

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2023

Public Authority: Chief Constable of Kent Police
Address: Sutton Road
Maidstone Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant has requested reports into an anti-corruption investigation and misconduct hearing carried out by Kent Police in 2014. Kent Police have refused to disclose the requested information, citing sections 30(1)(a) and 40(2) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that Kent Police have correctly applied section 30(1)(a) of FOIA to the requested information. As the Commissioner considers this to be the case, he has not gone on to consider the application of section 40(2) of FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 15 February 2022, the complainant wrote to the public authority and requested information in the following terms:

"In 2014, four Kent detectives have been sacked following an anti-corruption investigation into the alleged manipulation of crime figures. Kent Police said they were dismissed for committing gross misconduct, uncovered during an internal inquiry.

Please supply any reports into the corruption. I'm interested in what laws were broken, and what police policies were broken by the officers.

I'm not concerned about the names of the officers, or any officers for that matter. So if you need to redact those it's not an issue."

5. Kent Police responded on 20 April 2022. They stated that they would not disclose the requested information and cited sections 30(1)(a) and 40(2) of FOIA as a basis for non-disclosure. The response did provide the Standards of Professional Behaviour found to have been breached by each officer.
6. Following an internal review Kent Police wrote to the complainant on 25 April 2022. The reviewer upheld the original decision.

Scope of the case

7. The complainant contacted the Commissioner on 25 April 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of her investigation to be to establish whether the public authority is entitled to withhold the requested information under sections 30(1)(a) and 40(2) of FOIA.

Reasons for decision

Section 30 – Investigations and proceedings

9. 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 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..."

10. 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.
11. Consideration of section 30(1) 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?

12. The first step is to address whether the requested information falls within the class specified in section 30(1) of FOIA.
13. In his guidance¹, the Commissioner states: "Section 30 is a class based exemption. Information simply has to fit the description contained in section 30 to be exempt. There is no need for the information to prejudice, for example, the investigation or set of proceeding that it was obtained for".
13. He also states: "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. However, the purpose of the investigation must be to establish whether there were grounds for charging someone, or if they have been charged, to gather sufficient evidence for a court to determine their guilt. Section 30(1)(a) will still protect information if a police investigation fails to establish that an offence has been committed, or concludes that there is insufficient evidence to charge anyone".
14. The Commissioner is satisfied that the withheld information is held by Kent Police for the purpose of an investigation of the type described in section 30(1)(a) of FOIA as it formed part of an anti-corruption investigation into alleged manipulation of crime figures by police officers. He is therefore satisfied that the exemption provided by section 30(1)(a) is engaged.

Public interest test

15. Section 30(1)(a) 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-sections-30.pdf>

16. Key to the balance of the public interest in cases where this exemption is found to be engaged is 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.

Public interest arguments in favour of disclosure

17. Kent Police accepted that disclosure would demonstrate openness and transparency. This would be particularly significant in cases involving an investigation into the conduct of its own police officers. However, it stated that, under the requirements of the Police (Conduct) Regulations 2020, it temporarily publishes the outcome of misconduct hearings for a minimum of 28 days. It considers that this temporary publication when the hearing has just been concluded, also the annual publication of misconduct summaries, is sufficient to satisfy the public interest in how it conducts such affairs. The Commissioner notes that, at the time of the misconduct hearing, this was subject to the Police (Conduct) Regulations 2012, under which there was no requirement to publish disciplinary data or outcomes.

Public interest arguments in favour of maintaining the exemption

18. Arguing against disclosure, Kent Police explained to the complainant:

"...the information will have been created as part of an investigation, the public disclosure of which would risk prejudice to past, present or future investigations. Members of the public place their confidence in Kent Police's ability to protect certain information from disclosure under FOIA in order that investigations are not harmed. Were an investigation to be prejudiced by a disclosure under the FOIA then this would undermine the rights of all, but most importantly the rights of any victims to justice. The ability to protect certain information from blanket disclosure under FOIA promotes information sharing between communities and Kent Police; it follows that disclosure into the public domain of the requested information in the circumstances would erode public trust."

Balance of the public interest

19. 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.
20. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations.

21. In reaching a conclusion on the balance of the public interest in this case, the Commissioner has considered the public interest in Kent Police 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.
22. He has also taken into account the age of the investigation, which was conducted in 2014.
23. The Commissioner recognises that there is a general public interest in promoting openness, transparency and accountability. FOIA is a means of helping to meet that public interest, so it must always be given some weight in the public interest test.
24. The Commissioner acknowledges the importance of the public having confidence in public authorities that are tasked with upholding the law and he recognises that the public interest will be served by disclosures which serve that purpose.
25. While noting the public interest arguments in favour of disclosure, the Commissioner is mindful that 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 allegations of crime effectively.
26. The Commissioner states in his guidance: "When considering the public interest in maintaining the exemptions it is necessary to be clear what they are designed to protect. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings".
27. The complainant's main argument is that Kent Police regularly publishes detailed disciplinary data, as per the requirements of the Police (Conduct) Regulations 2020. However, the Commissioner notes that, at the time of the misconduct hearing in question, there was no such legislative requirement for publication.
28. It could perhaps be argued that, since Kent Police now regularly publishes such outcomes, albeit temporarily, the argument that publication of a previous misconduct hearing outcome could prejudice future investigations becomes weaker. However, Kent Police have pointed out that the publication is temporary and occurs just after the

misconduct hearing outcome. The annual publication of misconduct summaries provides far less detail. Kent Police have stated that, if these outcomes were to be disclosed under FOIA, this is a permanent disclosure into the public domain and they have no control over what happens to the information, whereas temporary publication is more controlled and serves the public interest in how such hearings are conducted.

29. In the circumstances of this case, the Commissioner has accorded greater weight to the arguments surrounding the public interest in protecting the ability of Kent Police to conduct effective investigations.
30. He accepts that it would not be in the public interest to disclose information that could prejudice the investigatory and prosecution process by undermining the investigation and detection of criminal activities.
31. Taking all the above into account, and having given due consideration to the arguments put forward by both parties, the Commissioner 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.
32. The Commissioner is therefore satisfied that Kent Police were entitled to rely on section 30(1)(a) of FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
33. 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, i.e. section 40(2) of FOIA.

Right of appeal

34. 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

35. 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.
36. 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

Deirdre Collins
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Wycliffe House
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