

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 November 2015

**Public Authority:** The Chief Constable of Lancashire Constabulary  
**Address:** Police Headquarters  
Saunders Lane  
Hutton  
Preston PR4 5SB

### Decision (including any steps ordered)

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1. The complainant requested information relating to an investigation into claims relating to the conduct of Lancashire Constabulary and its officers in its dealings with Cyril Smith in the 1960s and 1970s.
2. Lancashire Constabulary refused to disclose the requested information citing section 30(1) and 30(2) (investigation and proceedings conducted by public authorities) and section 40(2) (personal information) of FOIA.
3. The Commissioner has investigated its application of section 30(1). His decision is that Lancashire Constabulary correctly applied section 30(1)(a). He requires no steps to be taken as a result of this decision.

### Request and response

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4. On 11 February 2015 the complainant wrote to Lancashire Constabulary and requested information in the following terms:

*"\* Please provide a copy of the investigation report into claims relating to the conduct of Lancashire police and its officers in its dealings with Cyril Smith in the 1960s and 1970s.*

*Following the publication of a book on Cyril Smith last year the force referred all of its dealings with this matter to the Independent Police Complaints Commission. They determined that a local investigation be carried out by Lancashire Constabulary.*

*The force says a thorough investigation by the PSD has concluded.*

*My request is for a copy of the investigation report.*

*\* If no such report exists, please provide a copy of the full findings of the investigation.*

*\* Please provide the name of the SIO”.*

5. Lancashire Constabulary responded on 22 April 2015. It refused to provide the requested information. It cited the exemptions in sections 30(1)(a), (b) and 30(2)(a)(i), (ii) and (iii) of FOIA (investigations and proceedings conducted by public authorities) as its basis for doing so.
6. The complainant requested an internal review on 30 April 2015.
7. Lancashire Constabulary sent him the outcome of its internal review on 15 May 2015. It upheld its original position with respect to section 30 and additionally cited section 40(2) (personal information).

## **Scope of the case**

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8. The complainant contacted the Commissioner on 9 June 2015 to complain about the way his request for information had been handled. He disputes Lancashire Constabulary's application of section 30. In that respect to he told the Commissioner:

*"I do not believe the force has given sufficient weight to the compelling public interest in transparency surrounding the Cyril Smith case ...".*

9. The analysis below considers the Constabulary's application of section 30 to the withheld information.

## **Reasons for decision**

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### *Section 30 investigations and proceedings*

10. Section 30 of 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 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,  
or*

*(ii) whether a person charged with an offence is guilty of  
it,*

*(b) any investigation which is conducted by the authority and  
in the circumstances may lead to a decision by the authority to  
institute criminal proceedings which the authority has power to  
conduct, or*

*(c) any criminal proceedings which the authority has power to  
conduct.*

*(2) Information held by a public authority is exempt information if –*

*(a) it was obtained or recorded by the authority for the  
purposes of its functions relating to –*

*(i) investigations falling within subsection 1(a) or (b),*

*(ii) criminal proceedings which the authority has power  
to conduct,*

*(iii) investigations (other than investigations falling  
within subsection (1)(a) or (b)) which are conducted by  
the authority for any of the purposes specified in section  
31(2) and either by virtue of Her Majesty's prerogative  
or by virtue of powers conferred by or under any  
enactment, or*

*(iv) civil proceedings which are brought by or on behalf  
of the authority and arise out of such investigations, and*

*(b) it relates to the obtaining of information from confidential  
sources.*

*(3) The duty to confirm or deny does not arise in relation to  
information which is (or if it were held would be) exempt  
information by virtue of subsection (1) or (2)".*

11. Section 30 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.
12. The exemption is subject to the public interest test. Where there would be no harm in releasing the information, or the public interest arguments in favour of disclosure outweigh those in favour of maintaining the exemption, it will need to be disclosed.

13. In this case Lancashire Constabulary considers that sections 30(1)(a) and (b) and 30(2)(a)(i), (ii) and (iii) of FOIA apply.
14. Section 30(1) provides an exemption from the duty to disclose information that a public authority has held at any time for certain investigations or proceedings. As long as the other requirements of the exemption are satisfied, the exemption will apply to information even if it was not originally obtained or generated for one of those purposes and it will continue to protect information even if it is no longer being used for the specified investigation or proceeding. It is only necessary for the information to have been held at some point for those purposes.
15. Section 30(1)(a) can only be claimed by a public authority that has a duty to investigate offences. The public authority in this case is Lancashire Constabulary. As a police force it clearly has a duty to conduct criminal investigations. The Commissioner is therefore satisfied that it has a duty to carry out investigations of the sort described in section 30(1)(a).
16. Section 30(1)(b) also applies to investigations but the public authority only needs to have the **power** to conduct those investigations rather than a duty. Importantly, the public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation.
17. In the Commissioner's view, such proceedings would be conducted by the Crown Prosecution Service rather than the police. Therefore the Commissioner does not accept that the information in question is exempt from disclosure on the basis of section 30(1)(b).
18. For information to be exempt under section 30(2) it must both relate to the public authority's investigations or proceedings **and** relate to confidential sources. In this case, as Lancashire Constabulary has not cited section 30(2)(b), the Commissioner is not satisfied that that the information in question is exempt from disclosure on the basis of that section.
19. Having considered Lancashire Constabulary's submissions, the Commissioner is satisfied that it has the duty to carry out investigations of the sort described in section 30(1)(a) and that the exemption is properly engaged by virtue of that subsection.

*The public interest test*

20. Section 30(1)(a) is a qualified exemption and is therefore subject to the public interest test under section 2(2)(b) of FOIA.

*Public interest arguments in favour of disclosure*

21. Putting his request into context, the complainant told Lancashire Constabulary:

*"As is clear, this investigation relates to allegations of cover-up and wrongdoing by police during an investigation which resulted in a man now regarded to be a prolific paedophile escaping prosecution. The view of the DPP [Director of Public Prosecutions] is clear that there was evidence to prosecute.*

*Lancashire referred the allegations made in a book by the MP Simon Danczuk about police conduct in its enquiries to the IPCC.*

*The force then carried out a local investigation which cleared itself of any wrongdoing".*

22. The complainant clearly considers that there is a compelling public interest in disclosure of information capable of showing how thorough and robust that investigation was. For example, he told Lancashire Constabulary:

*"Public confidence will be greatly increased by transparency. It is capable of dispelling any notion of cover-up. These alone fair [sic] outweigh any perceived notion of harm to investigations which are not being conducted by the force and have no bearing on the conduct of Lancashire Police".*

23. In correspondence with Lancashire Constabulary he also said:

*"The compelling public interest in transparency surrounding the Smith case and the investigations being conducted some 40 to 50 years later outweigh the arguments put forward by the force, which are not backed by any evidence".*

24. Lancashire Constabulary acknowledged that providing the requested information would provide the general public:

*"with satisfaction that any investigation(s) that have been conducted to date have been done so properly and highlighting any issues relating to the conduct of Lancashire Police".*

25. With respect to the individual named in the request Lancashire Constabulary acknowledged:

*"The subject who was the focus of your request was a high profile public figure and there is a legitimate expectation that historic*

*allegations about this person's conduct should have been investigated thoroughly".*

26. It also told the complainant:

*"The Constabulary recognises that there will always be a public interest in achieving transparency in relation to police conduct, and indeed that the publication of the report would help to re-assure the public that a thorough investigation has been carried out that demonstrates that no evidence exists to substantiate the claims made in the book by Simon Danczuk relating to Lancashire Constabulary".*

*Public interest arguments in favour of maintaining the exemption*

27. In this case, Lancashire Constabulary considered it important to recognise that, at the time of the request, there were on-going investigations into related matters. In that respect it told the complainant:

*"There are current on-going investigations (IPCC & GMP – <http://www.ipcc.gov.uk/news/ipcc-manage-investigation-historic-allegation-against-gmp>) into the matters which concern the subject of your request and the Police actions and dealing in relation to the subject. Therefore, disclosure of information would prejudice the on-going investigations in relation to the same subject".*

28. Referring to the impact of disclosure in this case, Lancashire Constabulary told the complainant:

*"Making public the details of the investigation completed to date would undermine the on-going enquiries which could have a detrimental impact on the outcome".*

29. It also argued that detailing strategies used within the investigation – strategies which might relate to the on-going enquiries:

*"might also significantly weaken future law enforcement tactics and capabilities in relation to similar investigations".*

30. Explaining that it works with partner agencies, Lancashire Constabulary told the complainant:

*"to disclose information at this stage would undermine the ability of 'partner' organisations to complete their investigations".*

*Balance of the public interest*

31. The general public interest served by section 30(1) is the effective investigation and prosecution of crime. In the Commissioner's view, the weight given to arguments in favour of disclosure will depend largely on the need for greater transparency in relation to the subject matter and the extent to which disclosure of the information in question will meet that need.
32. In this case, the Commissioner acknowledges the validity of some of the public interest arguments in favour of releasing the exempt information.
33. The Commissioner recognises the importance of the public having confidence in those public authorities tasked with upholding the law. He accepts that confidence will be increased by allowing scrutiny of their performance and that this may involve examining police conduct in particular cases. However, he considers that the level of scrutiny that is appropriate will depend on many factors including the harm that any disclosure could have on the effective investigation and prosecution of offences.
34. In the Commissioner's view, there is a strong public interest in safeguarding the investigatory process. To disclose information under the FOIA (without a sufficiently strong public interest in doing so) would undermine the existing procedures governing the disclosure of information in relation to criminal investigations. Such disclosure could also act as a deterrent to those providing information to the police and as such act as a disincentive and consequent hindrance in other police investigations.
35. The Commissioner considers that the timing of the request is key to considering the public interest. He considers that, as a general rule, there will always be a strong public interest in maintaining the section 30 exemption whilst an investigation is ongoing and is mindful that the emphasis in this case is on protecting the interests in respect of the related ongoing investigations. In the circumstances of this case, the Commissioner accepts that disclosure would be prejudicial to those related investigations.
36. Having taken all of the above into consideration, the Commissioner is of the view that the public interest in maintaining the exemption outweighs the public interest in disclosing the information requested. The Commissioner therefore finds that Lancashire Constabulary was entitled to withhold the requested information under section 30(1)(a).

## Right of appeal

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37. 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)

38. 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.
39. 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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**