

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2023

Public Authority: Chief Constable of Northumbria Police
Address: Northumbria Police Headquarters
Middle Engine Lane
Wallsend
Newcastle upon Tyne NE28 9NT

Decision

1. The Commissioner's decision is that Northumbria Police is correct to rely on section 30(3) of FOIA to neither confirm nor deny it holds a specific case file as the information, if held, would be exempt from disclosure under section 30(1), which concerns investigations and proceedings.
2. It is not necessary for Northumbria Police to take any corrective steps.

Request and response

3. The complainant made the following information request to Northumbria Police on 9 May 2022:

"I made an FOI request several weeks ago and have heard nothing since. Could you please update me as to progress.

The request was for a copy of the police case file regarding [redacted] ([redacted]) sudden and unexpected death on [redacted] in [redacted].

I asked a number of questions following your communication of 07/03/2022 which you have had 1 month to consider. They are not difficult questions but you have refused to answer them."

4. Northumbria Police responded to the request on 18 October 2022 (its reference 577/22). It refused to confirm or deny it held the requested information under sections 40(5), 30(3), 31(3) and 38(2) of FOIA.
5. The complainant requested an internal review on 10 November 2022 and Northumbria Police provided one on 27 February 2023. It maintained its position.

Reasons for decision

6. This reasoning covers whether Northumbria Police is entitled to neither confirm nor deny it holds the requested information. The Commissioner will consider section 30 first and, if necessary, the other exemptions on which Northumbria Police has relied.
7. Section 1(1)(a) of FOIA obliges a public authority to confirm whether or not it holds information that an applicant has requested – this is known as ‘the duty to confirm or deny’.
8. However, under section 30(3) of FOIA the duty to confirm or deny does not arise in relation to information which is (or if held, would be) exempt by virtue of section 30(1).
9. Under section 30(1) of FOIA information is exempt if the public authority has held it at any time for the purposes of:
 - (a) investigations which the public authority has a duty to conduct to ascertain whether a person should be charged with an offence whether a person charged with an offence is guilty of it
 - (b) investigations conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has the power to conduct, or
 - (c) any criminal proceedings which the public authority has the power to conduct.
10. In its response to the request, Northumbria Police advised the complainant that information that is disclosed under FOIA is disclosed [or confirmed or denied that it is held] to the public as a whole and not just to the individual applicant. As such, it did not wish to confirm or deny to the public at large whether it held information about any individual.
11. Northumbria Police went on to say that confirming or denying whether it held the requested information would undermine any investigations -

past, present or future – and would undermine the Authorised Professional Practice for Information Management. It said that it is imperative that there are effective and efficient arrangements in place that ensure that information can be exchanged with relevant partners. Information sharing agreements (ISAs) are in place to help deliver effective law enforcement. These involve good working relationships between Northumbria Police and other organisations who commit to an ISA and who readily share relevant information when there is a lawful policing purpose to do so. Confirming or denying Northumbria Police held the requested information could compromise those ISAs and other organisations' willingness to engage with ISAs.

12. Northumbria Police confirmed this position in its submission to the Commissioner.
13. Given the nature of the information requested, the Commissioner is satisfied that, if Northumbria Police held information falling within the scope of the request, it would fall within the scope of the exemption under section 30(1) FOIA. As such, Northumbria Police is entitled to rely on section 30(3) to neither confirm nor deny it holds this information. He has gone on to consider the public interest test associated with section 30.

Public interest test

14. In its correspondence to the complainant, Northumbria Police acknowledged that there is public interest in confirming or denying it holds the requested information as this would lead to a better-informed general public. It could also promote public trust by providing transparency and demonstrating openness and accountability as to where the police is currently focusing its investigations.
15. Northumbria Police also considered that the public is entitled to know how public funds are spent, particularly in the current economic climate.
16. However, Northumbria Police noted that modern-day policing is intelligence led and forces at times share information with other law enforcement agencies as part of the investigative process. To confirm or not whether it held the requested information could, it said, hinder the prevention and detection of crime as well as undermine any partnership approach to investigations and law enforcement. Northumbria Police said it would not want to highlight where investigations may or may not be being carried out. This would have an impact on investigations and consequently jeopardise law enforcement.

17. Northumbria Police then balanced the factors for confirming whether or not the information was held against the factors for neither confirming nor denying the information was held.
18. Northumbria Police advised that the police service is tasked with protecting the community and solving crime and information would not be disclosed [or confirmed or denied it is held] if it would jeopardise those important roles. Confirming or denying that any information is held would mean that investigations would be less effective. Northumbria Police said that the police service relies heavily on the public, other law enforcement and local authority agencies providing and sharing information to assist in investigations and in delivering law enforcement. The public expects that any information it provides will be treated with confidence and in line with the relevant professional practice. Anything which places that confidence at risk, no matter how generic, would undermine any trust or confidence other agencies and individuals have in the police service.
19. Finally, Northumbria Police said that delivering operational law enforcement effectively takes priority and is at the forefront of Northumbria Police's operations. Crime must be prevented and detected and apprehending and prosecuting offenders must be maintained. This includes ensuring Northumbria Police's investigations and law enforcement relationship with other law enforcement agencies runs smoothly and with a joint approach to any multi-agency investigations that may or may not have taken place.
20. The Commissioner understands the complainant's personal interest in the requested information. However, it is important to reiterate that confirmation or denial under FOIA is confirmation or denial to the world at large, and not just a private communication between the public authority and the applicant.
21. The Commissioner recognises that there is a very strong public interest in protecting public authorities' investigative capabilities. He considers that appropriate weight must therefore be afforded to the public interest inherent in the exemption – in this case, the public interest in Northumbria Police being able to carry out investigations effectively.
22. The Commissioner is satisfied that the public interest in Northumbria Police being able to carry out effective investigations outweighs the public interest in transparency and in meeting the requirements of section 1(1)(a) of FOIA, in this case.
23. The Commissioner's decision is therefore that Northumbria Police was correct to rely on section 30(3) of FOIA.

24. The Commissioner has found that Northumbria Police correctly applied section 30(3) of FOIA to the complainant's request and that the public interest favours maintaining this exemption. As such it has not been necessary to consider the remaining exemptions that Northumbria Police applied to the request.
25. To confirm, nothing in Northumbria Police's correspondence to the complainant or in this decision notice should be taken as an indication that the requested information is or is not held.

Other matters

26. The complainant has noted that Northumbria Police had suggested that the complainant make contact with its office, "to facilitate further discussion in respect of possible alternative options."
27. The complainant has told the Commissioner that they accepted that offer in an email to Northumbria Police on 10 November 2022 but that no one from Northumbria Police had then contacted them.
28. Northumbria Police apologised for this oversight in its internal review response. It advised that it had passed the complainant's details to a relevant individual and asked that individual to allocate a suitably experienced officer to contact the complainant.
29. The complainant again acknowledged that offer in correspondence to Northumbria Police dated 28 February 2023, a copy of which they provided to the Commissioner.
30. At the point that they submitted their complaint to the Commissioner in April 2023, however, the complainant said that Northumbria Police had still not contacted them about any discussion.
31. If it has not already done so, Northumbria Police should consider contacting the complainant to discuss matters outside of FOIA, since it had suggested to them more than once that this was an option.
32. However, if Northumbria Police does not contact the complainant, the complainant will need to pursue that matter with Northumbria Police directly; it is a matter that is outside the Commissioner's role.

Right of appeal

33. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Cressida Woodall
Senior Case Officer
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Wycliffe House
Water Lane
Wilmslow
Cheshire
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