

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2022

Public Authority: Chief Constable of Sussex Police
Address: Police Headquarters
Malling House
Malling
Lewes
East Sussex
BN7 2DZ

Decision (including any steps ordered)

1. The complainant requested information relating to a named police operation.
2. Sussex Police provided some relevant information, but refused to provide the substantive requested information, citing section 30 (investigations and proceedings) of FOIA.
3. The Commissioner's decision is that Sussex Police was entitled to rely on section 30(1)(a)(i) to withhold the requested information.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 25 February 2022, the complainant wrote to Sussex Police and requested information in the following terms:

"[I] would like to make a request under the Freedom of Information Act for all information relating to [named police operation]

...

I would like to know how many times and when [named police operation] has been fully reviewed by Sussex police. I would also

like to request a copy of the latest police review of [named police operation]”.

6. Sussex Police responded on 9 May 2022, apologising for the delay in responding. It provided some information regarding the review cycle, but refused to provide the substantive requested information, citing section 30 (investigations and proceedings) of FOIA.
7. Following an internal review, Sussex Police wrote to the complainant on 27 May 2022 maintaining its position that section 30 applies.

Scope of the case

8. The complainant contacted the Commissioner on 7 July 2022 to complain about the way his request for information had been handled. He explained that he has requested a copy of the latest police review into an incident that occurred in 1983:

“The police review is titled [operation name redacted] and was conducted in 2016/2017”.

9. He told the Commissioner he was challenging the refusal to provide the requested information “on the grounds of overwhelming public interest to release the information”. He described the information as information relating to “an historic crime which remains unsolved”.
10. He also stated that Sussex Police has released other such case reviews on other occasions.
11. Although the Commissioner understands from the complainant that Sussex Police would appear to have complied with similar requests, he does not consider that this sets an automatic precedent for disclosure under FOIA. In the Commissioner’s view, each case must be considered on its merits.
12. During the course of the Commissioner’s investigation, Sussex Police confirmed its application of section 30 to the withheld information.
13. The analysis below considers Sussex Police’s application of that exemption to the requested information.

Reasons for decision

Section 30 investigations and proceedings

14. 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...”.

15. 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.

16. 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?

17. The first step is to address whether the requested information falls within the class specified in section 30(1)(a) of FOIA.

18. In its correspondence with the complainant, Sussex Police acknowledged that the case remains unresolved. It told the complainant:

“It is not necessary for the exemption to apply that the investigation leads to someone being charged or convicted of an offence. Section 30 will still protect information if a police investigation fails to establish that an offence has been committed or concludes that there is insufficient evidence to charge anyone. Also, an investigation does not have to be ongoing, and [in] this case the investigation will be resumed should new information come to light”.

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 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>

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. Section 30 of 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.
22. As a police force, Sussex Police has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. It therefore has the power to carry out investigations of the type described in section 30(1)(a)(i) of FOIA.
23. The Commissioner is satisfied that the withheld information was held in relation to a specific investigation conducted by Sussex Police 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.

Public interest arguments in favour of disclosure

25. The Commissioner acknowledges that the complainant has an interest in the subject matter of this request.
26. Sussex Police recognised that release of the requested information would reinforce the force's commitment as an open and transparent service in respect of the information it holds. It accepted that disclosure:

"...would also show a recognition of accountability into where the police are currently focusing their investigations, raising awareness of previous actions taken within the case and any evidence considered by the force in relation to [the Operation]".

Public interest arguments in favour of maintaining the exemption

27. In favour of maintaining the exemption, Sussex Police argued disclosure of this information could not only jeopardise the investigation but also any future judicial process.

28. It told the complainant:

"There is an inherently strong public interest in public authorities carrying out investigations to prevent and detect crime. This ensures that offenders are brought to justice, the public are protected and that the necessary checks and balances are in place to safeguard public funds and resources. To allow the effectiveness of investigations to be reduced by conducting them in public is not in the public interest. Sussex Police need to be allowed to carry out investigations effectively away from public scrutiny to ensure accurate, thorough and objective investigations".

29. It also told him:

"If information of this nature were to be disclosed this could potentially compromise this investigation and any future linked investigations. Undetected/ Cold cases have the potential to [be] reopened and further investigated at any point in the future should new information come to light, there is also a [possibility] that cases can be linked to repeat offending and serial offending. It therefore remains the case that other than information already in the public domain, information relating to the investigation would prejudice that investigation".

30. In that respect, it argued that inappropriate disclosure of information about the investigation:

"... would interfere with that investigation by allowing suspects to change their behaviour, destroy evidence or prepare alibis based on their knowledge of the information known by Sussex Police. This is particularly true for a disclosure of any information related to any recent reviews of [the Operation]".

31. Similarly, Sussex Police told the Commissioner:

"Our public interest test found that it is inherently in the public interest for serious crimes of this nature to be investigated by the appropriate authorities with sufficient space in which to conduct

those investigations thoroughly and unhampered by attention in the media. It is our belief that the effectiveness of those investigations and any future judicial processes would be seriously compromised if the information related to the case were in the public domain”.

32. It explained that placing information into the public domain could alert individuals to the status of the investigation “which would be useful to them to evade detection or commit further crimes”.

33. Sussex Police also considered it possible that the information, if disclosed:

“... could be used to incorrectly link this case with others or to make false accusations or name suspect perpetrators in error”.

Balance of the public interest

34. 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.

35. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations.

36. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in Sussex Police 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.

37. 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.

38. The Commissioner acknowledges the importance of the public having confidence in public authorities that are tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases, such as the one that is the subject matter of the request under consideration.

39. The Commissioner 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. In this case, he is aware that

the complainant has an interest in the information that Sussex Police holds.

40. The Commissioner recognises that disclosure of the requested information would meet the public interest in transparency and accountability of Sussex Police.
41. However, while noting the public interest arguments in favour of disclosure, the Commissioner is mindful that 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 police to investigate crime effectively.
42. In the circumstances of this case, the Commissioner has accorded greater weight to the arguments surrounding the public interest in protecting the ability of Sussex Police to conduct effective investigations.
43. He accepts that it would not be in the public interest to disclose information that would prejudice the investigatory and prosecution process by undermining the investigation and detection of criminal activities.
44. This is the very activity which the exemption is formulated to protect.
45. Taking all of the above into account, and having given due consideration to the arguments put forward by both parties, the Commissioner is satisfied that section 30(1)(a) has been applied appropriately on this occasion and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

Right of appeal

46. 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

47. 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.
48. 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
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