

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 28 March 2022

Public Authority: Chief Constable of Hampshire Constabulary
Address: Mottisfont Court
Tower Street
Winchester
SO23 8ZD

Decision (including any steps ordered)

1. The complainant has requested information about the 'Nave Andromeda' incident that occurred in October 2020.
2. The Commissioner's decision is that Hampshire Constabulary (HC) has correctly applied section 30(1) – investigations and proceedings, to the withheld information.
3. The Commissioner does not requires the public authority to take any steps as a result of this decision notice.

Request and response

4. On 17 March 2021 the complainant made the following request for information under the FOIA:

"I wish to see full copies of all the reports you hold relating to the Nave Andromeda incident that occurred on 25 October 2020."
5. HC responded on 14 April 2021 and refused to provide the requested information citing section 40(2) and section 31(1)(a) as its basis for doing so.
6. Following an internal review on 15 April 2021 HC maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 31 May 2021 to complain about the way their request for information had been handled. It was their view that a 'blanket' exemption to withhold all the information was not acceptable.
8. Due to the volume of information the Commissioner has been provided with a sample of the withheld information.
9. The analysis below considers HC's reliance on section 30(1)(a)(i) FOIA. If the Commissioner considers that it has been incorrectly cited, he will then consider whether section 40(2) applies.

Reasons for decision

Section 30 investigations and proceedings

10. The relevant part of section 30 of the FOIA states that:
 - (1) 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,
11. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
12. Consideration of section 30(1)(a)(i) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Is the exemption engaged?

13. The first step is to address whether the requested information falls within the class specified in section 30(1)(a) of FOIA.

14. The Commissioner has issued guidance on section 30¹ which states that section 30(1)(a) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence.
15. The Commissioner's guidance describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the 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. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence..."
16. HC explained that a criminal investigation was launched in respect of offences under s.58 Merchant Shipping Act 1995 relating to conduct endangering a ship. Other offences were also investigated which related to Hijacking, Threats to kill and Destroying or endangering the safety of ships. It confirmed that the investigation had concluded at the time of the request.
17. As a police force, HC has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. It therefore has the power to carry out investigations of the type described in section 30(1)(a)(i) of FOIA.
18. The Commissioner is satisfied that the withheld information was held in relation to a specific investigation conducted by HC of the type described in section 30(1)(a)(i) of FOIA. He is therefore satisfied that the exemption provided by section 30(1)(a)(i) is engaged.

The public interest test

19. Section 30(1)(a)(i) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

¹ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

20. In accordance with his guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
21. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations.
22. In applying the public interest test in a case such as this, where this exemption is found to be engaged, the Commissioner must consider whether the disclosure of the requested information 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, and in turn, increase the risk of harm to members of the public from offenders.

Public interest arguments in favour of disclosure

23. The complainant did not provide any arguments with regard to the public interest.
24. HC acknowledged that this matter was, at the time, in the public domain and was considered to be a significant event which led to police involvement and commencement of a criminal investigation. It further appreciates that as a result, the public will expect the police to be open and accountable about how it handled such a major incident.

Public interest arguments in favour of maintaining the exemption

25. HC considered that any information disclosed would impact on this criminal investigation process and future cases conducted by the Police Service.
26. By its very nature, information held relating to specific criminal investigations are sensitive in nature and the exemption acknowledges this fact. However, in respect of maintaining the exemption under the public interest, it is HC's view that disclosure of the data held in connection with this investigation would undermine its investigation process and the process of gaining legal advice from the CPS.
27. It would also undermine the relationship it has with victims, witnesses and suspects when a case is not proceeded to criminal trial as they have no expectation that the material will be made public. As such this would significantly undermine the reassurance provided to individuals who assist HC with criminal investigations.
28. This would have the broader effect of undermining the future relationship the Police have with the community when it comes to criminal investigations and their understanding and expectations in

respect of police disclosure. It does not believe this case justifies such a course of action as no trial in the criminal courts occurred.

29. Furthermore. HC believe there is strong public interest in safeguarding the police investigation process in circumstances similar to this case which do not result in any criminal action. As a law enforcement agency it should be able to consider investigation options and reach decisions away from external interference and scrutiny.
30. The expectation that decisions or actions could routinely be disclosed could have an inhibiting effect on future investigation and the loss of that frankness and candour could damage the quality of information and deliberation, and lead to poorer decision-making.
31. HC also argued that it is imperative that the Police and CPS are able to maintain confidentiality between communications as it is an essential part of the investigation process. It is important for officials to be able to freely justify and maintain their thought process when making decisions on criminal cases without the fear of the routes leading to those decisions later being disclosed in the public domain.
32. To release case information in this specific case will potentially dissuade witnesses in assisting in future investigations. Witnesses are a vital part of the prosecution process and it is crucial they are able to provide statements without the fear that one day they may be placed in the public domain. Individuals would be less likely to come forward, or co-operate with the police if they believe information they provide to the police will be disclosed in circumstances outside of the judicial process.
33. In considering the balance of the public interest HC noted there is limited information already in the public domain, however it maintained that further disclosure is likely to be prejudicial to its criminal investigatory process.

The Commissioner's decision

34. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in HC disclosing the requested information. The Commissioner has also considered whether disclosure 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.
35. As set out above, the purpose of section 30 is to protect the effective investigation and prosecution of offences. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.

36. Set against this, the Commissioner recognises the importance of the public having confidence in public authorities that are 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.
37. The Commissioner also recognises the public interest in promoting transparency, accountability and public understanding with regard to decisions made by public authorities.
38. In addition, he recognises that there may be a specific public interest in disclosing the information in question.
39. The withheld information comprises information about the incident that is the subject of this request. In his guidance, the Commissioner acknowledges that the stage an investigation or prosecution has reached will have a bearing on the extent of any harm caused by the disclosure.
40. The Commissioner acknowledges that the investigation did not lead to anyone being charged.
41. The Commissioner has also taken into account that HC's arguments relate to the investigatory process that was followed in respect of the investigation, as well as to the specific investigation itself.
42. In that regard, the Commissioner does have concerns that disclosing information considered as part of a criminal investigation, which identifies individuals who assisted with the investigation, could create a perception among the wider public that sensitive information about criminal investigations may be disclosed to the world at large, even where the evidence has not resulted in a prosecution. He considers that there is a real chance this may deter people (including witnesses, complainants and suspects) from coming forward and cooperating with prosecuting authorities, particularly where criminal offences have been alleged. There is a very significant public interest in avoiding that outcome and it is a factor of some weight in favour of maintaining the exemption in this case.
43. The Commissioner further notes that updates via the media were provided to inform the public on the steps taken in connection with this incident and also informed them that no criminal charges were being progressed. As an example:- <https://www.bbc.co.uk/news/uk-england-hampshire-55586418>
44. He considers these media releases provide sufficient information to manage the public's interest in this specific case.
45. Taking all the above into account, and having given due consideration to the arguments on both sides, while the Commissioner accepts that

disclosing the withheld information would be likely to promote transparency, he 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.

46. The Commissioner is therefore satisfied that HC was entitled to rely on section 30(1)(a)(i) of FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
47. As the Commissioner has concluded that this exemption is properly engaged in respect of the withheld information in its entirety, he has not considered the other exemption cited

Right of appeal

48. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

49. 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.
50. 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

Susan Duffy
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