

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 November 2022

Public Authority: The National Archives
Address: Kew
Richmond
Surrey
TW9 4DU

Decision (including any steps ordered)

1. The complainant has requested an investigation file relating to a murder. The above public authority ("the public authority") relied on section 38 (health and safety) and 40(2) of FOIA (third party personal data) to withhold the requested information.
2. The Commissioner's decision is that the public authority was entitled to rely on section 40(2). Section 38 is also engaged and the balance of the public interest favours maintaining this exemption. The public authority breached section 17(3) of FOIA as it took an unreasonable amount of time to complete its public interest considerations.
3. The Commissioner does not require further steps.

Request and response

4. On 7 August 2021, the complainant wrote to the public authority and requested access to a particular file that had been transferred from the Home Office.
5. The public authority responded on 24 January 2022. It relied on sections 38 and 40(2) of FOIA to withhold the requested information. A position it upheld in its internal review.

Reasons for decision

6. The file in question covers the investigation and conviction of William Arthur Watkins for the murder of his new-born son in January 1951. Watkins was convicted of murder and hanged three months later.
7. The Commissioner has not viewed the file in question, but has dealt with a number of cases requesting access to similar files. He is aware from previous cases that files of this type often contain photos of the victim after death, as well as graphic accounts of their injuries and the trauma inflicted upon them prior to (and, in some cases, after) death. Whilst some of this information may be recorded in contemporary reports, this is usually a sanitised version of the detail recorded in the investigation files.
8. In decision notice IC-97448-Z5S3, the Commissioner reviewed a similar file and found that it engaged section 38 because the graphic information it contained was likely to cause significant distress to any surviving family of the victim.¹
9. Whilst the events the file relates to occurred some 70 years prior to the public authority's refusal notice, the Commissioner notes that Watkins had ten other children and it is not implausible that some of them are still alive and could reasonably be expected to find specific details of their brother's death, at the hands of their father, extremely distressing.
10. The Commissioner is therefore satisfied that disclosure of the information would be likely to endanger the mental health of one or more individuals. He relies on the same reasons as were set out in paragraphs 12-35 of decision notice IC-97448-Z5S3.
11. The Commissioner has also carefully assessed the balance of the public interest. There is always public interest in better understanding the criminal justice system – especially when individuals are being sentenced to death. A book written about the murder has suggested that Watkins, who, by that point was increasingly deaf, may have had some difficulty properly instructing his defence team.²

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4018437/ic-97448-z5s3.pdf>

² <https://www.executedtoday.com/2018/04/03/1951-william-watkins-one-mans-life-and-death/>

12. However, in this case, the Commissioner considers that the balance of the public interest favours maintaining the exemption. The fact that there is a significant amount of information about the case already in the public domain would suggest that the public interest in making the more gruesome aspects available to the wider world is limited. At the same time the Commissioner considers that there is a much stronger public interest in ensuring that individuals connected to the case do not experience avoidable mental distress.

Section 40(2) – third party personal data

13. The public authority has explained that some of the information in question is the personal data of third parties presumed to be alive. The Commissioner notes from previous cases that it is not unusual for files such as this to contain witness statements.
14. In previous cases, the Commissioner has also looked at the public authority's method for applying section 40(2) of FOIA and why this is necessary.³
15. In this case, no definitive evidence has been provided to the Commissioner to indicate that the individual(s) concerned are dead.
16. In this case, the Commissioner considers that the individuals concerned would have a reasonable expectation that information they provided to the police as part of a murder investigation would not be revealed during their lifetimes. As such, the Commissioner is not persuaded that disclosing the information would satisfy a legitimate interest and therefore section 40(2) would apply to this information.

Procedural matters

17. The public authority has already accepted that it took an unreasonable amount of time to complete its public interest considerations. The Commissioner agrees and finds a breach of section 17(3) of FOIA.

³ See for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4019342/ic-107589-d5h8.pdf> (paras 62-71)

Right of appeal

18. 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

19. 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.
20. 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

Roger Cawthorne
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