

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 October 2022

Public Authority: Commissioner of Police of the Metropolis
Address: New Scotland Yard
Broadway
London SW1H 0BG

Decision (including any steps ordered)

1. The complainant requested information from the Metropolitan Police Service ("MPS") about the murder of Sandra Rivett and the disappearance of the seventh Lord Lucan. MPS cited the section 30(3) (Investigations and proceedings) and section 40(5) (Personal information) FOIA exemptions to neither confirm nor deny holding the requested information.
2. The Commissioner decided that MPS had correctly engaged the section 30(3) FOIA exemption and that the public interest favoured maintaining the exemption. No steps were required.

Request and response

3. On 7 August 2021 the complainant made a detailed request to MPS for information under FOIA relating to the murder of Sandra Rivett and the disappearance in 1974 of the then seventh Earl of Lucan (Lord Lucan):

"1....Does the Metropolitan Police's investigation (s) into the murder of Sandra Rivett and or the disappearance of Richard John Bingham, 7th Earl of Lucan (aka Lord Lucan and John Bingham) remain active and open? Can you state if one or both investigations remain open? Can you state which investigations remains open?"

2...If the investigation(s) remain active and open how many officers are currently investigating either the murder of Sandra Rivett and or the disappearance of the 7th Earl of Lucan and or both things simultaneously.

3...Since 1 January 2016 has [redacted] and or anyone acting specifically on his behalf written to and or communicated with the Met about any of the following matters.

(a)...[redacted]

If the answer is yes, can you, please provide a copy of this correspondence and communication. Please provide an actual copy of written correspondence (together with any letter headings, signature, and design features) rather than just excerpts from that correspondence. Please redact any information which does not relate to [redacted] but please redact the information as it appears in the original correspondence so I can be sure of the location and extent of any redaction.

4...Since 1 January 2016 has the Metropolitan Police written to and or communicated with [redacted] and or anyone acting specifically on his behalf about any of the issues outlined in [redacted]. If the answer is yes, can you, please provide a copy of this correspondence and communication. Please provide an actual copy of written correspondence (together with any letter headings, signature, and design features) rather than just excerpts from that correspondence. Please redact any information which does not relate to [redacted] but please redact the information as it appears in the original correspondence so I can be sure of the location and extent of any redaction."

4. MPS issued a refusal notice on 13 October 2021 and relied on the section 40(5) FOIA and section 30(3) FOIA exemptions to neither confirm nor deny (NCND) holding information within its scope. MPS said that they needed to protect the integrity of investigations which remained unsolved; MPS added that an unsolved murder was never closed but might not be actively worked on at all times.
5. MPS judged that the public interest balance favoured maintaining NCND and an internal review of 17 November 2021 maintained the MPS NCND position. In his request for a review, the complainant had particularly questioned the MPS NCND stance for his Question 3 saying that any MPS correspondence and communications were unlikely to be about the crime alone.

Scope of the case

6. The complainant contacted the Commissioner on 24 November 2021 to complain about the way his request for information had been handled. He said he had made earlier connected requests to MPS for information about related matters, several of which the Commissioner had investigated.
7. The Commissioner understands that the Courts have decided that, for some civil law purposes, the seventh Lord Lucan can now be presumed dead. He considered the MPS reliance on the sections 30(3) and 40(5) FOIA exemptions to NCND holding the requested information.
8. In his investigation, the Commissioner has considered representations he received from the complainant and MPS; he also had regard for his own published guidance and for relevant case law.

Reasons for decision

Neither confirm nor deny (NCND)

9. Section 1(1)(a) FOIA requires a public authority to inform a requester whether it holds the information specified in a request. The decision to use a NCND 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 for NCND in most cases, will be considering the likely consequences of confirming or denying whether or not particular information is held.
10. Public authorities need to use the NCND response consistently, over a series of comparable requests, regardless of whether or not they actually do hold the requested information. This is to ensure that a NCND response cannot be taken as an indication of whether or not information is in fact held.
11. MPS neither confirmed nor denied holding any of the requested information in its entirety, citing the sections 40(5) (personal information) and 30(3) (investigations and proceedings) FOIA exemptions. The issue for the Commissioner to decide is not disclosure of any requested information that may be held, it is solely the issue of whether or not the MPS were entitled to NCND holding information of the type requested by the complainant.

Section 30(3) - investigations and proceedings

12. Section 30(3) 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) FOIA.

The parties' views

13. In his representations, the complainant told the Commissioner that a presumption of disclosure was inherent in the FOIA regime. He said he had made previous unsuccessful requests for MPS information about connected matters. However this request was different as he was seeking communications about [redacted] belief that the seventh Earl was dead. He said, without supporting evidence, that relevant material could be disclosed without prejudicing any actual enquiry.
14. The complainant said that the Courts had pronounced the missing Lord Lucan as dead and that the MPS insistence on keeping the matter open after 47 years contrasted sharply with the MPS closure of the investigation into another high profile murder after only 27 years. He said that the requirement for secrecy should not extend to documents and correspondence which could have no bearing on any actual lines of enquiry. He questioned whether MPS might have other reasons for preserving 'a cloak of secrecy' over all related documents including documents that were not about any ongoing enquiries.
15. MPS told the Commissioner that the section 30(3) FOIA exemption was applicable to the information being requested. This was because, if the information requested were held, it would fall within the scope of section 30(1)(a). MPS has a duty to conduct investigations with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it. Consequently MPS as a public authority was entitled to rely upon Section 30(3) FOIA to the extent that as here, the requested information, if held, could have been held at any time for the purpose of such investigations.
16. MPS said that the Commissioner's guidance titled 'Exemption for investigations and proceedings' states¹:

"the phrase "**at any time**"... means that information is exempt under section 30(1) if it relates to an **ongoing, closed** or **abandoned investigation**. It extends to information that has been obtained prior

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

to an investigation commencing, it is it subsequently used for this purpose”.

17. MPS said that, if relevant information was held, the section 30(1)(a) FOIA exemption would apply to it. The phrase “at any time” meant that information could be exempt under section 30(1) if it related to a specific ongoing, closed or even a currently abandoned investigation.
18. MPS added that the section 30 FOIA exemption was designed to protect the integrity of investigations conducted by public authorities. It had therefore been applied to the entirety of this request.
19. MPS noted that, while they had never placed information relating to this case into the public domain officially, any acknowledgement under FOIA would do just that. A statement confirming or denying whether information is held for any part of the request would reveal something about those persons, that is it would disclose to the world whether or not they had been in contact with MPS. MPS added that, once FOIA access to information had been granted to one person, the information must then be communicated to any other individual upon request.
20. MPS said, in relation to the complainant’s question 2, that MPS could not confirm or deny the number of officers currently actively investigating a case. The reason being that if, for example, the number of officers currently investigating a case was zero and there were no active lines of inquiry and MPS confirmed zero, that would provide information of potential value to an interested onlooker. If at a later date, a further request was received and MPS confirmed the number of officers had increased from zero to ten that could potentially provide insight into intelligence received and new lines of inquiry which were actively being followed. Such insight would provide intelligence and investigative activity and could ultimately hinder the prevention and detection of crime and apprehension of offenders.
21. MPS noted the Commissioner’s guidance on the duty to confirm or deny and that, in many cases, the more specific the request, the lower was the likelihood of the duty arising. The complainant’s request focused on a specific investigation rather on investigations in general. That increased the harm that would be caused by confirming or denying that the information was held.

Public interest test

22. Section 30(3) FOIA is a qualified exemption. Therefore, MPS had to consider the public interest test contained at section 2(1) FOIA and determine whether the public interest in maintaining the NCND

exemption outweighed the public interest in confirming whether or not the requested information was held.

23. MPS said that factors in favour of confirmation or denial included that MPS needed to demonstrate that they had been accountable and transparent in their actions, and thus telling the public how MPS conducted its business. Confirmation or denial would demonstrate that MPS were being open, transparent and accountable. It would also dispel any rumours or misconceptions the public might have regarding information held.
24. MPS said that factors for maintaining the exemption included that the section 30 FOIA exemption protected the integrity of investigations conducted by public authorities. If MPS held the information requested, it would be held solely for the purpose of investigating crime. MPS would not wish to confirm or deny to the public specific elements of a police investigation or what information may or may not be held in relation to an individual or third party.
25. MPS said that the complainant's request had specifically asked for information that, if held, would relate to an investigation which the MPS has a duty to conduct. The request related to specific matters rather than to MPS or investigations in general. As such, this would increase the harm which would be caused by MPS confirming or denying holding the requested information.
26. MPS also said that they needed to consider the consequences of public confirmation or denial. It was not possible to be certain of the relevance or significance of specific pieces of information to police investigations as, even when investigations and proceedings appeared to have been concluded, there was often a realistic possibility of an investigation being reopened to investigate new lines of enquiry, or review existing evidence. The scope of an investigation could be broadened or narrowed, or new investigations could be carried out that related to, or overlapped with, earlier enquiries.
27. MPS added that there would be an expectation that information previously collated as part of related investigations would be kept confidential. Confirmation or denial would be likely to inhibit the ability of MPS to prevent and detect crime. Individuals might well be less inclined to come forward, or co-operate with the police if they believed that information they provided, or information about them, would be likely to be disclosed to the world in circumstances sitting outside of the criminal justice process. Therefore MPS believed that confirmation or denial could discourage suspects, witnesses or even victims of crime from coming forward if they anticipated that information they provided could later be disclosed publicly in response to FOIA requests. It was not

in the public interest to disclose any information held regarding allegations or investigations.

28. MPS added that whilst the information might interest the complainant, the public interest was not what interested the public or a few individuals, the public interest was what would be of greater good to the community as a whole. It was not in the public interest for MPS to confirm or deny holding information that might compromise the ability of MPS to accomplish its core function of law enforcement.
29. MPS decided that the balance of the public interest favoured maintaining their NCND position to safeguard the investigation and prosecution of criminal matters. The section 30(3) FOIA exemption was therefore engaged.

The Commissioner's view

30. The section 30 FOIA exemption preserves the ability of relevant public authorities to carry out effective investigations, prosecute offenders and protect confidential sources of police information. It prevents disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including prejudice to any future investigations and proceedings. The requested information, if held, would relate to specific police investigations conducted by MPS. The Commissioner therefore decided that the exemption provided by section 30(3) FOIA was engaged.
31. Key to the balance of the public interest in a case where this exemption is found to be engaged is whether confirmation or denial could have a harmful impact on the ability of the police to carry out effective investigations. It would not be in the public interest to jeopardise the ability of MPS to investigate crime effectively.
32. In reaching a conclusion on the balance of the public interest the Commissioner considered the public interest in the MPS confirming or denying whether the requested information is held. He also considered whether confirmation or denial would be likely to harm an investigation, which would not be in the public interest, and what weight to give to the competing public interest factors.
33. Whilst, on the face of it, the public interest in confirmation or denial in this case is limited, because the request relates to an incident which occurred decades earlier. The Commissioner noted that there is always a public interest in transparency and accountability in relation to information held by public authorities. Against this, he recognised the very strong public interest in protecting police investigations.

34. Taking all of the above into account, the Commissioner decided that MPS had applied the section 30(3) FOIA exemption appropriately and that the public interest in maintaining the exclusion of the duty to confirm or deny outweighed the public interest in disclosing whether or not MPS holds the information.
35. In the light of this decision, the Commissioner did not go on to consider application of the section 40(5) FOIA exemption which MPS had also cited.

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

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