

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 September 2014

**Public Authority:** Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

---

1. The complainant has requested information relating to the Metropolitan Police Service (the "MPS") investigation into the death of Sandra Rivett and the subsequent disappearance of Lord Lucan. The MPS has confirmed that it holds information but has found it to be exempt from disclosure under sections 30(1)(investigations and proceedings) and section 40(2)(personal information).
2. The Commissioner's decision is that the exemption at section 30(1) is engaged and that the public interest favours maintaining the exemption. No steps are required.

### Request and response

---

3. On 12 May 2014, the complainant wrote to the MPS and requested information in the following terms:

*"Can you please supply copies of all documents and photographs held by the Metropolitan Police which in any way relates to the force's investigation into the death of Sandra Rivett who died on 7 November 1974 and or the subsequent disappearance of Lord*

*Lucan, the missing peer who is now presumed dead and who has been widely linked to Ms Rivett's death.*

*Please note that I am only interested in information which was generated between period 7 November 1974 and 31 December 1984.*

*I note that section 30(1) of the Freedom of Information Act does not apply to historical information and I note the changes introduced by the Constitutional Reform and Governance Act 2010.*

*The documentation held by the Metropolitan Police will include but will not be limited to crime scene photographs, artist impressions, witness statements, investigation officers note books, internal communications, and maps as well as documentation and or material relating to the hunt for and or possible sightings of Lord Lucan.*

*Lord Lucan has been pronounced dead so I do not anticipate any data protection implications as far as he is concerned.*

*Please feel free to redact the names and addresses of any witnesses and police officers who are still alive but please do not exclude details of people who are now deceased".*

4. The MPS responded on 22 May 2014, advising that the information held was exempt from disclosure by virtue of sections 30(1)(a)(b) and 40(2). It stated:

*"The enquiry into the death of Sandra Rivett is the subject of regular reviews, as is the case with all undetected homicides. It has never been closed".*

5. Following an internal review the MPS wrote to the complainant on 9 July 2014. It removed reliance on section 30(1)(b) but maintained reliance on the exemptions previously cited.

## **Scope of the case**

---

6. The complainant contacted the Commissioner on 15 July 2014 to complain about the way his request for information had been handled. He made specific reference to the age of the material and his belief that it was no longer a 'live' enquiry.
7. The Commissioner will consider the application of the exemptions.

## Reasons for decision

---

### Section 30 – investigations and proceedings

8. Section 30(1)(a)(i) 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".*

9. The phrase "at any time" means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.

10. Section 30 of the 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. In order for the exemption to be applicable, any information must be held for a specific or particular investigation and not for investigations in general. Therefore, the Commissioner has initially considered whether the requested information would fall within the class specified in section 30(1)(a)(i).

11. The public authority in this case is the MPS. As a police force it clearly has the power to conduct criminal investigations. The Commissioner is therefore satisfied that it has the power to carry out investigations of the sort described in section 30(1)(a).

12. However, section 63 of the Act states that information contained in a historical record cannot be exempt from disclosure by virtue of section 30(1). Section 62 provides the following definition of a historical record:

*"(1) – For the purposes of this Part, a record becomes a "historical record" at the end of the period of thirty years beginning with the year following that in which it was created.*

*(2) Where records created at different dates are for administrative purposes kept together in one file or other assembly, all records in that file or other assembly are to be treated for the purposes of this Part as having been created when the latest of those records was created".*

13. The MPS explained, to both the complainant and the Commissioner, that it believed that the requested information did not constitute a historical record. It advised the complainant that: *"The enquiry into the death of*

*Sandra Rivett is the subject of regular reviews, as is the case with all undetected homicides. It has never been closed”.*

14. The Commissioner asked the MPS for further details regarding the information held and for copies of the most recent items that had been added to the enquiry, in order to demonstrate that the enquiry is still ‘live’. He was advised:

*“I can confirm the investigation into the murder of Sandra Rivett and the attempted murder of Lady Lucan and disappearance of Lord Lucan remains a live and on-going investigation”.*

And,

*“The possibility still remains that further evidence may come to light and/or additional lines of enquiry may become available and it is not uncommon for investigations and related prosecutions to span a long period of time. Investigations relevant to Sandra Rivett are still open and active; the investigation remains an unsolved murder investigation”.*

15. The MPS also advised:

*“I have attached ‘In Confidence’ recent correspondence to demonstrate the investigation is still very much live and active. The most recent line of enquiry/information received was on xxx 201X”.*

16. The Commissioner has considered the MPS’ submissions and is prepared to accept that in the circumstances of this case the withheld information does not constitute a historical record and thus is exempt from disclosure on the basis of section 30(1)(a)(i). He has reached this conclusion based upon the submissions above, having had sight of the most recent items of information which have been added to the investigation.

17. However, section 30(1)(a)(i) is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of the Act and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosure**

18. The MPS has submitted the following arguments in favour of disclosure to the complainant:

*“The death of Sandra Rivett continues to be a very high profile case. There has already been a significant amount of information*

*placed into the public domain through media articles and official press releases from the MPS. The public therefore have a genuine interest in being informed as to the nature and circumstances of this incident and who may have been involved”.*

19. It added the following in correspondence to the Commissioner:

*“In consideration of the high profile nature of this investigation there is an increased public interest in obtaining information held pertinent to the investigation. In light of the length of time that has passed since the death of Sandra Rivett, there could be a perceived increased public interest in disclosing information that would provide the public with an awareness of previous actions taken and any evidence considered by the MPS in this high profile investigation.*

*Disclosure would therefore enhance transparency and accountability in terms of methodology employed by the MPS in respect of its role, action and considerations in this case.*

*Media interest in the murder of Sandra Rivett is still current with the ITV based drama in December 2013 and BBC documentary in February 2012”.*

### **Public interest arguments in favour of maintaining the exemption**

20. The MPS has submitted the following arguments in favour of maintaining the exemption to the complainant:

*“During the course of any ongoing investigation enquiries are made to secure evidence. These enquiries are made for the duration of the case and are based upon proven methods as well as the judgement and experience of the officer(s) in charge of the investigation.*

*The MPS is reliant upon these techniques to conduct its investigations and the public release of the modus operandi employed during the course of this enquiry could prejudice the ability of the MPS to conduct further, similar investigations.*

*It cannot be clear at present what effect disclosures of investigation material through the Act may have upon this case but care must be taken not to compromise any strand of the investigation, cause any undue harm to the families involved, or compromise an individual’s right to a fair trial”.*

21. It added the following lengthy submissions in correspondence to the Commissioner:

*"To disclose material pertinent to this ongoing investigation would prejudice the investigation itself as the investigation is a live unsolved murder investigation.*

*Disclosure of the information would undermine the currently open investigation by disclosing operational methodology and techniques engaged by the MPS in respect of the murder. Disclosing copies of all documents, photographs, artist impressions, witness statements, investigating officer note books, internal communication regarding the murder of Sandra Rivett and maps including documentation and material relating to the hunt for or possible sightings of Lord Lucan would impede the current investigation and affect our ability to detect crime in this case. This would also prejudice the MPS ability to apprehend or prosecute any offenders. Should the information be utilised or alerted to those seeking to evade the law, which would not be in the public interest.*

*To disclose the information pertinent to this ongoing investigation risks undermining the rights of any possible suspect to a fair trial in the future. It also risks undermining the rights of the victims' family who are alive if a prosecution were to fail due to an adverse disclosure under the Act.*

*It would not be appropriate to release any information in connection with this investigation as any response may expose police lines of enquiry, may alert any potential suspects and may lead to the interference of witnesses.*

*The MPS is often required to utilise and rely on information provided by confidential sources to solve crimes. Disclosing information pertinent to an open murder investigation, such as witness statements, would be irresponsible and inappropriate. Witness statements held are likely to identify individuals even if their name was redacted. Those who assist police on criminal matters do not expect their personal statements to be disclosed under FoIA. Disclosing witness statements relating to any area of this case would send a concerning message to the public in respect of this murder case as well as unconnected cases. Individuals with vital information on unconnected cases may be less forthcoming in assisting with investigations, should the MPS be seen to disclose personal statements pertinent to high profile ongoing investigations. This would not be in the public interest.*

*Public disclosure of information and work undertaken to detect and apprehend a suspect would not be in the public interest to disclose information pertinent to investigating this death as the information*



*could be used to undermine the investigation by individuals who may wish to avoid the solving of this murder.*

*As per the Information Commissioner's guidance titled 'Exemption for Investigations and proceedings it states:-*

*'There is general recognition that it is in the public interest to safeguard the investigatory process. The right of access should not undermine the investigation and prosecution of criminal matters nor dissuade individuals from coming forward to report wrongdoing.*

*It is also not in the public interest to undermine the prosecution process and the role of the criminal courts as the bodies responsible for determining guilt. Where it is quite clear that disclosure could prejudice the right to a fair trial, it would not be in the public interest to release it.'*

*There is a public interest in allowing investigations the necessary space to determine the course of investigations that they have a duty to conduct. Premature disclosure of the information requested prior to the conclusion of related investigations and proceedings may undermine these investigations, the future prosecution of individuals and the role of the criminal courts as the sole forum for determining guilt...*

*... The possibility still remains that further evidence may come to light and/or additional lines of enquiry may become available and it is not uncommon for investigations and related prosecutions to span a long period of time. Investigations relevant to Sandra Rivett are still open and active; the investigation remains an unsolved murder investigation.*

*Finally, there is much media and public interest in this murder however it is vital to remember that the information relates to the tragic and violent death of a woman whose family are still alive and also involves the attempted murder of another woman who along with her three children is still alive. Disclosure would cause these individuals great distress".*

## **Balance of the public interest**

22. When considering the application of any of the exemptions contained in s30(1), the Commissioner believes that consideration should only be given to protecting what is inherent in those exemptions – the effective investigation and prosecution of crime - which requires the following:

- the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
  - the maintenance of independence of the judicial and prosecution processes;
  - preservation of the criminal court as the sole forum for determining guilt;
  - allowing the investigating body space to determine the course of an investigation; and
  - information that deals with specialist techniques.
23. With the above underpinning the consideration of 30(1), when weighing up the public interest in relation to the exemption the following factors (amongst others) should be considered:
- the stage or stages reached in any particular investigation or criminal proceedings;
  - whether and to what extent the information has already been released into the public domain;
  - the significance or sensitivity of the information; and
  - the age of the information.
24. The Commissioner accepts the relevance of all the arguments put forward by the MPS above and considers that they all weigh heavily in favour of maintaining the exemption in this case.
25. Although the request relates to what is now an aged murder case, the MPS has demonstrated to the Commissioner that it remains 'live' and that pertinent information continues to be added to the investigation; the MPS has demonstrated that investigatory work continues to be actively taking place.
26. The Commissioner also notes that whilst some information has been made available to the public, and that there remains an ongoing public interest in this high profile case, any such information has only been disclosed by the MPS in a carefully managed way. It is clear that the information requested has not been released. Indeed, as it relates to a live investigation the Commissioner considers that its disclosure would necessarily have a negative impact on that investigation. It could allow potential offenders to evade justice, it could lead to the intimidation of witnesses, it could deter further contact by the possible witnesses and it could, ultimately, undermine the right to a fair trial.
27. The Commissioner also recognises the detriment that could be caused to the police service because of the inherent danger of restricting the flow of information to the police in respect of future investigations, including



the ongoing investigation of this case, if witness statements (and other evidence) from a live murder investigation were disclosed.

28. Whilst he finds it unlikely that disclosure of details of investigative techniques used by the police at the time of the murder would be harmful in the current day, nevertheless they will show what was undertaken at that time and disclosure of this may well have a long term impact on the investigation itself were anyone to be tried in relation to the murder.
29. Giving due consideration to the arguments put forward, on this occasion the Commissioner readily accepts that the public interest favours maintaining the exemption on this occasion.
30. In light of the Commissioner's findings in respect of section 30(1)(a)(i) he has not gone to consider the MPS' reliance on section 40(2).

## Right of appeal

---

31. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**