

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 August 2018

**Public Authority:** Police & Crime Commissioner for West Yorkshire

**Address:** Ploughland House  
62 George Street  
Wakefield  
WF1 1DL

### Decision (including any steps ordered)

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1. The complainant has requested information related to a police investigation into a former Chair of the West Yorkshire Police Authority from the Office of the Police and Crime Commissioner for West Yorkshire (the "OPCC"). The OPCC would neither confirm nor deny ("NCND") holding any information, citing the exemption at section 31(3) (law enforcement) of the FOIA as its basis for doing so.
2. The Commissioner's decision is that it was entitled to do so. No steps are required.

### Background

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3. The OPCC has provided the following background information which it advises is available in the public domain:

*"Neil Taggart was a former councillor in Leeds (between 1980 and 2014), Lord Mayor of Leeds (in 2003) and Chair of the West Yorkshire Police Authority (between 1998 and 2003). He was sentenced to 32 months in prison on 04/07/2017 after being convicted of making, possessing and distributing indecent images of children between 2010 and 2016. This information has been widely reported by local media".*

4. West Yorkshire Police Authority was superseded by the OPCC in 2012.
5. The request has been made by a media producer.

## Request and response

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6. On 3 October 2017, 5 December 2017 and 17 January 2018 the complainant wrote to the OPCC and requested information in the following terms:
    - 1) *Did the office of the West Yorkshire Police and Crime Commissioner have a hard drive and/or any computer peripherals or storage devices (floppy discs/tapes/memory sticks) that had been used by the former West Yorkshire Police Authority Chairman Neil Taggart?*
    - 2) *How long was the computer hardware in your possession? From what year has it been in storage with the office of the PCC?*
    - 3) *Did [name removed] keep this computer equipment from his time as [job title removed] West Yorkshire Police Authority?*
    - 4) *How long has the computer equipment been in the possession of [name removed]? From what year?*
    - 5) *Has this computer equipment been stored in a safe?*
    - 6) *Why was this computer equipment kept?*
    - 7) *What information was on this computer equipment that you wanted to keep?*
    - 8) *Has this computer equipment been given to West Yorkshire Police?*
    - 9) *When was this computer equipment given to West Yorkshire Police?*
    - 10) *Has this computer equipment been analysed by West Yorkshire Police?*
  7. Responses were provided on 27 October 2017, 14 December 2017 and 31 January 2018 respectively. On the first two occasions the OPCC would neither confirm nor deny holding any information citing section 31(3) (law enforcement). On the third occasion it cited section 14(2) (repeat request).
  8. The complainant requested an internal review of all three requests on 2 March 2018. On 23 March 2018 the OPCC provided an internal review which covered all the requests. It withdrew reliance on section 14(2) but maintained its position in respect of 31(3) for all three.
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## Scope of the case

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9. The complainant contacted the Commissioner on 12 April 2018 to complain about the way her request for information had been handled.
10. All the requests are the same and were internally reviewed together. The Commissioner has therefore considered the OPCC's most recent position below.

## Reasons for decision

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11. The OPCC has provided the Commissioner with a confidential submission. This has been taken into account in the Commissioner's decision-making but has not been reproduced in this notice.

## Section 31 – law enforcement

12. Section 31 of FOIA states that:

*(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-*

- (a) the prevention or detection of crime,*
- (b) the apprehension or prosecution of offenders,*
- (c) the administration of justice*

...

*(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).*

13. Section 31(3) provides that a public authority is not obliged to confirm or deny holding information described in a request if to do so would, or would be likely to, prejudice any of the matters mentioned in section 31(1). The OPCC had advised that the relevant matters in this case are those set out at sections 31(1)(b) and 31(1)(c). This is a qualified exemption, and is therefore subject to a public interest test.
14. The Commissioner's guidance on section 31 explains that the prejudice in terms of section 31(3) will depend on how the request is phrased. Typically, where a request identified an individual or an organisation as the possible subject of an investigation, or a particular line of enquiry a public authority could be pursuing, the more chance there is that confirming the information's existence would, or would be likely to, prejudice that investigation.

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15. The guidance goes on to explain that there is a need, in some circumstances, to apply the neither confirm nor deny (NCND) provision consistently. Where confirmation or denial would reveal whether a particular party was under investigation and where this would, or would be likely to, prejudice such an investigation, public authorities should be alert to the need to apply the NCND provision.
16. The issue for the Commissioner to consider in this case is whether confirming or denying that the requested information is held would, or would be likely to, prejudice the apprehension or prosecution of offenders or the administration of justice.
17. When considering a prejudice based exemption such as this the Commissioner will:
  - identify the applicable interests within the relevant exemption;
  - identify the nature of the prejudice and that the prejudice claimed is real, actual and of substance;
  - show that there is a causal link between disclosure and the prejudice claimed; and,
  - decide whether prejudice would or would be likely to occur.
18. Confirming or denying whether or not it holds any of the requested information would effectively disclose whether or not the OPCC was, or still is, directly involved in any investigation into the named parties. As such, the Commissioner accepts that such confirmation or denial relates to both the apprehension or prosecution of an offender and the administration of justice, and that these are relevant applicable interests.
19. The Commissioner will next consider whether issuing a confirmation or denial in response to the request would be likely to result in a real and significant likelihood of prejudice to the apprehension or prosecution of an offender and the administration of justice.
20. In its internal review the OPCC advised the complainant:

*"The prejudice in confirming or denying whether any information is relevant to your request is held is that not all circumstances of previous police investigations are suitable for disclosure to the world... Disclosing potentially sensitive information about an individual police investigation, if held, would be likely to undermine investigative processes and the police service's ability to deliver effective law enforcement".*
21. The OPCC explained to the Commissioner that:

*"Confirmation or denial that such information is held would not be given for any other police investigation under any circumstances*

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*because it would be likely to undermine the investigative process and harm the judicial process..."*

22. It added that a similar request had been made directly to West Yorkshire Police which had resulted in the force itself refusing to confirm or deny whether this information is held:

*"... on the basis that disclosure of such information about any police investigation would be likely to compromise the investigative process, undermine delivery of law enforcement and undermine confidence in the force".*

23. In her grounds of complaint the complainant has argued that the OPCC's arguments do not relate to the case in question but rather rely on "unsubstantiated concerns about hypothetical future cases". She believes it would be "entirely possible to reveal whether this information is held or not in this specific case without setting a precedent that would jeopardise an ongoing police investigation in future".

24. The Commissioner accepts the view that the arguments presented to the complainant by the OPCC are very generic and do not entirely focus on the case in question. However, she can also confirm that more specific arguments have been provided to her personally, albeit that these have been given in confidence and cannot therefore be reproduced here.

25. The Commissioner also notes that the request is very specific in the information it is seeking, ie referring to a particular investigation and named parties, and her guidance on the application of section 31 states<sup>1</sup>:

*"The prejudice in terms of section 31(3) will depend on how the request is phrased. Typically, where a request identifies an individual or an organisation as the possible subject of an investigation or a particular line of enquiry a public authority could be pursuing, the more chance there is that confirming the information's existence would, or would be likely to, prejudice that investigation."*

26. The complainant also argues that the case she is requesting information about is:

**Commented [SB1]:** Also worth referring back to the wording of the request which is quite specific in the info it seeks. S31 guidance may also be helpful "The prejudice in terms of section 31(3) will depend on how the request is phrased. Typically, where a request identifies an individual or an organisation as the possible subject of an investigation or a particular line of enquiry a public authority could be pursuing, the more chance there is that confirming the information's existence would, or would be likely to, prejudice that investigation."

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

*"... in the public domain already and that there must be a yes or no answer to the questions I have asked in my FOI. The NCND reply in this instance therefore lacks any credibility and will not give anything away that is not already obviously known".*

27. The complainant goes on to say that she believes that a hard drive from the OPCC that had been used by Neil Taggart when he was the former West Yorkshire Police Authority Chairman was kept in a safe at the OPCC. She further argues as follows:

*"During the West Yorkshire Police investigation into Neil Taggart we have reason to believe that [name removed] did not disclose that [gender removed] had a hard drive belonging to Neil Taggart. We believe this was not given to West Yorkshire Police until after Neil Taggart's guilty pleas.*

*The Police have a statutory duty to report and investigate child sexual exploitation. Therefore why was this hard drive not disclosed during the investigation?*

*We believe it to be legitimately in the public interest that the West Yorkshire Police and Crime Commissioner's office is open and transparent about this hard drive and when they became aware of it and handed it over to West Yorkshire Police. If the hard drive was withheld from the original investigation into Neil Taggart then this is at best incompetence and at worst corruption. The public interest is for disclosure on this matter to ensure confidence in the police, promote public trust and be open and accountable. We feel in this circumstance, NCND has been used to avoid disclosing information that may reveal unlawful activity".*

28. Albeit the complainant has initially argued that what she is requesting is already in the public domain, based on the further arguments she has provided to the Commissioner above this is clearly not the case; the matters she is enquiring about are only things which she suspects at this stage. The Commissioner considers that this is clearly the specific issue which the OPCC is seeking to maintain a NCND stance about, ie it is not a matter currently in the public domain nor is it formally known whether or not it is a matter of interest to the police or whether there are any further enquiries outstanding (or, indeed, whether any are actually necessary). At the moment it remains purely speculative on the part of the complainant and no formal statements have been made on the matter either by the OPCC or the associated police force. The Commissioner therefore considers that the requested information is clearly not in the public domain, nor is its existence, or otherwise, publicly confirmed.

29. As mentioned above, the Commissioner has been provided with further arguments from the OPCC which she is unable to reproduce in this notice. She is satisfied that they are appropriate to the engagement of this exemption and that they sufficiently evidence that confirmation or denial as to the existence of the requested information would be likely to result in a real and significant likelihood of prejudice to the apprehension or prosecution of an offender and the administration of justice. Furthermore, she is satisfied that the OPCC is able to show that there is a causal link between disclosure and the prejudice claimed, and also that this prejudice would be likely to occur.
30. The exemption at section 31(3) is qualified by the public interest test set out in section 2(2)(b) of the FOIA. Therefore, the Commissioner must determine whether, in all the circumstances of the case, the public interest in maintaining a NCND stance outweighs the public interest in confirming whether or not any information is held.

*Public interest arguments in favour of confirmation or denial*

31. The OPCC has argued that revealing whether or not any relevant information is held would better inform the public about investigative processes. It would also keep the public informed about this particular case and evidence any particular involvement which the OPCC may, or may not have, in the matters covered by the wording of the request.
32. The complainant has argued that the confirmation or denial should be given because of the public interest surrounding confidence and transparency in the OPCC.
33. The Commissioner accepts that there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain confidence and trust.

*Public interest arguments in favour of maintaining the NCND provision*

34. The OPCC has advised that information about the police investigation into this individual is already in the public domain.
35. It has also indicated that confirmation or denial as to the existence of any of the requested information may undermine any future investigation.
36. The Commissioner also recognises that there is a very strong public interest in protecting the law enforcement capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to the apprehension or prosecution of offenders and the administration of justice.

### Conclusion

37. The Commissioner has considered both the complainant's and the OPCC's arguments. She has also taken into consideration the confidential submission made by the OPCC.
38. The complainant clearly has concerns that a matter which she believes to be of significance may have been overlooked, either intentionally or inadvertently, by the OPCC. The Commissioner accepts that such a concern, if warranted, demonstrates a matter which has the potential to be of considerable concern to the general public. However, it must be borne in mind that such matters need to be dealt with by the appropriate authorities and disclosure to the world at large by way of a request made under the FOIA would prevent this happening. If, as suspected by the complainant, there is evidence of a further crime, or concerns that such evidence has not been acted on, a confirmation or denial in this case has the potential to seriously undermine any chance of a fair outcome to such matters in the future. A confirmation or denial would therefore be likely to undermine law enforcement and the judicial processes. The Commissioner considers that any possibility of confirmation or denial resulting in this outcome considerably outweighs the arguments presented by the complainant.
39. On balance, the Commissioner has concluded that the public interest in confirming or denying whether the requested information is held is outweighed by the public interest in upholding the application of section 31(3). Therefore no steps are required.

**Commented [SB2]:** This is a bit vague – are you talking about concerns about the existence of evidence of further crimes, or concerns that such evidence has not been acted on? I assume the former, but it just needs clarifying.

### Other matters

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40. In its response to the Commissioner's enquiries the OPCC advised:

*"The request ... is a series of questions, submitted via the FOI Act rather than through usual media channels for comment. The FOI Act applies to recorded information held by a public authority. Questions 3, 4 and 7, in particular, are worded as requests for comment rather than for recorded information which would be more suitably made as media requests for comment".*
41. The OPCC did not advise the complainant that it understood these parts of the request to be invalid and the Commissioner has not therefore considered this point any further.
42. However, the Commissioner's would like to remind the OPCC that the FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold. Therefore, if the OPCC



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understood the requests not to be valid for the purposes of the FOIA, it should have advised the complainant accordingly.

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**Right of appeal**

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43. 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)

44. 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.
45. 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  
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Cheshire  
SK9 5AF**