

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2012

Public Authority: The Chief Constable Greater Manchester Police
Address: P.O. Box 22
Manchester
M16 0RE

Decision (including any steps ordered)

1. The complainant requested specific information about an investigation into his mother's death. Greater Manchester Police (GMP) refused to confirm or deny whether it held the requested information, citing sections 30(3), (investigations and proceedings), 38(2) (health and safety) and 40(5) (personal information). The Commissioner's decision is that GMP was entitled to refuse to confirm or deny under section 30(3). The Commissioner does not require GMP to take any steps in relation to the request.

Request and response

2. On 28 May 2012, the complainant wrote to GMP and requested information about an investigation into his mother's death:
"Under the provisions of the FOIA/DPA could you please release to me the instruction given to Police commissioned medical expert [name redacted] in respect of the investigation of my Mother's death [name redacted]".
3. GMP sought clarification of "the instruction" and the complainant provided that clarification.
4. GMP responded on 18 June 2012. It refused to confirm or deny whether it held the requested information, citing section 30(3) (investigations and proceedings), 38(2) (health and safety) and 40(5) (personal information).

5. Following an internal review GMP wrote to the complainant on 13 July 2012 upholding its original position. GMP added, for the avoidance of doubt, that its response should not be taken as conclusive evidence that the information requested exists or does not exist.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled:

"I would like to initiate a complaint in regard to the non release of information by Greater Manchester Police in respect of their instruction given to their commissioned medical expert, this being in regard to the 'supposed' investigation of my Mother's death by this mentioned Force".

7. Having considered the correspondence, the Commissioner wrote to the complainant. He explained that his investigation will be to determine whether GMP handled his request in accordance with the FOIA. Specifically, given the nature of the complaint, the complainant was advised that the Commissioner will consider GMP's refusal to confirm or deny holding information on the basis that, if held, it relates to investigations (section 30(3)).
8. The complainant disagreed with the scope as set out by the Commissioner, requesting that his "full arguments" were added to the scope of the case. He requested that the Commissioner also investigate GMP's citing of sections 38(2) and 40(5) and take into account his references to the European Court of Human Rights (ECHR) and the Human Rights Act 1998. The complainant also clarified that his complaint is in regard "to the release of the requested information".
9. In the Commissioner's view, the complainant's arguments comprise reasons why the requested information should be disclosed.
10. When considering a 'neither confirm nor deny' response, as in this case, the single issue the Commissioner must determine is whether the public authority was correct neither to confirm nor deny whether it holds the information. It would only be if he concluded that the "neither confirm nor deny" response was incorrect that he would then require the public authority to go on to consider whether it should be disclosed (if it was in fact held).
11. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. In considering such matters, the

Commissioner is mindful that whilst an individual may be aware that information does or does not exist because of their involvement in events, it does not follow that the general public is also aware of the existence of that information. Disclosure under the FOIA is a disclosure to the world at large.

12. In a case such as this one, the decision for the Commissioner is whether confirmation or denial that the information is held should be placed in the public domain. The Commissioner recognises that the complainant has personal reasons for making the request in this case. However, neither the identity of the applicant nor any purely personal reasons for wanting the requested information is relevant to the consideration of a freedom of information request. FOIA is about disclosure to the public and public interests. It is not about specified individuals or private interests.

Reasons for decision

13. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise the applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.
14. The Commissioner has first considered GMP's citing of section 30(3).

Section 30 Investigations and proceedings

15. Section 30(1) of FOIA states 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-

(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,

(b) 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

(c) any criminal proceedings which the authority has power to conduct."

16. Section 30(2) provides that:

"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...".

17. Section 30(3) provides that:

"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)."

18. Section 30 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. Section 30(3) provides an exemption from the duty to confirm or deny in relation to any information, whether held or not, that falls within any of the classes specified in sections 30(1) or 30(2).

19. Section 30(1)(a)(i) provides an exemption to disclosure for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person should be charged with an offence. Section 30(1)(a)(ii) provides an exemption for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person charged with an offence is guilty of it. In order for the exemptions within section 30(1) to be applicable, any information held must be held for a specific or particular investigation, and not for investigations in general.

20. The Commissioner has therefore considered whether, if at the time of the request GMP held information falling within the scope of the request, any such information would fall within the classes specified in section 30(1)(a)(i) and / or (ii).

21. The public authority in this case is a police force and the Commissioner is satisfied that it has the power to carry out investigations of the sort described in sections 30(1)(a)(i) and (ii) to establish whether an offence has occurred.

22. The Commissioner is satisfied that any information falling within the scope of the request that may be held by GMP would have been held for the purposes of a specific investigation, which it has a duty to conduct with a view to ascertaining whether a person should be charged with an

offence or whether a person charged with an offence is guilty of it. The Commissioner is therefore of the view that the exemption at section 30 is engaged.

23. As section 30 is a qualified exemption the Commissioner has gone on to consider whether, 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 GMP holds any information falling within the scope of the request.

Public interest arguments in favour of confirming or denying that information is held

24. When requesting an internal review, the complainant told GMP:

"We as a family and the public as a whole have every right ... to scrutinise questionable Police activity. ... The question must be asked as to what have the Police got to hide?"

25. During the course of the Commissioner's investigation, the complainant asserted that the requested information was held by GMP and that it was in the public interest for it to be disclosed.

26. GMP acknowledges that public authorities should be held accountable for their public functions and use of public funds. In correspondence with the complainant, it told him:

"If GMP held information, relevant to your request, disclosure of that information would show GMPs accountability in the use of public funds to investigate reported incidents/crimes and engage with partner agencies. In the case of closed investigations, again if information were held, disclosure would further assist the public in understanding that the investigation was conducted properly."

Public interest arguments in favour of maintaining the refusal to confirm or deny whether information is held

27. Arguing in favour of maintaining its refusal to confirm or deny whether it holds the requested information, GMP told the complainant:

"To confirm or deny information relating to investigations and/or individuals will impede on any on-going and future investigations and cause mental and physical harm to any individual subject to those investigations."

28. In correspondence with the Commissioner, GMP provided further explanation in support of its refusal to confirm or deny whether the requested information is held. Details of those arguments can be found

in the Confidential Annex to this decision notice which will be provided to the public authority only. In summary, they relate to the public interest in protecting the investigative process.

Balance of the public interest

29. The Commissioner's guidance on the duty to confirm or deny¹ explores the implications of the wording of the request in relation to the duty to confirm or deny. In the Commissioner's view, the wording of the request for information will affect whether or not a public authority will confirm or deny it holds that information. The Commissioner also considers that, in many cases, the more specific the request, the lower the likelihood of the duty arising.
30. In this case the request focuses on a particular investigation rather than investigations in general and specifically asks for information about an investigation in relation to a named individual.
31. In the Commissioner's view, there are cases where it is important that the "neither confirm nor deny" response does not imply anything about whether information is or is not held. It should therefore be applied consistently by a public authority whether or not information is actually held. In other words, the authority should consider both whether any harm would arise from confirming that information is held *and* whether harm would arise from stating that no information is held. Otherwise, if the same (or same type of) request were made on several occasions over time, the changing response could reveal whether information was held.
32. In considering the balance of the public interest in relation to the application of the NCND exemption in this case, the Commissioner's view is that significant weight has to be given to the need to protect the public authority's ability to adopt a consistent approach when responding to similar requests in the future.
33. Having considered both sets of arguments in this particular case, the Commissioner's view is that the public interest arguments in favour of

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http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/when_to_refuse_to_confirm_or_deny_section_1_foia.ashx

maintaining the refusal to either confirm or deny whether information is held outweigh those in favour of GMP issuing such a confirmation/denial. Therefore, the Commissioner finds that GMP was entitled to rely on the refusal to confirm or deny provided by section 30(3) of the FOIA.

Other exemptions

34. As the Commissioner is satisfied that the section 30(3) exemption has been correctly applied to the requested information, he has not gone on to consider GMP's application of the other exemptions cited in respect of the same information.

Right of appeal

35. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

36. 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.
37. 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

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