



**NCN: [2025] UKFTT 00072 (GRC)**

**Appeal Number: FT/EA/2024/0363**

**First-Tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Between:**

**Adrian Neighbour**

**Appellant:**

**and**

**The Information Commissioner**

**Respondent:**

**Date and type of Hearing:** On the Papers on 16 January 2025.

**Panel:** Judge Kennedy KC, & Specialists Kate Grimley Evans and Miriam Scott.

**Date of Final Decision** – 17 January 2025.

**Promulgated:** 21 January 2025.

**Representation:**

**The Appellant:** As a Litigant in person.

**For the Respondent:** Gemma Garvey of the ICO.

**Result:** – The Tribunal dismiss the Appeal.

### **REASONS**

1. This appeal brought by Adrian Neighbour (“the Appellant”) under section 57 of the Freedom of Information Act 2000 (“FOIA”), is against his decision notice of 2 September 2024 Ref. IC-299663-P6P3 (“the Decision Notice” / “DN”).

2. The Appellant requested information from Thames Valley Police (TVP) regarding a misconduct in public office allegation. TVP relied on sections 30(3) and 40(5) to neither confirm nor deny (“NCND”) holding the requested information.
3. The Commissioner’s decision is that TVP was entitled to rely on section 30(3) to NCND holding the requested information.

**Background:**

4. On 25 January 2024, the Appellant wrote to the Chief Constable of Thames Valley Police (TVP) and requested the following files:

*“I refer you [to] the lengthy correspondence bundle attached and, in this regard, hereby make a request under the FOI Act 2000 as follows:*

*In relation to the notifiable offence [99/12- Misconduct in Public Office] made against the Leader (etal) of [public authority removed], I request all information held relating to the recorded decision of the Office of the Force's Crime Registrar following submission of further and better particulars (case law) dated 2nd and 15th August 2022; this to include the following points to prove:*

*Date and location;*

*While acting as a public officer*

*Wilfully and without reasonable excuse or justification;*

*Neglected to perform his or her duty or*

*Misconducted himself /herself ...;*

*I request information relating to all correspondence/communication received by and sent from the Office of the Force’s Crime Registrar from/to the Office of the Chief Constable relating to the submission of further and better particulars (case law) dated 2nd and 15th August 2022.”*

5. TVP responded on 31 January 2024 and explained it would neither confirm nor deny holding the requested information under section 40(5A) and (5B) of FOIA. Following an internal review, TVP wrote to the complainant on 26 March 2024. It stated that it was refusing the request under section 14(1) of FOIA.
6. On 11 April 2024, the Appellant complained to the Commissioner. During the Commissioner's section 50 investigation, TVP informed the Commissioner that it no longer wished to rely on section 14(1) of FOIA. Alternatively, it sought to rely on sections 30(3) and 40(5A) and (5B) of FOIA.
7. On 2 September 2024, the Commissioner issued the DN now under appeal in which he determined that section 30(3) FOIA was engaged, and the public interest favoured maintaining the exemption.
8. On 7 September 2024, the Appellant lodged a Notice of Appeal with the Tribunal.

### **The Grounds of Appeal:**

9. The Appellant's grounds of appeal may be summarised as follows: -
  - Ground 1** - TVP has disclosed the initial recorded decision in a letter from the Crime Registrar to the Appellant dated 21 July 2022.
  - Ground 2** - The DN is inconsistent with the Police's investigatory duties, the rights of a victim under the Home Office Recording Rules<sup>1</sup> and section 3.2 of TVP's Crime Recording Policy dated July 2021.
  - Ground 3** - The decision that confirmation or denial would hinder TVP performing its functions and protecting victims does not stand up to scrutiny the victim has associated rights under the Home Office Recording Rules.
  - Ground 4** - The Appellant argues that the public interest favours confirmation or denial in this case. He that the decision fails to address whether TVP has applied this exemption to "*trump*" its investigatory duties "*shielding*" the conduct of officers. He considers that the IC's balancing exercise failed to take into account the wider public interest in transparency, accountability and integrity in relation to crime recording.

## **The Commissioner's Response:**

10. The Commissioner resists this appeal relying on the DN setting out his findings and the reasons for those findings, and repeats the matters stated therein but further observes in respect of the Appellant's Grounds 1, 2 and 3 that the rights of a victim under the Home Office Recording Rules or a TVP policy are distinct and separate to information rights under FOIA. The Commissioner submits that confirmation or denial under FOIA is equivalent to confirmation or denial into the public domain. This requires distinct consideration to TVP communicating information to a particular individual in respect of a complaint raised. In respect of Ground 4, the Commissioner took into account the Appellant's submissions when preparing the DN and has further reviewed the Appellant's grounds of appeal and the public interest arguments and remains of the view that the public interest favours maintaining the exemption in this case for the reasons set out in his DN and argues that the Appellant's grounds of appeal do not disturb this.

## **The Applicable Law:**

11. A person requesting information from a public authority has a right to be informed by the public authority whether it holds the information (s.1(1)(a) FOIA), and to have that information communicated to him, if the public authority holds it (s.1(1)(b) FOIA). However, those rights are subject to certain exemptions, set out in Part II of FOIA. The relevant exemption for the purposes of the appeal is section 30(3) FOIA.

Section 30 FOIA provides 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—*

- 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,*

*any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or  
any criminal proceedings which the authority has power to conduct.*

- (2) *Information held by a public authority is exempt information if—*
- (a) *it was obtained or recorded by the authority for the purposes of its functions relating to—*
    - (i) *investigations falling within subsection (1)(a) or (b),*
    - (ii) *criminal proceedings which the authority has power to conduct,*
    - (iii) *investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or*
    - (iv) *civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and*
  - (b) *it relates to the obtaining of information from confidential sources.*
- (3) *The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)."*

Section 30(3) FOIA is subject to the public interest test under section 2(1)(b) FOIA. This states that a public authority does not have to confirm or deny if the information is held if *:"in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information"*.

12. In the Commissioner's submission, none of the Appellant's arguments are sufficient to alter his findings. The Commissioner submits that the Appellant's grounds do not identify any error of law in the DN nor, he argues do they identify any incorrect exercise of the Commissioner's discretion.

**Conclusion:**

13. The Tribunal are not persuaded that the Appellant has demonstrated either an error of Law in the DN, nor any error in the exercise of the discretion by the respondent in his consideration of the public interest test as applied - and we refer to Paragraph 11 above accepting and adopting as we do, the Commissioner's reasoning.

14. We, like the Respondent, recognise the genuine and heartfelt concern the Appellant has in relation to transparency and accountability in the circumstances as he has raised them. However, disclosure under FOIA is to the world at large and parliament has recognised the significance of the release or disclosure of sensitive information and the public interest in the exemption as it has been applied by the public authority here. The other policies, options and obligations raised by the Appellant are not within our jurisdiction and do not relate to or result in the same effect as disclosure under FOIA. We have no doubt that the purpose envisaged under the exemption applied here is appropriate and properly engaged and further that it is on balance, in the public interest that it be relied upon in all the circumstances of this case. Accordingly, we unanimously dismiss this appeal.

Brian Kennedy KC

17 January 2025.

Decision given on date: 3 February

2025