

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 July 2015

Public Authority: Chief Constable of Hampshire Constabulary
Address: Police Headquarters
West Hill
Romsey Road
Winchester
Hants
SO22 5DB

Decision (including any steps ordered)

1. The complainant requested information from Hampshire Constabulary (the police) about a police investigation into a cycling event held in the New Forest area of Hampshire in October 2013. He asked for information including evidence from witnesses, the police form MG3 and the report to the Crown Prosecutor for the charging decision and investigative advice.
2. The Commissioner found that the police had correctly relied on the section 30(1) (information held for the purposes of an investigation) FOIA exemption to withhold the information since the exemption was engaged and the balance of the public interest favoured maintaining the exemption.
3. Having found that the information had been withheld correctly relying on the section 30(1) FOIA exemption, the Commissioner did not proceed to consider the police reliance on the section 40(2) (personal information) FOIA exemption, which was also cited.
4. He also found that the police had breached section 10(1) FOIA in not responding to the information request within 20 working days of receiving it.
5. The Commissioner requires no steps to be taken to ensure compliance with the legislation.

Request and response

6. On 17 January 2014, the complainant wrote to the police and requested information in the following terms:

"I wish to see the following documents [from a named police file]

- *MG3 – report to Crown Prosecutor for charging decision/ investigative advice*
 - *Other complaints*
 - *Officer's report after visiting a witness."*
7. The request arose from a charity cycling event held in the New Forest in October 2013 and which was said to have included a race involving police officers and postmen, a 'Plods v Posties' event, to raise money for charity. The complainant believed that traffic offences may have been committed and public nuisance caused as a result of the cycling event. He requested information that he believed to be relevant to demonstrating this. Some information was provided by the police but other information was withheld.
8. The police initially neither confirmed nor denied holding the information requested and, in a letter of 29 July 2014, relied on the section 30(3) FOIA exemption. After further correspondence the police told the complainant on 25 March 2015 that they were withholding information relying on the section 30(1) and 40(2) FOIA exemptions.

Scope of the case

9. The complainant contacted the Commissioner on 31 March 2015 to complain about the way his request for information had been handled.
10. He said that a commercial organisation had arranged a mass cycling event in the New Forest National Park for some 2000 cyclists. He said that the event had led to public nuisance being caused, had involved a criminal offence (an alleged cycle race on the highway) and had seriously disrupted the normal lives of the residents of the Forest. The events had been organised regardless of planned cattle drifts which had then been cancelled for fear of injury to cyclists and others. He added that the police had presented a file to the Crown Prosecution Service (CPS) who had said that no criminal offences had been identified. He asked to see relevant papers from the police file.

11. The complainant accepted that the section 30(1)(a) FOIA exemption was engaged and that the matter turned on the balance of the public interest. He also made representations about the police application of the section 40(2) FOIA exemption.
12. For the avoidance of doubt, the Commissioner makes clear that the question of whether or not any offences may have been committed is not a matter for him and he has not considered it.
13. The Commissioner first considered the application of the section 30(1)(a) FOIA exemption and the relevant public interest.

Reasons for decision

Section 30 – investigations and proceedings

14. 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".

15. 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.
16. Section 30(1) 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).
17. The public authority in this case is the police. 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).
18. The police had investigated whether or not offences had been committed with reference to the Road Traffic Act 1988 section 31 and the indictable offence of public nuisance. The requested information had been obtained

with a view to undertaking a specific investigation. The Commissioner is therefore satisfied that the exemption is properly engaged.

The public interest test

19. Section 30(1) is a qualified exemption and is therefore subject to the public interest test under section 2(2)(b) of FOIA.

Public interest arguments in favour of disclosure

20. The complainant argued persuasively that the event disrupted the normal course of daily life for residents of the New Forest, and bore particularly heavily on those responsible for livestock, as well as on general visitors to the Forest. He said that there was a need to protect the public from nuisance and that there was an overwhelming interest in the public knowing why the CPS and the police had concluded that no offences had been committed. He said that there was a public interest in transparency in a matter involving "a clear offence by police officers" who had either taken part in a road race or conspired to do so. He said that relevant members of the public had been the victims of the public nuisance and accordingly had brought this matter to the attention of the police and had urged action by them but in vain. He said that there was a clear public interest in disclosure for these reasons and especially as there had been alleged wrong doing by police officers.
21. The police acknowledged that the fact that the investigation was now closed and that a good deal of information about the matter was already in the public domain weakened the case for withholding the information. They also acknowledged that there was a public interest in accountability, showing that the investigation had been conducted in a transparent and comprehensive way, something that disclosure could help to demonstrate.
22. The Commissioner recognises that there will always be a public interest in achieving a proper level of transparency and accountability in police matters.

Public interest arguments in favour of maintaining the exemption

23. The police said that only certain information about the matter was in the public domain and that disclosing the information they had received could restrict the flow of information to the police in respect of other cases; potential sources of information might be discouraged from coming forward if they anticipated that information provided to assist the police could later be disclosed as a result of a FOIA request. This would prejudice the police ability to prevent and detect crime. The police said that relevant information had been obtained from identifiable witnesses and had been provided purely for the purpose of criminal

investigation. In the event of disclosure, this might then be disclosed and applied to different purposes beyond the criminal justice system despite the fact that no charges had been brought against any persons and no convictions had been obtained.

24. Having viewed the MG3, the Commissioner does not accept that, on this occasion, releasing its content would assist any persons of 'ill-intent' to evade justice.

Balance of the public interest

25. The complainant said that the balance of the public interest clearly favoured disclosure as members of the relevant public had been victims of considerable public nuisance and that a number of them had pressed the police to act but in vain. Those members of the public who had been victims of the alleged crime had experienced nuisance on a considerable scale and were keenly interested in the police investigation of it such that the public nuisance aspect weighed heavily in the public interest balancing exercise. The suspicion of police wrongdoing in this matter was a further reason for transparency.
26. The police said that, whilst this investigation had been closed and some information from it had been made public, this had to be balanced against the ongoing need to ensure the flow of information to the police would not harm their ability to investigate future cases. Accordingly they had concluded that the balance of the public interest lay in maintaining the exemption and withholding the information.
27. 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.
28. With the above underpinning the consideration of section 30(1), when weighing up the public interest in relation to the exemption the

Commissioner believes that 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.

29. The Commissioner considers that there is a very strong public interest in ensuring that those providing information to the police about matters which they believe could constitute an offence should be able to do so confident that their concerns and evidence, and the fact that they have given evidence, will be considered by the police in confidence and not made public later.
30. The Commissioner also considers it to be strongly in the public interest for the police to have space so as to be able to communicate frankly and freely with CPS and seek counsel from them openly, without having to consider that what they say to CPS, and any advice they receive, might subsequently be made public.
31. In this matter the Commissioner has seen that the police investigation was complete at the time of the information request so that there was no risk that disclosure would interfere with its conduct. There was a wide general awareness of the issues surrounding the alleged public nuisance and the conduct said to constitute offences had already taken place since the cycling event had received significant publicity. These are both factors in favour of disclosure.
32. Turning specifically to the form MG3, the Commissioner noted that the MG3 by its nature will contain a summary of the case and will rehearse at least some of the information received by the police during the investigation. This will include information received in confidence and disclosure of which could deter members of the public from assisting the police in other circumstances in the future. It is strongly in the public interest for members of the public to be able to share concerns and information with the police, confident that the police will respect confidences. It is also in the public interest for the police to be able to be frank and open in their dealings with CPS, something which goes to the purpose of the MG3. The identities of those who might be thought to have been suspected of criminal activity will be easily discernable from the information in the MG3 but no charges have been arisen and no convictions have resulted from CPS consideration of the matter.

33. Taking the above matters into account, the Commissioner found on balance that the strong public interest in protecting information acquired by the police during their investigations favoured maintaining the exemption. Disclosure now could deter the public from assisting the police in future which would hinder future police investigations. Where the police are suspected of having failed to protect the public there are other mechanisms that exist outside of FOIA to address the issue, so that provision of the MG3 and witness information to the world at large is not an appropriate way to deal with any such suspicions.
34. The Commissioner's decision is that the balance of the public interest weighs in favour of maintaining the exemption at section 30(1) FOIA.
35. In light of the Commissioner's findings in respect of section 30(1) he did not proceed to consider the police reliance on the section 40(2) FOIA exemption.

Section 10 – time for compliance

36. Section 10(1) FOIA states that: "*Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt*". The police should therefore have issued a full refusal notice or disclosed the requested information within 20 working days. However, the police did not respond to the complainant within 20 working days thereby breaching section 10(1) FOIA.

Right of appeal

37. 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

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

38. 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.
39. 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
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