquest is not in any way prejudiced due to inappropriate or premature disclosure of information relating to this case..."

39. The IOPC also told the Commissioner:

"We maintain that it would categorically be against the public interest to release any information to the 'world at large' under the FOIA prior to the conclusion of the inquest and any other associated proceedings for the reasons we outlined on our original response. It is not possible to know of the impact on the investigation case, nor our report publication decision, until the outcome of the inquest is known. The inquest could result in a further CPS review of the evidence that would have the potential to lead to a further prosecution, which the withheld information in this case could be relevant to".

40. It also explained:

"We have concluded that the public interest in maintaining the exemption in relation to information concerning an investigation that remains the subject of an ongoing process is of very significant weight..."

Balance of the public interest

41. When considering the public interest in maintaining the exemptions it is necessary to be clear what they are designed to protect. 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.

42. In reaching a conclusion on the balance of the public interest in this case, the Commissioner has considered the public interest in the IOPC disclosing the requested information. The Commissioner has also

considered whether disclosure 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.

43. As set out above, the purpose of section 30 is to protect the effective investigation and prosecution of offences. Clearly, it is not in the public interest to jeopardise the ability of the IOPC to investigate serious complaints and incidents involving the police effectively.
44. Set against this, the Commissioner recognises the importance of the public having confidence in public authorities. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases.
45. He also acknowledges the public interest in promoting transparency, accountability and public understanding with regard to decisions made by public authorities.
46. The withheld information comprises the IOPC's report into a death. The Commissioner is mindful of the sensitivity of the matter under consideration. He also recognises the IOPC's commitment to publish information about this case, if appropriate, in the future.
47. In his guidance, the Commissioner acknowledges that the stage an investigation or prosecution has reached will have a bearing on the extent of any harm caused by the disclosure.
48. In this case, he acknowledges that the IOPC stated that, despite the length of time that has passed since the death occurred, this remains an open case. He has also taken into consideration that, at the time of the request, further proceedings were being considered by the Coroner.
49. When dealing with a complaint that information has been wrongly withheld the Commissioner will consider the situation at the time at which the authority originally dealt with the request. He does, however, acknowledge that, at the time of writing this notice, the Coroner has not set a date for the inquest.
50. Taking all the above into account, while the Commissioner accepts that disclosing the withheld information would be likely to promote transparency, he considers that the public interest in disclosure is outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined.
51. The Commissioner is therefore satisfied that the IOPC was entitled to rely on section 30(1)(a)(i) of FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

52. As the Commissioner has concluded that this exemption is properly engaged in respect of the withheld information in its entirety, he has not considered the other exemption cited.

Right of appeal

53. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.
55. 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
Wilmslow
Cheshire
SK9 5AF