

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 November 2013

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant requested copies of the marked pages in the A-Z map book located during the Robert Napper murder investigation.
2. The Metropolitan Police Service ('the MPS') refused to provide the information by applying the exemption to disclosure in section 30(1) and section 40(2) & (3) of the FOIA. The Commissioner's decision is that the MPS correctly applied the exemption at section 30(1) and the public interest favours withholding the information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 30 March 2013 the complainant made the following request for information under the FOIA:

"In the robert napper murder investigation of samantha bisset and her daughter in 1993 napper house was searched during that search the police obtain 1 maybe 2 A TO Z map books in those map books were marking of places that napper had done inside them that maybe linked to other possible crime locations in or around london i would like all copies if possible by email of those markings in those map books by napper this is the same person that convicted of rachel nickell murder on wimbledon common in london in 1992 and maybe linked to other

murders he was also known as the plumstead rapists or the green chain rapists.”

5. On 10 April 2013 the MPS responded with a refusal notice citing the exemptions found at section 30(1) – Investigations and proceedings conducted by public authorities and section 40(2) & (3) – Personal information.
6. Following an internal review the MPS wrote to the complainant on 25 April 2013 upholding its initial response.

Scope of the Case

7. The complainant contacted the Commissioner on 28 June 2013 to complain about the MPS’s response.
8. The Commissioner’s investigation has focussed on the Council’s application of section 30(1) to withhold the requested information.

Reasons for decision

9. Section 30(1) 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-

(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.”

10. Section 30(1) applies to information that has at any time been held by the MPS for the purposes of an investigation that it has a duty to carry out with a view to ascertaining whether an individual should be charged with an offence. The information must relate to a specific investigation and not investigations in general.

11. In its reliance on section 30(1)(a)(i) & (ii) the MPS explained to the Commissioner that the requested information is potentially relevant to multiple offences and investigations that are open or on-going in specific relation to Robert Napper. The Commissioner notes that in June 2010 the Independent Police Complaints Commission (IPCC) published a report which outlined the history of the investigations relating to Robert Napper and identified significant failings in relation to the MPS investigations. That report concludes stating that investigations into Robert Napper's offending continue. The MPS stressed that this conclusion is still valid.
12. The sensitivity of the information contained in the case files and the on-going commitment of the MPS to continue with its investigations in respect of the historic offences are significant elements in engaging the section 30 exemption. The Commissioner accepts that the requested information is held by the MPS in relation to relevant criminal investigations. He has therefore decided that the section 30(1) exemption is engaged.
13. As section 30(1) is a qualified exemption, the Commissioner has gone on to consider the balance of the public interest.
14. The Commissioner recognises that there will always be a strong public interest in achieving transparency and accountability in police operations.
15. The complainant told the Commissioner that in his opinion the public interest in disclosure lay in the possibility that by disclosing the A – Z map book page markings this could stimulate the memory of the general public which may result in witnesses coming forward to provide further information to assist in the MPS investigations and "this might help victims of Mr Robert Napper get justice for once instead of been a number". The complainant also referred to the "blunders" made by the MPS in its investigations.
16. The Commissioner is aware that the Robert Napper murders already have a high profile with a significant amount of information already in the public domain. The IPCC report referenced in paragraph 11 reported on the discovery of the A-Z map book marking places that were later linked to sexual offences and not investigated at the time. This failing, amongst others, was identified and acknowledged by the MPS. However the disclosure of the information requested here would not identify any further failings in this regard.
17. Media interest in the serial murders of Robert Napper is still current with the Channel Five documentary series "Killers Behind Bars" broadcast in March 2013 with episode 3 focussed on Robert Napper. Therefore the

Commissioner considers that the general public is already aware of the investigations and the disclosure of the A-Z map book pages would add little to prompt individuals to contact the MPS with any further information.

18. There is a strong public interest in maintaining the section 30 exemption to ensure that the operations of authorities which are responsible for conducting criminal investigations are not jeopardised through disclosures of information. The disclosure of information in this case prior to the conclusion of related investigations and proceedings may potentially undermine the on-going MPS investigations.
19. The Commissioner recognises the strong interest in principle in protecting information acquired by the police during their investigations. Notwithstanding the passage of time, this is relevant in unresolved cases, where charges and prosecutions have not been brought. New evidence may be received and new technology or investigative techniques may enable existing evidence to be used to progress enquiries. The MPS illustrated this point by reference to the investigations linked to Robert Napper following advances in DNA recovery and analysis.
20. The MPS explained that the requested information has been referenced in numerous documents and its existence is already knowledge in the public domain. Media stories, books and documentaries have reported on the A-Z map book seized as evidence. However, the specific pages referred to in the request are not in the public domain and do constitute evidence in relation to a murder investigation.
21. The requested information has significance in relation to other crimes that may have been committed by Robert Napper. The MPS explained its view that it is better able to effectively filter new information when other related information is not in the public domain. For example, greater weight may be given to reports which corroborate information held that has not already been disclosed.
22. In determining the balance of the public interest with regard to the disclosure of the marked pages of the A-Z map book the Commissioner places some weight in the need for the police to demonstrate proper transparency and accountability in its investigations. He also recognises that disclosure of the locations marked could trigger public consideration of criminal activity at those locations which may result in the general public providing relevant information. However the Commissioner is aware of the considerable media interest in the murders of Robert Napper and the coverage attributed to his actions. Consequently he considers that debate of the investigations has featured sufficiently

prominently to trigger the public's consciousness of any relevant information it may hold.

23. The Commissioner's consideration that the right of access to information should not undermine the investigation and prosecution of criminal matters carries considerable weight. He has judged that there is significant public interest in safeguarding the investigatory process. The Commissioner was influenced in his judgement by the fact that connected matters remain unresolved, with the MPS stating its commitment to continue to investigate.
24. The Commissioner determined a strong public interest in protecting information acquired by the police during their investigations. To disclose important evidence in a criminal investigation under the FOIA (without a sufficiently strong public interest in doing so) would undermine the existing procedures governing the disclosure of information in relation to criminal investigations. Such disclosure could also act as a deterrent to those providing information to the police and as such act as a disincentive and consequent hindrance in other police investigations.
25. Accordingly the Commissioner decided that the balance of the public interest weighs in favour of maintaining the exemption at section 30(1).
26. In light of his findings in relation to section 30(1), the Commissioner has not gone on to consider whether the withheld information is also exempt from disclosure on the basis of section 40(2) of FOIA.

Right of appeal

27. 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

28. 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.
29. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF