

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 December 2014

Public Authority: Chief Constable of Gloucestershire Constabulary
Address: County Police Headquarters
No 1 Waterwells
Waterwells Drive
Quedgeley
Gloucester
GL2 2AN

Decision (including any steps ordered)

1. The complainant has requested information about an investigation carried out by Gloucestershire Constabulary. Gloucestershire Constabulary withheld some of the requested information, citing the non-disclosure exemptions at sections 30(1), 40(2) and 42.
2. The Commissioner's decision is that all of the withheld information is exempt from disclosure on the basis of section 30(1)(a) of the FOIA and that the public interest test favours maintaining the exemption. He does not require any steps to be taken.

Background

3. The complainant runs a blog which scrutinises the decisions and conduct of Carmarthenshire County Council.
4. The Chief Executive of Carmarthenshire County Council made public comments about the complainant and she brought proceedings for defamation against him. The Chief Executive, in his personal capacity, launched a libel counterclaim against the complainant, claiming that she had defamed him.

5. Carmarthenshire County Council decided to grant an indemnity to the Chief Executive in respect of the legal costs incurred in relation to the defamation proceedings (that is, it agreed to underwrite both the costs of defending against the complainant's action and counterclaiming against her).
6. In January 2014 the Welsh Audit Office issued a public interest report¹, stating that Carmarthenshire County Council's decision to grant an indemnity to the Chief Executive for the bringing of a libel counterclaim was unlawful by reason of it not being authorised by statute.
7. Gloucestershire Constabulary was asked to carry out an independent investigation as to whether there was a case for criminal charges to be brought arising out of Carmarthenshire County Council's decision to indemnify the Chief Executive.
8. Gloucestershire Constabulary conducted an investigation and found no evidence to suggest that any criminal offences had taken place. It stated that no further police action would be taken over the matter.

Request and response

9. On 12 May 2014, the complainant made the following request for information to Gloucestershire Constabulary:

"I am requesting information regarding the recently concluded criminal investigation by Gloucestershire Police into Carmarthenshire County Council following the publication of two Wales Audit Office reports published in January.

I am specifically requesting;

- 1. The final report following the conclusion of the investigation*
- 2. A list of any persons interviewed, and /or job titles, and*

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http://www.wao.gov.uk/system/files/publications/WAO_Carmarthenshire_PIR%20Libel_English_2014.pdf

whether any of these were interviewed under caution

3. Whether or not the CPS were involved and if so, any relevant correspondence.

4. Correspondence between Gloucestershire Constabulary and Carmarthenshire County Council

5. A list, or summary, of all documents in either paper or electronic form which formed part of the investigation."

10. Gloucestershire Constabulary responded on 11 June 2014. It answered questions 2, 3 and 4 (stating that it held no information) and withheld information in response to questions 1 and 5, citing the exemptions at section 30(1)(a) and (b).
11. The complainant requested an internal review of the decision and on 11 September 2014 Gloucestershire Constabulary provided the results of the review. It upheld the application of section 30 in respect of points 1 and 5 of the request. In addition, it stated that section 40(2) and section 42 also applied to the withheld information.

Scope of the case

12. The complainant contacted the Commissioner on 26 September 2014 to complain about the way her request for information had been handled. She disputed the application of the exemptions.
13. The Commissioner considers that points 2, 3 and 4 of the request have been addressed and the complainant has not disputed the response she received in respect of them. He has therefore restricted his consideration of the complaint to Gloucestershire Constabulary's response to questions 1 and 5.
14. Gloucestershire Constabulary did not submit any arguments in support of the application of section 30(1)(b) to the Commissioner. The Commissioner has therefore only considered Gloucestershire Constabulary's application of section 30(1)(a).

Reasons for decision

Section 30 - investigations

15. Gloucestershire Constabulary argued that the requested information is exempt from disclosure on the basis of section 30(1)(a).
16. Section 30(1)(a) exempts, as a class, any information held at any time by a public authority for the purposes of a criminal investigation conducted by it.
17. In the Commissioner's view, the phrase 'at any time' means that information is exempt under section 30(1)(a) if it relates to an ongoing, closed or abandoned investigation.
18. In order for the exemption to be applicable, any information must be held for a specific or particular investigation and not for investigations in general. Section 30(1)(a) is a class based exemption; if information falls within its scope there is no need for a public authority to demonstrate some level of prejudice in order for the exemption to be engaged.
19. In this case, the request specifies that the required information relates to a criminal investigation conducted by Gloucestershire Constabulary into Carmarthenshire County Council. The Commissioner has had sight of the withheld information and is satisfied that it relates to a specific, criminal investigation. Clearly Gloucestershire Constabulary has a duty to conduct investigations of the sort described in section 30(1)(a). The Commissioner is therefore satisfied that the exemption is engaged.

The public interest test

20. Section 30(1) 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. The complainant has stated that it was clearly in the public interest that the investigation of one public body by another should be open and transparent.
22. Gloucestershire Constabulary stated that the police service is charged with enforcing the law, preventing and detecting crime and protecting the communities it serves. It said that there is a public interest in the transparency of policing operations to ensure investigations are conducted appropriately. Disclosure of the withheld information in this case would provide the public with an understanding of how the police

undertake investigations and would satisfy them that a particular investigation had been thoroughly undertaken.

Public interest arguments in favour of maintaining the exemption

23. Gloucestershire Constabulary argued that a full, independent investigation had been carried out and the outcome of that investigation had been publicised. The applicant had been provided with a copy of the press release issued at the completion of the investigation. It considered that this should satisfy the public interest in transparency and in knowing that a proper investigation had taken place.
24. Gloucestershire Constabulary also argued that the disclosure of information relating to the matters it had investigated would involve the disclosure of a substantial amount of information relating to actual or potential civil litigation proceedings. It said that the complainant has publicly stated that she intends to apply for judicial review of the Council's decision to indemnify the Chief Executive's counterclaim, and that the withheld information could reasonably be expected to be considered as part of such a review.
25. Disclosure under the FOIA is considered to be disclosure to the world at large and Gloucestershire Police argued that it is not in the public interest to allow the open dissemination of information relating to civil proceedings, which was obtained as a result of a criminal investigation and which is not already in the public domain. Civil actions have particular disclosure arrangements and it is not in the public interest for disclosure under the FOIA to circumvent them.
26. Gloucestershire Constabulary also provided specific public interest arguments which reveal information it considers to be exempt from disclosure. The Commissioner has considered them in the attached confidential annex.

Balance of public interest arguments

27. 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.
28. In this case, the Commissioner, having regard to the subject matter of the information at issue, acknowledges that there is a public interest in transparency, openness and accountability. The Commissioner recognises the interest in the public being able to engage in debate and

discussion about controversial decisions public authorities make about the use of public money. In this case, the fact that the subject of the police investigation was the Council's decision to fund a civil action against an individual who had been highly critical of it, and that there were questions as to whether this decision had been lawful, add considerable weight to this interest.

29. Set against this, the Commissioner understands that there is a strong public interest in supporting the protection of an independent police investigative reporting system, which must remain free and frank without fear that sensitive material may be routinely disclosed to the public.
30. It is important to preserve the police's ability to have confidential, free and frank communications during criminal investigations (provided that such communications take place within the well-established framework for disclosure in any subsequent proceedings). The confidential quality of such communications enables police officers to be candid in their assessment of evidence. Such candour is vital for the effective administration of criminal justice. The police's ability to conduct investigations effectively would be prejudiced should its ability to have free and frank communications be routinely impeded by an anticipation of disclosure.
31. Additionally, disclosures under the FOIA of information provided by witnesses might undermine the public's confidence in assisting with criminal investigations. The Commissioner accepts that this consequence creates a real risk of a 'chilling effect' on the level and type of information the public will provide to the police service in the future. This would not be in the public interest and is a strong factor in favour of maintaining the exemption.
32. The timing of the request is also key to considering the public interest. The Commissioner has considered the ongoing nature of the complainant's dispute with the Council. He has taken account of the fact that the dispute between the complainant and the Council dates back to at least 2006 and shows no sign of being resolved. He has had regard to the fact that the complainant has defended and lost a previous defamation case with the Council, and that she has actively fought to have that judgement overturned. He has also noted her intention, stated on her blog, to have the Council's decision to fund the Chief Executive's defamation proceedings examined via judicial review.
33. In light of all this, the Commissioner considers it reasonable to believe that further civil litigation is a strong possibility, and that the Constabulary's concerns about prejudicing that process by disclosing information relating to its criminal investigation are credible. The

Commissioner considers that there is a public interest in ensuring that established civil disclosure procedures are not undermined by the FOIA.

34. Having assessed the arguments set out above and in the confidential annex, the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure. As he has found that the information was correctly withheld under section 30, the Commissioner has not gone on to consider Gloucestershire Constabulary's application of section 40 and section 42.

Other matters

35. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which he has stated that in his view internal reviews should take no longer than 20 working days to complete, and even in exceptional circumstances the total time taken should not exceed 40 working days.
36. In this case the complainant requested an internal review on 17 June 2014. Gloucestershire Constabulary did not provide the results of its internal review until 11 September 2014, some 61 working days later. The Commissioner expects Gloucestershire Constabulary to ensure that the internal reviews it handles in the future adhere to the timescales he has set out in his guidance.

Right of appeal

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

Website: 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
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Wycliffe House
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