

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2022

Public Authority: Humberside Police
Address: Priory Police Station
Priory Rd
Hull
HU5 5SF

Decision (including any steps ordered)

1. The complainant has requested information from Humberside Police ("HP") for all records, transcripts and case notes related directly or indirectly to the disappearance and murder of Liberty ("Libby") Squire in 2019. HP initially cited section 22 (Information intended for future publication) and then section 30 (Investigations and proceedings), section 38 and section 40(5) (Personal Information) of FOIA as its reasons to withhold the information.
2. The Commissioner's decision is that HP has correctly engaged section 30 of FOIA and that the public interest favours maintaining the exemption. However, by failing to refuse the request within 20 working days, the Council breached section 17(1) of FOIA. Also, the Commissioner has found that HP breached section 17 of FOIA because of the delays in its response.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 21 April 2022, the complainant wrote to HP (reference 001330/22) and requested information in the following terms:

"I wish to examine all of your written records relating to the Libby Squire murder case, including the following: The log for the period 31 Jan to 01 Feb 2019. Records of door to door enquiries in (names

redacted). All notes on the investigation made by Det (name redacted) Supt (name redacted) and other investigating officers. Transcripts of interviews with people involved in the case including (Names redacted). Records relating to the search operation in the days following the disappearance of Libby Squire”

5. HP responded on 17 May 2022. It stated that

“This case is currently being prepared for future publication; therefore it has been determined that this is exempt under S22 – Information intended for future publication.”

6. On 19 May 2022, the complainant wrote to HP stating the following:

“You are misusing section S22 of the Freedom Of Information Act as an excuse for refusing to provide the information I have requested. You do not have any intention of publishing the information, and if you did, you would have told me so in the first place.”

7. On 20 May 2022 , the complainant wrote to the chief constable at HP directly (reference 00tt1654/22) and requested information in the following terms:

“I hereby request all of Humberside Police's records and case notes made by police officers investigating the disappearance and murder of Liberty("Libby") Squire in 2019, to include all written material relating directly or indirectly to the investigation and also the log for the 48 hour period 31 Jan to 01 Feb 2019, for the Names redacted police area of Hull.”

8. On 28 June 2022 , the complainant wrote to HP (reference 002105/22) and requested information in the following terms:

“Further to my recent request for the written material relating to the disappearance and murder of Liberty "Libby" Squire, I am now making an additional request for all the video evidence relating to the Libby Squire case, including the drone video.

I would prefer the info to be supplied in the form of the video files on a computer disk (CD or DVD). It should be posted or delivered to the address above.

I understand the Libby Squire case is now officially closed, and that Humberside Police has stated that it will not investigate any new information.”

9. On 28 June 2022, HP responded to the complainant as follows:

"This case including video footage is currently being prepared for future publication, therefore it has been determined that this is exempt under S22 – Information intended for future publication.

In order to assist I provide the following link Sky to air 'not your average' three-part crime series into Libby Squire's murder - Hull Live (hulldailymail.co.uk)"

10. Following an internal review upholding its original decision, HP wrote to the complainant on 6 July 2022. It stated that

"Please be advised that having reviewed your FOI requests 001330/22, 001654/22 and 002105/22 relating to the Libby Squires murder investigation, searches have been conducted with the Force media team, Chief Officers and Major Incidents team. As previously corresponded to you the information requested is due for release in the near future and as such, we uphold the decision to exempt the request under s.22. The information will form part of a 3 part documentary. Further information can be found on the attached article:

[Sky to air 'not your average' three-part crime series into Libby Squire's murder - Hull Live \(hulldailymail.co.uk\)](https://www.hulldailymail.co.uk/news/crime/Sky-to-air-not-your-average-three-part-crime-series-into-Libby-Squire-s-murder-2022-07-06)

[Libby Squire three-part true crime series 'Libby, Are You Home Yet?': When it will air and on which channel \(msn.com\) "](https://www.msn.com/en-gb/news/crime/libby-squire-three-part-true-crime-series-libby-are-you-home-yet-when-it-will-air-and-on-which-channel)

Scope of the case

11. The complainant contacted the Commissioner on 18 May 2022 to complain about the way his request for information had been handled believing that HP have never had an intention to publish the information subject to the request.
12. The Commissioner wrote to HP on 9 November 2022 to set out his preliminary view of the complaint. He noted that it seemed extremely unlikely that section 22 of FOIA would apply to all the information within the scope of the request. Given the likely sensitivity of some of the requested information, he gave HP one opportunity to cite a further exemption that would cover any remaining information and provide its supporting arguments.
13. HP responded to the Commissioner on 23 November 2022 and now relied on section 30 of FOIA to withhold the remaining information.

14. As the tv documentary has now aired, the Commissioner considers that some of the information is now in the public domain and accessible to the complainant. The Commissioner considers the scope of his investigation to be to determine whether the HP is entitled to withhold the remainder of the requested information under section 30(1)(a) of FOIA.

Reasons for decision

Section 30 – investigations and proceedings

15. Section 30(1)(a)(i) of FOIA states:
16. "Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose 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..."
17. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1)(a) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
18. In this case the Commissioner has not asked HP to provide him with a copy of the withheld information as the investigation is now closed. The Commissioner understands that the withheld information subject to the request includes all documentation relating to the investigation conducted by HP into the death of the named individual. Documents which were used to convict a man of Miss Squires' rape and murder.
19. Section 30(1)(a) is also a qualified exemption. This means that, even if the exemption is engaged, consideration must be given as to whether the public interest lies in disclosure or in maintaining the exemption.

Is the exemption engaged?

20. The first step is to determine whether the withheld information falls within the class described in section 30(1)(a).
21. As the request clearly relates to information held for the purposes of a specific criminal investigation and may or may not have been used in the subsequent conviction of an individual, the Commissioner is satisfied that exemption s30 is engaged in respect of all the information HP held within the scope of this request – whether ultimately broadcast or not.

Public interest arguments in favour of disclosing the information

22. HP acknowledges that disclosure would promote transparency and accountability in how it conducts investigations leading to the convictions of individuals, particularly in high profile and emotive cases promoting trust that HP conducted its core functions to uphold the law fairly.
23. HP also consider that the public interest was met in this regard by the airing of the three-part documentary which gave a carefully considered insight into how HP had conducted investigations both during the search for Libby Squires leading to the arrest of the perpetrator and more importantly, was met by a well-publicised trial and subsequent conviction.
24. HP stated that it worked in close partnership with the victim's family and the documentary makers to determine which information could be made public and confirmed that information supplied to the production company included transcripts of interviews, all relevant logs, CCTV, all evidence used as part of the trial, drone footage, and details of media coverage.
25. Whilst the Commissioner understands that the information requested is of interest to the complainant, consideration must be given as to whether the information not already disclosed by the documentary or via the extensive press releases at the time of the trial, is suitable for disclosure under FOIA as this is disclosure to the world at large. The Commissioner is not able to consider the private interests of the complainant in his decision.

Public interest arguments in maintaining the exemption

26. HP argued that disclosure could lead to speculation and misinformation on where HP had directed both its investigations and how HP decided on who was or was not of interest for further enquiry, additionally revealing to the public precise tactics that were deployed and are likely to be deployed in the future.
27. Disclosure would also undermine and discourage the voluntary cooperation and disclosure of information to HP from witnesses and those who assist HP in investigations, potentially hindering the administration of justice as details of their assistance with HP is made public. HP stated

“We would not wish to reveal who and what evidence / intelligence is relevant and the extent of our investigations as this would clearly undermine the law enforcement and future investigative process.

Particularly as the applicant has requested specific details relating to the murder investigation namely, door to door enquiries, the search enquiries, interview transcripts and the log of investigating officers.”

The balance of the public interest arguments

28. HP stated that it accepts that there is a public interest in understanding how HP carries out its investigative work and how it makes decisions as to whether an individual should be charged and prosecuted or not.
29. The Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. That requires proper scrutiny of the evidence gathered and the tactics used.
30. However, in this case, the Commissioner notes that the evidence gathered was placed before a jury which was able to consider whether that evidence was reliable, properly gathered, and relevant to the matter at hand. The defendant had professional legal representation and his defence team would have had access to all the police evidence. He has chosen not to appeal either the length of sentence or the conviction itself.¹
31. Whilst the Commissioner accepts that this criminal investigation is complete, he recognises that disclosing the entirety of the investigation material would reveal police tactics that are likely to be used in other investigations – thereby potentially undermining the efforts of HP to carry out similar investigations in future.
32. The Commissioner also gives considerable weight to the importance of protecting future witnesses. There are likely to be several witnesses who provided statements to the investigation but chose not to be involved in the tv documentary, and such individuals have a reasonable expectation that their identities will not be published. Witnesses will generally have a strong expectation that any information they provide to the police will be treated in confidence. Potential witnesses are less likely to come forward in future if they are concerned that their identities and the information they provide will be placed, unfiltered, into the public domain.

¹ <https://www.hulldailymail.co.uk/news/hull-east-yorkshire-news/libby-squires-killer-pawel-relowicz-5199324>

33. Taking all the above into account and having given due consideration to the arguments put forward by both parties, the Commissioner considers that the public interest in disclosure is outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined and the ability of HP to investigate crime effectively is not jeopardised.
34. The Commissioner is therefore satisfied that HP was entitled to rely on section 30(1)(a) of FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
35. As the Commissioner has concluded that this exemption is properly engaged in respect of the withheld information in its entirety, he has not gone on to consider application of the other exemptions – s22 and s40(2) cited by HP.

Procedural matters

36. Under section 17(1) of FOIA a public authority must issue a refusal notice in respect of any exempt information within 20 working days following the date of receipt of a request.
37. In this case, the complainant submitted their request on 21 April 2022 and did not receive a refusal notice until 6 July 2022. HP also sought to rely on another exemption which it did not mention at internal review. HP therefore breached section 17(1) of FOIA as a result of its delayed response.

Other matters

38. The Commissioner considers that HP relied on section 22 of FOIA in a manner that was inappropriate.
39. In order to rely on this exemption, a public authority must be confident that **all** of the information it is relying on the exemption to withhold, is going to be published – not just a small proportion of it.
40. It is not clear how much of the requested information HP handed over to the documentary company. However, given that HP is unlikely to have had considerable editorial control over what was or was not used in the documentary, it could have made no reliable assessment, when issuing its refusal notice, of the parts of the requested information that would or would not be published (and therefore engage the exemption).

41. The Commissioner attention has been drawn to several postings on social media which seek information to disprove the conviction. They have been directed to key individuals connected to the investigation and family members of Libby Squires which have caused considerable distress . The Commissioner considers that the release of information into the public domain could further extend to others named within HP files, increasing the likelihood that they too could become subject to similar abuse or intimidation .The refusal of the request under section 30(1)(a) of FOI will protect others from this action.

Right of appeal

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Catherine Fletcher
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