

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2016

Public Authority: Chief Constable of Greater Manchester
Address: Greater Manchester Police
Openshaw Complex
Lawton Street
Openshaw
Manchester
M11 2NS

Decision (including any steps ordered)

1. The complainant has requested a copy of a draft manuscript and any accompanying notes seized by Greater Manchester Police ("GMP") as evidence in a counter terrorism investigation in 2008. GMP refused the request, citing the exemption at section 30(1)(a) (investigations and proceedings) of the FOIA.
2. The Commissioner's decision is that GMP was entitled to rely on the exemption at section 30(1)(a).
3. The Commissioner does not require GMP to take any further steps as a result of this decision.

Background

4. In 2008 Shiv Malik, a journalist, was in the process of writing a book about Hassan Butt, a British man who claimed to have been a recruiter for Al Qaeda, before renouncing terrorism and engaging in anti-radicalisation work. Butt has publicly claimed that before renouncing terrorism, he sent arms to the Taliban, organised terrorist training for British Muslims, raised funds for terrorism, incited others to terrorism, encouraged attacks on political and military targets in the UK and associated with the 7/7 bombers. Written with Butt's full cooperation, the book promised to be the most detailed account yet by a self-proclaimed Al Qaeda insider.

5. Prior to the book's publication, Shiv Malik's drafts of the manuscript were requisitioned by GMP, as part of a counter terrorism investigation.
6. However, in December 2008, while giving evidence on oath as a witness in a separate court case, Butt retracted his claims. He stated that he had fed stories to the media and that his portrayal of himself as a terrorist planner who later renounced violence in order to fight Islamist extremism was a fabrication, made for personal gain¹.
7. Publication of the book was subsequently dropped. The Commissioner understands that no action was taken against Butt as a result of the aforementioned counter terrorism investigation, which GMP confirmed was concluded at the time of the request.

Request and response

8. On 20 May 2015, the complainant wrote to GMP and requested information in the following terms:

"I am writing to make an open government request for all the information to which I am entitled under the freedom of information act.

...

I am looking for the photocopied chapters and/or notebooks concerning the work "Leaving Al-Qaeda: Inside The Mind Of A British Jihadist" by the author Shiv Malik that were handed over during a 2008 GMP investigation concerning the writing of the book."

9. GMP responded on 18 June 2015. It confirmed that it held the requested information but that it was exempt from disclosure under sections 30(1)(a)(i) and (ii) (investigations and proceedings conducted by public authorities). It stated that the public interest in maintaining the exemption was greater than that in disclosure because disclosure would hinder its tactical capability to efficiently and effectively undertake future investigations of a similar nature.
10. Following an internal review, GMP wrote to the complainant on 15 July 2015. It upheld its application of section 30.

¹ <https://www.theguardian.com/uk/2009/feb/09/uksecurity-july7>

Scope of the case

11. The complainant contacted the Commissioner on 18 August 2015 to complain about the way his request for information had been handled. He disputed GMP's application of section 30.
12. The complainant argued that since Butt claimed under oath to have fabricated his claims of being a former Islamic extremist, the manuscript was essentially a work of fiction. He said this called into question any claim that disclosure could have adverse effects on GMP's investigative capabilities.
13. He also argued that the length of time that had elapsed between the seizure of the manuscript in 2008 and the time of his request lessened the sensitivity of the information and reduced the likelihood that its disclosure would have adverse effects.
14. He argued that the manuscript was already in limited circulation within publishing and proof reading circles and was, therefore, to some extent, already in the public domain.
15. Furthermore, he argued that the draft manuscript could not give any information that would compromise GMP investigations as the individuals writing it had no professional links with the force.
16. The Commissioner considers the scope of this decision notice to be whether GMP was entitled to rely on sections 30(1)(a)(i) and (ii) to refuse to disclose the requested information.

Reasons for decision

Section 30 – investigations and proceedings

17. Section 30(1) provides that –

"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"*

18. 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.

19. 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.
20. In this case, the Commissioner has had sight of sizeable extracts of the withheld information. She is satisfied by the material she has viewed, and by information provided by GMP about the circumstances of its seizure, that it relates to a specific, criminal investigation, which had been concluded by the date of the request. Clearly, GMP 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

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

Public interest arguments in favour of disclosure

22. The complainant's main argument as to why disclosure was in the public interest was that prior to claiming that he had fabricated his past, Butt was operating as a professional Jihadist expert and claiming expertise in radicalisation. The complainant believed he had been consulted about and had influenced Home Office counter-terrorism strategy. In light of this, the complainant considered that the public interest would be served by information about Butt's former claims being placed in the public domain.
23. For its part, GMP acknowledged that disclosure would highlight the ways in which GMP police resources are being used. This was a high profile case that received attention in the national press regarding press freedoms. As such, there was a public interest in sight of material that would assist public debate. Furthermore, disclosure would inform how police spend public funds, particularly in the current economic climate. Disclosure would also facilitate accountability for the way in which GMP performed its functions in the detection and prevention of crime.

Public interest arguments in favour of maintaining the exemption

24. The complainant had argued that the manuscript was already, to some extent, in the public domain, but GMP refuted this. It stated that the fact the complainant was seeking access to it under the FOIA suggested that he was unable to obtain a copy elsewhere.
25. Disclosure under the FOIA is regarded as disclosure to the world at large. GMP said disclosure of this information would compromise the efficient and effective conduct of its current or future law enforcement capabilities in this area of policing. In view of the very serious nature of the investigation during which the manuscript was seized, it said it was of the utmost importance to prevent inappropriate disclosures of material, which could assist or encourage acts of terrorism or other very serious criminality.
26. If disclosed, GMP said that incidents of terrorism and other very serious criminality could increase substantially and impact on GMP's ability to investigate and counter terrorism in all its forms. This could affect not just GMP but forces nationally. There may also be serious world-wide terrorist related ramifications.

Balance of the public interest

27. The general public interest served by section 30(1) is the effective investigation and prosecution of crime. The police service is charged with enforcing the law, preventing and detecting crime and protecting the communities it serves. Anything which interferes with its ability to deliver this service will clearly be against the public interest.
28. In this case, the complainant's arguments have centred around Butt's alleged duping of the authorities to the extent that he was, according to the complainant, able to influence government policy on counter terrorism matters. Disclosure of the manuscript would therefore serve the public interest by shedding light on the claims he made about himself and their credibility.
29. When considering this, the Commissioner notes that Butt's story of rejecting Islamic extremism has been quite widely reported in the media, and so there is already a certain amount of information about it in the public domain. She has therefore accorded medium weight to this public interest argument.
30. GMP has countered that disclosure would adversely affect its ability to investigate and prosecute those involved in acts of terrorism or other very serious criminality, and may lead to an increase in such acts. However, while it has provided a series of broad assertions about this as a likely outcome of disclosure, the Commissioner is concerned that it has

not demonstrated how or why disclosure of the draft manuscript would lead to these outcomes.

31. The withheld information is voluminous and so GMP provided the Commissioner with extracts to refer to when considering its arguments. The extracts comprise seven lever arch files of multiple drafts of several chapters of the manuscript. The information in the extracts consists largely of autobiographical information about Hassan Butt, and also of the author, aspects of his own life being interwoven and contrasted with Butt's, as part of the narrative. The extracts describe Butt's childhood, friends and involvement in radical Islamic circles. While they do set out the rationale behind Butt's supposed former beliefs, the Commissioner is not convinced that the extracts she has seen contain information of sufficient sensitivity that, if disclosed, they would be likely to cause the sorts of adverse effects that GMP has described. The information she has seen is of the type which is readily accessible by conducting quite basic internet searches about extremist Islamic beliefs.
32. The Commissioner therefore requested that GMP provide more detailed public interest arguments setting out how disclosure of the requested information could lead to the harm it outlined. In making its arguments, she asked it to refer to and describe information which had not been provided for her scrutiny, if necessary. She specifically asked GMP to provide examples of how and why disclosure of the requested information might have the impact it had described. She explained that GMP needed to demonstrate a causal link between particular types of information and particular outcomes (for example, if some of the information comprised specific details of police operational practices the disclosure of which might assist someone to avoid surveillance operations).
33. The Commissioner asked for this information to be provided several times, but GMP failed to respond (this failure to engage is dealt with in the 'Other matters' section, below). Therefore, based on the information she was provided with, the Commissioner has concluded that GMP has not demonstrated a causal relationship between disclosure of the manuscript and the adverse effects it has described as likely to result from disclosure. She therefore places little weight on GMP's public interest arguments in this regard.
34. While the Commissioner does not have a general duty to introduce arguments on behalf of a public authority, she has chosen to do so in this instance.
35. In this case, the Commissioner considers that there are very strong public interest arguments for maintaining the exemption at section 30(1)(a), which GMP has not cited. These are directly to do with the

need to protect its ability to obtain evidence in support of the functions set out in subsections (i) and (ii).

36. The request was for evidence seized as part of a formal criminal enquiry. People who give evidence to the police do so with the instinctive and legitimate expectation that the information they provide will be treated in confidence, only used for the purposes for which it was obtained and will not be disclosed outside of that context. Such expectations need to be respected if the public are to have confidence in police procedures and not be deterred from cooperating with their enquiries. If the public comes to expect that material obtained by the police for evidential purposes may routinely be disclosed to the world at large via the FOIA, the Commissioner considers that this would have a detrimental effect on the police's ability to gather evidence in future criminal cases. This clearly would not be in the public interest.
37. The information in this case contains substantial amounts of personal data (some of it sensitive personal data, as defined by section 2 of the Data Protection Act 1998) about Hassan Butt, his family and friends and the author. While the complainant has argued that the author and Butt have indirectly consented to the placing of information about them in the public domain by proposing to publish the book, the fact remains that the book was never published, and that the circumstances of each individual have since changed (Butt has retracted his claims, while the author might now be regarded as having been the victim of an elaborate hoax).
38. Furthermore, it is questionable as to whether other people mentioned in the manuscript (many of whom for which there is no suggestion of any wrongdoing) had given meaningful consent to the placing of their identities in the public domain, in the context of being associated with Hassan Butt. The Commissioner considers that these individuals, having come to the police's attention via evidence seized in a criminal investigation, would not expect this fact to be disclosed under the FOIA.
39. Lastly, the Commissioner has had regard to the impact on the provider of the information, if it were to be disclosed. The information was provided by and relates to the livelihood of Shiv Malik, a journalist. It effectively documents the process by which he was allegedly deceived into believing the claims Butt made about himself. While this is information he might be prepared to provide to the police for the purposes of a formal criminal investigation, the Commissioner considers it reasonable to believe that he might find it embarrassing or distressing to share it with the wider world. It is also possible that the experience might itself form the basis of further journalistic work for him, and that he might be materially disadvantaged by the manuscript's disclosure under the FOIA.

40. Taking the above into account, the Commissioner considers that disclosure of the requested information under the FOIA, obtained as it was as evidence, would have detrimental effects on these individuals and that public awareness of this would bring the police's evidence gathering procedures into disrepute. As stated above, the resultant lack of confidence by the public in the police's ability to handle evidence confidentially and with integrity would be highly likely to interfere with its ability to collect evidence, and consequently the functions at section 30(1)(a)(i) and (ii) would be adversely affected.
41. The Commissioner considers this to be a compelling public interest argument for maintaining the exemption and that it carries substantially more weight than the arguments favouring disclosure. She therefore finds that the public interest in maintaining the exemption is stronger than that in disclosing the information, and consequently that GMP was entitled to apply section 30(1)(a) to withhold the requested information.

Other matters

42. During the course of the investigation GMP stopped responding to the Commissioner's correspondence. On 10 June 2016 the Commissioner ascertained that the case officer who had been dealing with the matter had left GMP in February 2016, and that nobody had been dealing with the matter in his absence. GMP then assured the Commissioner that the request for more detailed public interest arguments would be addressed within 20 days. However, at the date of this decision notice, and despite further reminders by the Commissioner, no further response had been received from GMP.
43. The Commissioner is disappointed by GMP's failure to engage properly with the Commissioner's investigation. It has led to significant delays in concluding the matter. GMP has also failed to represent its position properly to the Commissioner.
44. The Commissioner has made a separate record of GMP's failure to engage properly with her about this case and may revisit the issue if further evidence suggests that engagement with the ICO is an ongoing problem.

Right of appeal

45. 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

46. 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.
47. 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

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