

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2023

Public Authority: Chief Constable of Hampshire Constabulary

Address: Mottisfont Court
Tower Street
Winchester
SO23 8ZD

Decision (including any steps ordered)

1. The complainant has requested information from Hampshire Constabulary (the Police) about a historical murder case. The Police refused to disclose the requested information, citing section 30 (investigations and proceedings) and section 40 (personal information) of FOIA as its basis for doing so.
2. The Commissioner's decision is that the Police correctly relied on section 30 of FOIA to withhold the requested information, and that the public interest favours maintaining the exemption.
3. The Commissioner does not require the Police to take any further steps.

Request and response

4. On 25 July 2022, the complainant wrote to the Police and requested information in the following terms:

"I would like access to the records of a woman called Sharon Carr, who murdered [redacted] Katie Rackliff in 1992."
5. The Police responded on 27 July 2022. It stated that it could neither confirm nor deny that it held the requested information, citing section 40(5) of FOIA.

6. The complainant contacted the Police again on 23 August 2022 to dispute its response.

"I have been in contact with Citizens Advice Bureau and they advised I appeal this decision, so I would like to for the following reasons:

1. Sharon Carr killed Katie Rackliff on 7th June 1992, I [redacted] do not understand how a 12 year old girl got her from Camberley to Farnborough about five miles away.
 2. She has said that she was in a vehicle with two 'older teenage males' that night, and named them.
 3. These men were interviewed by police, but released as I believe they gave each other an alibi.
 4. I want to examine their statements, as years past by before they were questioned."
7. The Police responded on 14 September 2022. It now confirmed that it held information, but stated that the information within the scope of the request was exempt from disclosure by virtue of section 30(1)(a) and section 40(2) of FOIA.
 8. Following an internal review the Police wrote to the complainant on 27 September 2022. It upheld its position, that the information is exempt from disclosure by virtue of section 30 and section 40 of FOIA.

Reasons for decision

Section 30 – investigations and proceedings

9. Section 30(1)(a) provides 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 any investigation which the public authority has a duty to conduct, 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.
10. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1)(a) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
11. Consideration of section 30(1)(a) is a two-stage process. Firstly, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test.

Is the exemption engaged?

12. The first step is to address whether the requested information falls within the class specified in section 30(1)(a) of FOIA.
13. The Commissioner has published guidance on section 30 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.
14. 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 says¹:

"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..."
15. The Police confirmed that the requested information relates to a historical murder case which resulted in the conviction of a juvenile.
16. The request clearly relates to a specific criminal investigation and the Commissioner is therefore satisfied that the exemption is engaged.

The public interest test

17. Section 30(1)(a) 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 circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
18. 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.

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

19. The purpose of section 30 of FOIA is to protect the Police's (and other applicable public authorities) function of carrying out effective investigations.

Public interest arguments in favour of disclosure

20. The Police recognises the general public interest and benefits of being open and transparent in relation to the high-profile investigations which it is responsible for conducting.
21. It is widely reported that the offender claimed to have been aided by two male accomplices, who subsequently provided alibis for the night in question during the Police's investigation.
22. In this particular case, the Police recognises the concerns surrounding the alleged involvement of third parties in this historical murder, and that disclosure of the requested information would provide reassurance that the Police had conducted a thorough investigation.
23. The complainant clearly has a personal interest in the requested information and wishes to conduct their own investigation and reach their own conclusions regarding the events which occurred on the night of the murder. They also argue that if the two males are innocent of any involvement in the murder then disclosure would help clear their names.

Public interest in favour of maintaining the exemption

24. The Police argued:

"By its very nature, information held relating to criminal investigations is sensitive in nature. In respect of maintaining the exemption under the public interest, it is our view that disclosure of the data held in connection with this historical murder investigation would undermine the Police's investigation process. It would significantly undermine the reassurance we provide to individuals who assist us with criminal investigations. This would have the broader effect of undermining the relationship the Police have with the community when it comes to criminal investigations and their understanding and expectations in respect of police disclosures. We do not believe this historical case justifies such a course of action."

25. The Police also noted that maintaining the confidentiality of information gathered for the purpose of a criminal investigation is important to avoid the deterrent, or chilling, effect on future investigations, and the perception that there might be disclosure to the world at large.

Balance of the public interest

26. In reaching a view on where the balance of the public interest lies in this case, the Commissioner has taken into account the nature of the requested information as well as the views of both the complainant and the Police.
27. He accepts that it is important for the public to have confidence in the Police's investigative capabilities. Accordingly, there is a general public interest in disclosure of requested information in order to promote accountability and transparency and to maintain confidence and trust.
28. The Commissioner understands the complainant's personal interest in gaining access to the requested information, however, it is important to reiterate that a disclosure under FOIA is a disclosure to the world at large and not just a private transaction between the public authority and the applicant.
29. He also recognises that there is a very strong public interest in protecting the investigative capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – in this case, the public interest in the Police being able to effectively conduct its function of carrying out criminal investigations.
30. The Commissioner does have concerns that disclosing information considered as part of a criminal investigation, which identifies individuals who assisted with the investigation, could create a perception among the wider public that sensitive information about criminal investigations may be disclosed to the world at large, even where the evidence or statements have not resulted in prosecution. He considers that there is a real chance this may deter people (including witnesses, complainants and suspects) from coming forward and cooperating with prosecuting authorities, particularly where criminal offences have been alleged. There is a very significant public interest in avoiding that outcome and it is a factor of some weight in favour of maintaining the exemption in this case.
31. Accordingly, the Commissioner is satisfied that the Police is entitled to rely on section 30(1)(a) of FOIA to refuse to disclose the requested information and has therefore not gone on to consider whether section 40(2) was engaged.

Right of appeal

32. 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

33. 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.
34. 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

Catherine Fletcher
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