

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 February 2018

**Public Authority:** Chief Constable Northumbria Police  
**Address:** Northumbria Police Headquarters  
Middle Engine Lane  
Wallsend  
Tyne & Wear  
NE28 9NT

### Decision (including any steps ordered)

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1. The complainant requested information about alleged criminal offences arising from a third party's employment tribunal. Northumbria Police refused to provide the requested information, initially citing section 21 of FOIA, (information reasonably accessible by other means) for part one of the request and 30(2)(a)(i), (criminal investigations and proceedings) for the second part of the request. However, during the course of the Commissioner's investigation, Northumbria Police confirmed it no longer wished to rely on section 30(2)(a)(i) in respect of part two of the request, instead citing section 30(1)(a) of FOIA. The complainant is only concerned with the information withheld under section 30(1)(a).
2. Having considered its application of section 30(1)(a), the Commissioner's decision is that Northumbria Police was entitled to rely on that exemption to withhold the requested information. However, by relying on this exemption, which it had not mentioned at or before the internal review, Northumbria Police has breached section 17(1) of FOIA.
3. The Commissioner does not require Northumbria Police to take any steps as a result of this notice.

## Request and response

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4. On 15 January 2017, the complainant wrote to Northumbria Police and requested information in the following terms:

*"My questions relate to the alleged criminal offences which were revealed during the [name redacted] employment tribunal. As you will doubtless be aware, while only allegations, they included claims of assault and the deletion of records on the force computer.*

*I understand that, after the tribunal, the Chief Constable, Steve Ashman, released a statement regarding the investigation of these allegations. Can you please:*

- 1) Give me a copy of Mr Ashman's statement.*
- 2) Update me of the extent, if any, to which these allegations have been investigated (e.g. numbers of people interviewed, suspects identified, files sent to CPS etc) and if there is any evidence to support or refute these claims.*

*While I appreciate that it would be unreasonable to request the finer details of a criminal investigation, I believe it is reasonable to at least request a general overview of what, if any, action has been taken."*

5. Northumbria Police responded to the request on 14 February 2017. In relation to part one it refused to provide the requested information, citing section 21 of FOIA (information reasonably accessible by other means) and provided a weblink<sup>1</sup> to that information.
6. In relation to part two of the request, Northumbria Police also refused to provide the requested information citing section 30(2) of FOIA (investigations and proceedings conducted by public authorities). It said that the balance of the public interest favoured withholding the requested information.
7. On 14 February 2017, the complainant requested an internal review in respect of part two of his request; however Northumbria Police failed to respond. The complainant did not follow this up and his subsequent

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<sup>1</sup>[http://www.northumbria.police.uk/your\\_neighbourhood/central\\_area\\_command/newcastle/city/news-detail/?pageId=45555](http://www.northumbria.police.uk/your_neighbourhood/central_area_command/newcastle/city/news-detail/?pageId=45555)

complaint to the Commissioner was technically out of time given that it was submitted to her more than three months later. However, having spoken to the Commissioner, the complainant contacted Northumbria Police who realised it had not actioned the review request. It then agreed to provide the internal review outcome and did so on 26 October 2017, maintaining its original position. The Commissioner exercised her discretion and agreed to progress the subsequent complaint.

## Scope of the case

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8. Following receipt of the late internal review, the complainant contacted the Commissioner on 26 October 2017 and advised that he was satisfied with the handling of part one of his request. However, he confirmed he wished to complain about the way part two of request for information had been handled. He disputed the need to withhold all the information because he considered he had asked "*reasonably general questions*".
9. As stated in the 'Summary' above, during the course of the Commissioner's investigation, Northumbria Police confirmed that it no longer wished to rely on section 30(2)(a)(i) in respect of part two of the request, instead citing section 30(1)(a) of FOIA.
10. The Commissioner has therefore considered whether Northumbria Police was entitled to rely on section 30(1)(a) of FOIA in respect of the second part of the request.

## Reasons for decision

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### Section 30 - investigations and proceedings conducted by public authorities

11. Northumbria Police cited section 30(1)(a) in relation to the withheld information it holds for the second part of the request. This states:

*"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".*

12. The phrase 'at any time' means that information is exempt under section 30 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.

*Is the exemption engaged?*

13. The Commissioner has issued guidance on section 30<sup>2</sup> which states that section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings.
14. Section 30 of 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).
15. Northumbria Police relies upon section 30(1)(a) in this instance. This is because Northumbria Police (and other Police Forces) have the duty to undertake investigations by virtue of the core function of law enforcement. As a Police Force it is a statutory function of Northumbria Police to carry out such investigations that could lead to criminal proceedings. The Commissioner is therefore satisfied that it has the power to carry out investigations of the sort described in section 30(1)(a).
16. The Commissioner's guidance explains the types of scenarios in which the subsections of section 30(1) apply. With respect to section 30(1)(a), her guidance says:

*"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged.*

*Any investigation must be, or have been, conducted with a **view** to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it.*

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

*It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence...."*

17. In correspondence with the Commissioner, Northumbria Police said that the investigation was "*ongoing*" at the time of the request. In light of the above, the Commissioner is satisfied that the exemption is engaged.

*Public interest test*

18. Section 30(1)(a) provides a qualified exemption and is therefore subject to the public interest test under section 2(2)(b) of the FOIA. Section 2(2)(b) provides that such an exemption can only be maintained where:

*"... in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information".*

19. In accordance with her guidance, when considering the public interest in maintaining the exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
20. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.

***Public interest arguments in favour of disclosure of the information***

21. Arguing in favour of disclosure, the complainant told the Commissioner:

*"This particular case involves the spending of £1.2 million on an employment tribunal and the refusal to answer any questions regarding criminal allegations against a former chief constable which arose out of that tribunal. This is obviously a matter of public interest."*

22. He also said:

*"I appreciate that an investigation (if one is actually taking place) requires a force to hold back certain information which may be confidential or could jeopardise an inquiry.*

*However, I believe the questions I asked, which relates [sic] to alleged criminal offences by former senior officers, is in the public interest and deserves answers. The questions I asked were reasonably general."*

23. Northumbria Police recognised the public interest in openness and accountability. It told the complainant:

*"Disclosure of information about how Northumbria Police conducts its functions could enhance the accountability of the Force and its individual officers. There is a legitimate public interest in knowing that the Force takes action against any members of staff who are alleged to have breached procedures. Disclosure of the information requested may encourage accurate and informed public debate. It would also correct rumour and speculation and provide confidence in the Force's ability to investigate any alleged offences."*

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

24. In favour of withholding the requested information, Northumbria Police advised the complainant at internal review as follows:

*"It is accepted that there has been public curiosity into this subject and it has seen significant coverage in the press. However this is not indicative of there being an actual public benefit through the disclosure of information."*

*It is a matter of fact that this matter is still subject to investigation and there is little public benefit in the disclosure of the information requested other than to satisfy public curiosity."*

*In this case, disclosure would not assist the policing process. Whilst you argue that the information you seek is general information, this is not the case. You have asked for a [sic] specific information about a particular investigation. It would not be appropriate to disclose the extent of an investigation in response to an FOI request as such a disclosure would be likely to have an adverse effect on that very investigation. The disclosure of such information will always be resisted where disclosure does not serve a core policing function."*

25. Northumbria Police also said:

*"Whilst such information may be released in order to serve a core policing purpose (ie to protect life and property and/or assist in prevention and detection of crime and/or in the apprehension and prosecution of offenders), it will only be disclosed if there are strong public interest considerations favouring disclosure. As you have acknowledged in your request above this matter is ongoing and investigations are still being carried out. Northumbria Police has a duty to ensure all investigations are dealt with fairly and equally. It is important that any investigation is conducted with regard to confidentiality and privacy. The public interest would*

*not be served if a disclosure made under FOIA compromised any of those ongoing investigations."*

***The balance of the public interest***

26. In applying the public interest test, the Commissioner considers it is important to recognise that the purpose of the section 30 exemption is to protect the effective investigation and prosecution of offences.
27. The Commissioner acknowledges that the complainant clearly has an interest in the subject matter of this request. However, she must consider the wider public interest issues. In that respect, she accepts the public interest in openness and accountability in the context of this request.
28. The Commissioner recognises the public interest in transparency and accountability in matters relating to the conduct of senior officers who are subject to the allegations, which were currently under investigation at the time of the request and internal review, and for the public to be able to reach an informed view as to whether such matters were being investigated thoroughly. In that respect she notes that Northumbria Police has published the Chief Constable's statement on its website. It has also said that some of the information *may* be disclosable on completion of the investigation. She considers that this goes some considerable way to meet the public interest.
29. In her published guidance on section 30<sup>3</sup>, the Commissioner recognises that:

*"In a democratic society it is important that offences can be effectively investigated and prosecuted. However, the public needs to have confidence in the ability of the responsible public authorities to uphold the law and the public interest will be served by disclosures which serve that purpose".*
30. 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. She recognises that releasing the requested information in this case would aid transparency and increase accountability and could add to the public's knowledge of the actions taken by Northumbria Police.

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

31. However, in the circumstances of this case, the Commissioner has given much greater weight to the arguments surrounding the public interest in protecting the ability of Northumbria Police to conduct effective investigations, including into allegations of criminal offences, as the investigation remained ongoing at the time of both the request and internal review.
32. The Commissioner is satisfied that it would not be in the public interest to disclose information relating to a live investigation involving allegations of serious criminal offences.
33. Furthermore, the perception that information provided by witnesses may be disclosed to the world at large may deter them coming forward and cooperating with prosecuting authorities, particularly where criminal offences have been alleged. This is particularly apparent when an investigation is live.
34. In the Commissioner's view, it would not be in the public interest to disclose information which might prejudice or jeopardise the work of this investigation, which is not yet concluded.
35. Taking all of the above into account, the Commissioner is satisfied that section 30(1)(a) has been applied appropriately in this case and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Breach of section 17 for late reliance on section 30(1)(a)**

36. Section 1(1) of FOIA states:

*"(1) Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

37. Section 17(1) of FOIA states:

*"(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, **within the time for complying with section 1(1)**, give the applicant a notice which –*

*(a) states that fact,*



*(b) specifies the exemption in question, and*

*(c) states (if that would not otherwise be apparent) why the exemption applies."*

38. Breaches of section 17 will also be found if the public authority seeks to rely on another exemption during the investigation which it had not mentioned at or before internal review.
39. In this case, Northumbria Police relied on section 30(1(a) during the course of the Commissioner's investigation. It has therefore breached section 17(1) of FOIA.

### **Other matters**

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40. The complainant requested an internal review on 14 February 2017; Northumbria Police did not provide its internal review until 26 October 2017.
41. In this case the Commissioner has not been made aware of the reason why Northumbria Police failed to carry out an internal review within the recommended 20 working days; however she notes that once the complainant contacted it in October 2017 to query his outstanding internal review, it completed it quickly.

## Right of appeal

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42. 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)

43. 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.
44. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**