

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2016

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 the response which the Metropolitan Police Service (the 'MPS') sent to a regulation 28 report sent by the Coroner in a particular case. The MPS withheld this on the basis of sections 32(1)(a) & (b) (court records). The Commissioner's decision is that the MPS was entitled to do so. No steps are required.

Background

2. A Regulation 28 Report is a "Report to prevent future deaths"; it refers to section 28 of The Coroners (Investigations) Regulations 2013 (the "Regulations") and is completed by a coroner after an inquest; a copy is also passed to the Chief Coroner who has the discretion to publish it under the Regulations.
3. Section 29 of the same Regulations requires a response to a Regulation 28 Report (as in this case). The response must be sent to the coroner who made the Report within 56 days of the date on which the Report is sent.
4. A copy of the response is also passed to the Chief Coroner who may decide to publish it if he thinks fit or pass it to interested parties. Whether to publish it is ultimately the decision of the Chief Coroner, again as stated in the Regulations.

5. Further details about the process can be found online¹ on the Courts and Judiciary website. This also says that: *"All reports (formerly known as Rule 43 reports) and responses must be sent to the Chief Coroner. In most cases the Chief Coroner will publish the reports and responses on this website"*.
6. The Regulation 28 Report in this case can be viewed online².

Request and response

7. On 21 October 2015, the complainant wrote to the MPS and requested information in the following terms:

"Please provide a copy of the force's response to the regulation 28 report sent to the commissioner by coroner Tony Badenoch in relation to the death of Wiktoria Was. The report was sent on July 13, 2015, and the deadline for a response given as September 7, 2015".

8. The MPS responded on 23 November 2015. It refused to provide the requested information citing the following exemptions as its basis for doing so: 32(1)(a)(b) & (4)(b) and 22(1)(a)(b)(c) & (2).
9. Following an internal review the MPS wrote to the complainant on 6 January 2016. It revised its position to reliance on sections 32(1)(a) & (b) only.

Scope of the case

10. The complainant contacted the Commissioner on 6 January 2016 to complain about the way his request for information had been handled. His grounds of complaint were as follows:

"I would argue that the response is not part of the proceedings or been produced as part of the proceedings. The proceedings is the inquest hearing itself rather than any report which may have been produced afterwards. This is clearly the view of many public

¹ <https://www.judiciary.gov.uk/related-offices-and-bodies/office-chief-coroner/pfd-reports/>

² <https://www.judiciary.gov.uk/publications/wiktoria-was/>

authorities who regularly release their responses to coroner's reports".

11. The Commissioner also notes the complainant's comments regarding the disclosure of some Coroners' reports by various agencies. However, this disclosure is on a discretionary basis rather than in compliance with the FOIA so the Commissioner is unable to comment further on this matter.
12. The Commissioner will consider the application of section 32 below.

Reasons for decision

Section 32 – court records, etc

13. Section 32(1) provides that –

"Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,*
- (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, ...".*

14. In its internal review the MPS explained to the complainant:

"It has been confirmed that this document was created solely for the purpose of responding to the Coroner's Regulation 28 report, and therefore is held 'only by virtue of' being contained within a document filed with, or otherwise placed in the custody of, a court for the purpose of proceedings. As quoted in the original response, section 32(4)(b) goes on to confirm that 'proceedings in a particular cause or matter' does include any inquest or post mortem examination, such as is the case here.

Furthermore, as explained within the original response, section 32 is a class based, absolute exemption. Therefore, once it has been determined that the information requested falls within the classes of information laid out in section (1)(a)-(c) of the exemption, there is no requirement to articulate the prejudice that may be caused, or to argue the public interest in deciding whether or not to uphold the exemption. As I am content that the MPS response to this report by the Coroner was created only upon his request, I am assured

that this information does fall within the remit of section 32 and is therefore most definitely engaged”.

15. The Commissioner notes the complainant's grounds of complaint which stipulate that the response which the MPS is required to give happens **after** the inquest, ie in his view it is not "*part of the proceedings*". This is therefore the point which the Commissioner needs to consider.
16. As referred to in the Background section above, the processes involved clearly all fall under the same Regulations. The Response which the MPS was required to make is also covered by those Regulations and the decision as to whether to further publish that response is clearly at the discretionary control of the Chief Coroner – indeed this may actually include future disclosure.
17. An explanatory memorandum which accompanies the Regulations³ states:

“The Coroners (Investigations) Regulations 2013 govern the practice and procedure of coroner investigations of deaths under Part 1 of the Coroners and Justice Act 2009 (‘the 2009 Act’).”

18. It is the Commissioner's view that the whole Regulations are therefore intended to encompass the practice and procedure of coroners' investigations in full. As such it is his determination that the reports required in connection with sections 28 and 29 of those Regulations are clearly intended to be part of the "*practice and procedure of coroner investigations*". He therefore finds that the Response provided by the MPS to the coroner is a court document, prepared specifically for a coroner's investigation and that it therefore falls under the exemption in section 32(1)(a). This is an absolute exemption so no further consideration is necessary.

³ http://www.legislation.gov.uk/ukxi/2013/1629/pdfs/ukxiem_20131629_en.pdf

Right of appeal

19. 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

20. 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.
21. 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

Carolyn Howes
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