

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 March 2018

**Public Authority:** Chief Constable of Merseyside Police  
**Address:** Police Headquarters  
Canning Place  
Liverpool  
Merseyside  
L1 8JX

#### Decision (including any steps ordered)

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1. The complainant has asked to know whether an individual that he believed to be a paedophile had ever been the subject of police investigation. Merseyside Police refused to confirm or deny whether it held the requested information, citing the exemption at section 30(3) (investigations and proceedings) of the FOIA.
2. The Commissioner's decision is that Merseyside Police was entitled by section 30(3) to refuse to confirm or deny whether it held the requested information.
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. On 29 June 2017, the complainant wrote to Merseyside Police and requested information in the following terms:

*"I would like to request the following information under the Freedom of Information Act 2000. It concerns [name redacted] who is now deceased and therefore no longer covered by Data Protection.*

*I would like to know if [name redacted] was ever questioned by the Merseyside Police or former Liverpool Police, including any concerns [sic] over his conduct with youths. I would like to be given details of*

*any investigations that were carried out or closed by the FIMs<sup>1</sup>. If there are, I would like the names and FINS<sup>2</sup> of the officers who decided to close the incidents on NICHE<sup>3</sup>."*

5. Merseyside Police responded on 17 July 2017, refusing to confirm or deny ("NCND") whether it held the requested information, by virtue of the exemption at sections 30(3) (investigations and proceedings), 31(3) (law enforcement), 38(2) (health and safety), 40(5) (personal information) and 43(3) (commercial interests) of the FOIA.
6. The complainant submitted a request for an internal review, in which he stated his belief that the named individual was a paedophile, and that Merseyside Police had been aware of this. Following an internal review Merseyside Police wrote to the complainant on 27 July 2017. It upheld its application of the above NCND exemptions.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 29 July 2017 to complain about the way his request for information had been handled. He challenged Merseyside Police's decision to issue an NCND response.
8. The Commissioner has considered in this decision notice whether Merseyside Police was entitled to rely on section 30(3) of the FOIA to issue an NCND response. As her decision is that Merseyside Police was entitled to apply section 30(3) of the FOIA, it has not been necessary for the Commissioner to consider its application of the other exemptions it cited.
9. The Commissioner has not been made aware as to whether or not Merseyside Police holds the requested information as this is not necessary in order for her to consider its position. Nothing within this decision notice should be taken as implying that Merseyside Police does or does not hold the requested information.

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<sup>1</sup> Force Incident Managers

<sup>2</sup> Force Identity Numbers

<sup>3</sup> Merseyside Police's records management system

## Reasons for decision

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10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. However, there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the FOIA allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.
11. The decision to use a neither confirm nor deny response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point, and main focus in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
12. A public authority will need to use the neither confirm nor deny response consistently, over a series of separate requests, regardless of whether it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
13. It is sufficient to demonstrate that either a hypothetical confirmation, or a denial, would engage the exemption. In other words, it is not necessary to show that both confirming and denying information is held would engage the exemption from complying with section 1(1)(a) of the FOIA.

### **Section 30 – investigations and proceedings conducted by public authorities**

14. Merseyside Police said that the information described in the request, if it was held, would be exempt from disclosure by virtue of section 30(1)(a)(i).
15. Section 30(1)(a)(i) of the FOIA provides an exemption for information which has at any time been held for the purposes of an investigation with a view to ascertaining whether a person should be charged with an offence.
16. Section 30(3) of the FOIA provides an exclusion from the duty to confirm or deny whether information is held in relation to any information which, if it was held, would fall within sections 30(1) or 30(2) of the FOIA.
17. Consideration of section 30(3) of the FOIA involves two stages; first, the information described in the request must fall within the classes

described in sections 30(1) or 30(2). Secondly, the exemption is qualified by the public interest. This means that if the public interest in the maintenance of the exemption does not outweigh the public interest in confirming or denying whether information is held, then confirmation or denial must be provided.

18. As a police force, Merseyside Police clearly has a duty to investigate offences and allegations of offences. Information held for the purposes of a police investigation will generally fall within the description at section 30(1)(a)(i) of the FOIA. In this case, the complainant framed his request by specific reference to criminal allegations he believed the named individual had committed. The Commissioner therefore accepts that the information described in the request, if it was held, would be held by Merseyside Police for the purposes of an investigation and so would be within the class described in section 30(1)(a)(i).
19. The Commissioner is therefore satisfied that the exemption provided by section 30(3) of the FOIA is engaged.
20. However, section 30(3) is subject to the public interest test. Although the exemption may be automatically engaged where the information described in a request would be exempt under either subsection (1) or (2), it may only be maintained in the public interest if confirmation or denial would interfere with the effective conduct of the investigations or proceedings.

### **Public interest test**

21. In reaching a conclusion on the balance of the public interest, the Commissioner has considered what public interest there is in Merseyside Police confirming or denying whether it holds the requested information. The Commissioner also considered whether confirmation or denial would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.

#### *The complainant's position*

22. The complainant set out the following public interest arguments against the application of section 30(3). He alleged that while the individual named in the request had been held in high regard on Merseyside, there were "...widespread rumours for decades when he was alive that he was known to have carried out paedophile activities and which the Force refused to take action on".
23. The complainant alleged that the individual "...was given accolades which would never have been awarded [sic] to him if it had been confirmed

*that he was known to be a prolific user of underage boys for the use of sexual encounters”.*

24. The complainant alleged that Merseyside Police was aware of the allegations against the named individual and that it was therefore in the public interest to know if the force treated “*high profile, influential offenders differently from the general public*”.
25. He concluded “*Lastly, there is a need for the information to be released so that any potential victims who could have been intimidated into silence can not [sic] come forward and apply for justice*”.
26. While these appear to be the complainant’s genuinely held beliefs, the Commissioner would note here that he has not provided any information to substantiate his allegations.

*Merseyside Police’s position*

27. Merseyside Police considered the wording of the request, on the face of it, to be quite broad. However, the comments contained in the complainant’s request for an internal review led it to conclude that he was specifically interested to know whether the named individual had ever been questioned as a suspect in connection with the allegations he referred to.
28. Merseyside Police observed that the public interest in openness and transparency about its investigative processes, which is inherent in the exemption, would, to some extent, be served by it confirming or denying whether it holds the requested information.
29. However, Merseyside Police considered that the public interest in issuing an NCND response was stronger, due to the potential damage to those same investigative processes that confirmation or denial would be likely to cause. It explained that the act of confirming or denying whether it held such information would disclose to the public sensitive information about a particular, identifiable individual. The information request contained a suggestion of wrongdoing by the named individual, and the complainant had followed this up in the internal review request with the specific allegation that the named individual was a paedophile. Confirming or denying whether the information described in the request was held would therefore disclose either that he had or had not been the subject of police investigation in relation to the allegations cited by the complainant.
30. Merseyside Police said that the involvement or otherwise of any party in a criminal investigation should be protected from disclosure unless there is an overriding policing purpose which would be supported by the disclosure. It said that the police rely upon a flow of information to

investigate crimes and other matters. Anything which interrupts or undermines that flow would have a detrimental effect upon law enforcement. It is an entirely reasonable expectation for the public when assisting the police (as victim, witness or suspect) to expect confidentiality and protection in those dealings, both for themselves and for wider friends and family members who might be distressed or even physically endangered should their involvement with the police become public knowledge. To forsake that trust by responding to speculative FOIA requests for information about individual investigations would affect people's trust in the police, which would jeopardise the flow of information to them, and would damage their ability to investigate crime effectively.

*The Commissioner's conclusion*

31. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the act of confirming or denying whether the requested information is held could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.
32. The Commissioner recognises that the subject matter of this case – historic allegations of sexual abuse - is a sensitive issue. She acknowledges that there is general public concern about how allegations of abuse have been handled in the criminal justice system.
33. She also notes that considerable public concern remains about apparent historic failures to investigate high profile figures who allegedly committed offences against children.
34. The Commissioner recognises the importance of the public having confidence in those public authorities tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases.
35. She recognises that confirmation or denial in this case would, to some extent, aid transparency and increase accountability and could add to the public's understanding of the actions taken by Merseyside Police.
36. However, the Commissioner also considers that confirming or denying would not allow the public to draw reliable conclusions about Merseyside Police's conduct. For example, a denial that information was held could indicate that allegations had been received by the police but not acted on. Equally, it could indicate that no allegations or complaints had ever

been made to the police about the named individual. The Commissioner therefore considers that confirmation or denial would do little to address the complainant's stated public interest concerns.

37. As explained in paragraph 13, above, it is sufficient to demonstrate that either a hypothetical confirmation, or a denial, would engage the exemption.
38. In the circumstances of this case, the Commissioner has accorded greater weight to the arguments surrounding the public interest in protecting the ability of Merseyside Police to conduct effective investigations.
39. The Commissioner considers that the act of confirming or denying in this case could create a perception among the wider public that individuals who cooperate with Merseyside Police (or any police force), whether as victim, witness or suspect, risk having this fact disclosed into the public domain, and that communications with the police may prove not to be truly confidential.
40. Clearly, it is vital that Merseyside Police is able to give a guarantee of confidentiality to anyone who wishes to complain or give evidence to it or who may be willing to cooperate with it about criminal matters. This guarantee extends to suspects who are entitled to expect that, at least until formally charged, information about them will not be disclosed for reasons not directly to do with and necessary for, the police investigation.
41. If the credibility of such guarantees is undermined the perception that information provided to the police may be disclosed to the world at large may deter people from coming forward and cooperating with prosecuting authorities, particularly where sensitive offences are alleged. This would be likely to disrupt the flow of information and intelligence to Merseyside Police, and there would be an inevitable impact on its ability to conduct efficient and well evidenced criminal investigations which would be strongly against the public interest.
42. Given the specific wording of the request, the Commissioner considers that confirmation or denial in this case would give rise to a perception that Merseyside Police is not able to guarantee confidentiality in its criminal investigations and that this would very likely disrupt the flow of information to the police, thereby jeopardising future investigations. There is a very significant public interest in avoiding that outcome and it is a factor of considerable weight in favour of maintenance of the exemption in this case.

43. The complainant's overall concern is that justice has not been done. However, confirming or denying in this case would not significantly further that end. If the complainant has specific information about the named individual's involvement in criminal matters, he may make a formal complaint to Merseyside Police. If he is dissatisfied with the outcome, the Commissioner is satisfied that the wider public interest in accountability is served by the formal channels which exist (via Merseyside Police's Professional Standards Department, or the Independent Office for Police Conduct), capable of scrutinising decisions taken in particular cases.
44. Having given due consideration to the arguments put forward by both parties, on this occasion the Commissioner accepts that the public interest favours maintaining the exemption at section 30(3) of the FOIA and that Merseyside Police was not obliged to confirm or deny whether it held the information described in the request.



## Right of appeal

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45. 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)

46. 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.
47. 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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**