

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 May 2023

Public Authority: Chief Constable of Hampshire & Isle of Wight Constabulary

Address: Mottisfont Court
Tower Street
Winchester
SO23 8ZD

Decision (including any steps ordered)

1. The complainant has requested information on recent deaths in the locality. Hampshire & Isle of Wight Constabulary ('HIOWC') refused the request, citing sections 30 (Investigations and proceedings) and 38 (Health and safety) of FOIA.
2. The Commissioner's decision is that HIOWC was entitled to rely on section 30(1)(a) of FOIA to refuse the request.
3. The Commissioner does not require any steps as a result of this decision.

Request and response

4. On 13 February 2023, the complainant wrote to HIOWC and requested information in the following terms:

"Between 01/01/2022 to 01/01/2023, please provide from your records system a list of subjects and their DOB, who have an involvement marked as 'deceased' in the occurrence type 'sudden death' or 'unexpected death' or 'homicide'.

I need no information in regards to the investigation itself, just a list of those who have an involvement listed as 'deceased'. The information will not be exempt under Personal Information as they are deceased."

5. HIOWC responded on 9 March 2023. It refused the request, citing the costs exemption at section 12 of FOIA. By way of assistance, it provided a link to statistical crime data it proactively publishes on its website.
6. The complainant requested an internal review the same day, setting out how the information might be collated within the costs limit. HIOWC provided the internal review on 5 April 2023. It revised its position, confirming that it held the requested information, but that it was exempt from disclosure under sections 30(1) and 38 of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 6 April 2023 to complain about the way her request for information had been handled. She disagreed with the application of sections 30(1) and 38 of FOIA to refuse her request.
8. She said the information was already obtainable from other public sources and that any concerns about placing sensitive information in the public domain could be addressed by HIOWC sending her the information privately.
9. The analysis below therefore considers whether HIOWC was entitled to rely on either of the exemptions it cited, to refuse to disclose the names and dates of birth of people whose deaths, in the 12 months to 1 January 2023, were recorded as 'sudden death', 'unexpected death' or 'homicide'.

Reasons for decision

10. Section 30(1)(a) of FOIA states:

"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 .

11. 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. It is not necessary for the investigation to lead to someone being charged with, or being convicted of, an offence.
12. The exemption 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. Information must simply have been held for a specific or particular investigation.
13. The withheld information in this case is the names and dates of birth of people whose deaths, in the 12 months to 1 January 2023, were shown in HIOWC's records as 'sudden death', 'unexpected death' or 'homicide'.
14. The complainant argued:

"The information requested is not for investigation material but instead data which is held by police (namely deceased's names), that happens to be recorded as 'deceased'. The fact a record exists, or appears as part of this request, does not mean it's been held for the purposes of an investigation into the death of a person, or a criminal investigation. As said, the request was not for the reason or cause of death, nor which type of death record it is. Therefore, this information is not sensitive. The information I request is available through public records available online, accessible through the press, coroner court lists, wills/probate rolls and records and the London Gazette."
15. The Commissioner understands that HIOWC does not hold a record of every death that occurs in the area it serves, as most deaths are not 'suspicious'. It told the Commissioner:

"The police are called to certain sudden deaths or unexpected deaths or homicides as part of our policing duties. In all circumstances we are required to investigation [sic] the cause of death and then if appropriate launch a criminal investigation."
16. As a police force, HIOWC has a duty to investigate whether a criminal offence has been committed by virtue of its core function of law enforcement. The Commissioner is satisfied that it has the duty to conduct investigations of the type described in section 30(1)(a)(i) of FOIA. The information that it holds which falls in scope of this request is in its possession by virtue of that core duty. The circumstances of each death will have been investigated with a view to determining to what extent further enquiries are needed.
17. The Commissioner is therefore satisfied that the exemption provided by section 30(1)(a)(i) of FOIA is engaged.

The public interest test

18. Section 30 is a qualified exemption and is subject to the public interest test at section 2 of FOIA. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
19. In accordance with his guidance¹, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
20. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the disclosure of the requested information could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively, and in turn, increase the risk of harm to members of the public from offenders.

Public interest arguments in favour of disclosure

21. The complainant did not offer any reasons as to why it was in the public interest for the information to be disclosed.
22. HIOWC said it had been unable to identify any public interest which would be served by disclosure.
23. The Commissioner recognises 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 actions and decisions which have been taken in relation to particular cases.
24. In this case, the Commissioner accepts that the disclosure of the requested information would promote transparency and accountability, and would add to the public's general understanding of the numbers of sudden or unexpected deaths which are investigated by HIOWC.

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

Public interest arguments in favour of maintaining the exemption

25. HIOWC told the Commissioner:

"...the police are required to conduct investigations in the circumstances outlined. We believe that although some investigations will need to be made public due to the seriousness or significant nature of certain cases, it is not in the public interest to provide the public with a list. The Police Service have a role to perform and the public only expect us to make public significant issues. As a result, the weight falls firmly in favour of non-disclosure in our view."

26. Responding to the complainant's suggestion that the information was, in any case, already available from various sources, it disputed this claim.

27. HIOWC also said that the complainant's invitation to disclose the information to her personally, misunderstood the purpose of FOIA, which was expressly to place information in the public domain.

Public interest balancing test

28. When balancing the opposing public interests in a case, the Commissioner will decide whether it serves the public interest better to disclose the requested information, or to withhold it because of the interests served by the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.

29. The Commissioner is not aware of the complainant's reasons for wanting the withheld information. While she may have personal reasons for requesting it, the Commissioner must primarily consider wider public interest issues.

30. The Commissioner accepts that there is a presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest.

31. As well as this general public interest in transparency, as set out above, the Commissioner acknowledges the public interest in accountability in law enforcement. The Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. FOIA is a means of helping to meet that public interest, as confidence will be increased by allowing scrutiny of how they discharge their duties. Disclosure of the withheld information in this case would inform the public on the treatment of deaths which appeared sudden or unexpected, and homicides.

32. However, at the time of the request, the time period it covered had only just elapsed and so the requested information was very 'recent'. It is likely that some deaths were still under review by the police, while they determined whether further investigation was needed. And in cases where further investigation was necessary, enquiries might not yet have been completed.
33. As a general rule, the Commissioner accepts that certain information held by the police about criminal investigations can impart intelligence which may be useful to those seeking to commit criminal offences and evade detection. In this case, disclosure of those deaths which were recorded by the police as 'sudden', 'unexpected' or 'homicide' would be useful to someone looking to conceal their criminal involvement in a death, as it would allow them to gauge the extent of any likely police interest in the matter, ie they would be able to ascertain whether a crime they have committed has been deemed as suspicious and reported to the police.
34. Disclosure may also, in future, deter people (witnesses who may have reported suspicions, and even suspects) from cooperating with the police, for fear that information which might be capable of identifying them may be placed in the public domain.
35. The Commissioner places considerable weight on these as arguments for withholding information, when the information requested includes names and other identifying information about potential victims.
36. The Commissioner considers that the complainant's proposal, that the information only be disclosed to her personally, would not address concerns about the information being made public. As HIOWC correctly pointed out, disclosure under FOIA is to be regarded as being to the world at large, with anyone being entitled to have access to the disclosed information, for any reason. The Commissioner is not able to facilitate any such disclosure outside of the FOIA regime.
37. As regards the complainant's contention that the withheld information is otherwise available from public records, the Commissioner acknowledges that individual death certificates are obtainable from the General Register Office², on application. However, he understands that the descriptors she has specified ('sudden death', 'unexpected death' and 'homicide') are not among the causes of death commonly shown on a death certificate. He therefore does not agree that the information would be disclosable in the manner the complainant has suggested.

² <https://www.gov.uk/general-register-office>

38. Mindful that the overarching interests served by section 30 are concerned with protecting the public from crime, the Commissioner also notes the capacity for the misuse of the withheld information for posthumous identity theft. The combination of name and date of birth, when cross matched with electoral roll information, can facilitate identity fraud and, because the individual has passed away, such fraud may go undetected for a long time.
39. Taking all the above into account, and having been presented with no persuasive countervailing public interest arguments in support of disclosing the information, the Commissioner is satisfied in this case that the public interest clearly favours maintaining the exemption. It follows that HIOWC was entitled to apply section 30(1)(a) to refuse to disclose the requested information.

Right of appeal

40. 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

41. 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.

42. 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
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Wycliffe House
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SK9 5AF