

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 October 2022

Public Authority: Chief Constable of Surrey Police
Address: PO Box 101
Guildford
Surrey
GU1 9PE

Decision (including any steps ordered)

1. The complainant has requested video recordings and/or written transcripts of any interviews Surrey Police conducted with Jimmy Savile. Surrey Police said it had transcribed the interview it held with Savile and it referred him to redacted copies that are in the public domain. It refused the remainder of the request under section 14(1) of FOIA, on the grounds it was vexatious due to burden. It also argued that, in the event section 14 did not apply, the information was also exempt under section 38 (Health and safety) of FOIA.
2. During the Commissioner's investigation, Surrey Police confirmed that it did not hold any video recording of the interview it had conducted with Savile in 2009 (it only held an audio tape).
3. The Commissioner's decision is that, on the balance of probabilities, Surrey Police does not hold the remaining information specified in the request.
4. The Commissioner requires no steps as a result of this decision.

Request and response

5. On 21 October 2021, the complainant wrote to Surrey Police and requested information in the following terms:

"I would like video copies and/or transcripts of any interviews you have conducted on Jimmy Saville [sic] from when you were investigating allegations against him."
6. Surrey Police responded on 26 October 2021. It explained that it had previously disclosed a redacted transcript of its interview with Savile, which was published by various media sources¹.
7. Surrey Police refused to comply with the remainder of the request under section 14 of FOIA, on the grounds that the work involved in preparing what it referred to as "the tapes", for disclosure, would be excessive.
8. Surrey Police said that section 38(1) was also engaged, as disclosure of the tapes may cause emotional harm to Savile's victims and their families.
9. On 17 November 2021, the complainant requested an internal review of Surrey Police's decision not to disclose the video recording.
10. Surrey Police provided the outcome of the internal review on 16 February 2022. It maintained that sections 14 and 38 of FOIA had been correctly applied, stating:

"I can confirm that no information is held relating to video interviews of Jimmy Savile...Surrey Police has previously taken the decision not to disclose copies of the audio tapes for the reasons articulated in the original response letter".

Scope of the case

11. The complainant contacted the Commissioner on 16 February 2022 to complain about the way his request for the video recording had been handled. He did not complain about Surrey Police's response to his request for a copy of the transcript of the interview, and so the Commissioner has not considered that part of the request further.

¹ See, for example, <https://www.theguardian.com/media/interactive/2013/oct/16/jimmy-savile-police-interview-transcript>

12. As regards the video recording, the complainant argued:

“There would be no risk to the health and safety of Jimmy Saville's [sic] victims if any names were simply muted out of the interview tape. If anything, having a greater insight into the way this investigation was conducted may indeed offer some comfort to them because they may feel let down by the police. If this video was released it would surely reveal why the police weren't able to prosecute him at the time and may allow them some closure.”

13. During the Commissioner's investigation, Surrey Police said that it does not hold a video recording of its interview with Savile and that it only holds an audio recording of that interview.

14. The analysis below considers Surrey Police's compliance with section 1 of FOIA. The Commissioner has commented on the delay in conducting the internal review in the 'Other matters' section.

Reasons for decision

Interpretation of request

15. Although he specifically asked for a copy of the video recording of any interview between Surrey Police and Savile, Surrey Police treated the request as being for a copy of the audio recording. It has clarified that it does not hold a video recording.

16. The Commissioner considers that notifying the complainant of the existence of an audio recording was helpful and that it was in accordance with the duty under section 16 of FOIA, to provide advice and assistance to those making requests.

17. However, the Commissioner's guidance on interpreting requests² states that public authorities should respond to a request based on the particular wording of the request itself. In this case, the request describes particular distinguishing characteristics of the information being sought (ie a video recording of any interview with Savile). The Commissioner considers the wording of the request was clear, unambiguous and not open to more than one possible interpretation.

18. Furthermore, section 1 of FOIA makes it clear that when handling a request, a public authority's primary duty is to consider whether, as a

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/#read>

matter of fact, the requested information is held, before going on to consider whether it may be disclosed.

19. The Commissioner has therefore considered whether Surrey Police holds a copy of the information that was actually described in the request (ie a video recording of the interview with Savile).

Section 1 – General right of access

20. Section 1(1) of FOIA states:

“Any person making a request for information to a public authority is entitled-

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

21. In this case, Surrey Police told the Commissioner it does not hold a copy of a video recording of its interview with Savile. It says the interview was instead captured on audio tape. It says the audio tape is the only recording it holds of any interview it held with Savile.
22. In cases where there is some question as to what information a public authority holds, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of ‘the balance of probabilities’. In essence, the Commissioner will determine whether it is likely or unlikely that the public authority holds the requested information.
23. The Commissioner understands that at the time of Surrey Police’s interview with Savile in 2009, the video recording of police interviews was not the commonplace procedure that it is today. He also notes that the published transcript of the interview commences with the statement that the interview is being tape recorded.
24. The Commissioner liaised with Surrey Police in 2013 regarding the transcription of the interview tapes and their subsequent publication, with redactions. He also considered a subsequent complaint about an FOIA request for the audio recording of the interview³. When considering that request it was necessary for him to listen to sample extracts of the audio recording.

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1020038/fs_50526275.pdf

25. The Commissioner has therefore been presented with evidence which strongly supports Surrey Police's position that the only recording it holds of the Savile interview is in the form of an audio recording, and that it does not hold a video recording.
26. That being the case, the Commissioner is satisfied that, on the civil standard of the balance of probabilities, Surrey Police does not hold the information described in the request (ie a copy of a video recording of the interview).

Other matters

27. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Requesting the audio recording

28. As set out above, Surrey Police holds an audio recording of its 2009 interview with Savile. The Commissioner considered a complaint about a request for access to that audio recording in 2014.
29. The Commissioner's detailed rationale for determining whether or not the audio recording should be disclosed can be read in the decision notice referred to in paragraph 24, above.
30. Despite the passage of time, he is not aware of any change in circumstances which might lead him to alter that decision. He therefore considers it unlikely that a fresh request for the audio recording would be likely to succeed, for the reasons set out in his previous findings.

Internal review

31. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
32. The Commissioner considers that, where offered, internal reviews should be completed promptly. Although no explicit timescale is laid down in the code of practice, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer, but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.

33. In this case, the complainant requested an internal review on 17 November 2021. Having not received a response, he asked the Commissioner to intervene. Surrey Police then responded on 16 February 2022, 62 working days later. It did not provide an explanation for the delay.
34. By failing to complete the internal review within the timescales specified above, the Commissioner considers that Surrey Police did not conform with the Section 45 code of practice.
35. The Commissioner uses intelligence gathered from individual cases to inform his insight and compliance function. This aligns with the goal in his draft "Openness by design"⁴ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting systemic non-compliance, consistent with the approaches set out in his "Regulatory Action Policy"⁵.

⁴ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁵ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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
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Wycliffe House
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