

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2024

Public Authority: Chief Constable of Devon and Cornwall Police

Address: Police Headquarters
Middlemoor
Exeter
EX2 7HQ

Decision (including any steps ordered)

1. The complainant has requested information relating to the death of a named individual. Devon and Cornwall Police (DCP) refused to provide the information citing section 30(1) of FOIA (Investigations and proceedings) and section 40(5) of FOIA (Personal data) as its basis for doing so.
2. The Commissioner's decision is that DCP was entitled to rely on section 30(1) of FOIA to refuse the request. No steps are required.

Request and response

FOI request 2567/22

3. On 18 July 2022, the complainant wrote to DCP and requested information in the following terms:

"Inquest touching the death of [name redacted] please can you provide me with a copy of the entire file or explain, in detail, why you are unable to do so."
4. DCP responded on 22 July 2022 and refused to provide the requested information. It stated that the information requested relates to

investigations and proceedings conducted by a public authority and was exempt from disclosure.

5. Following an internal review, dated 18 April 2023, DCP maintained its original position to withhold the information under section 30(1)(a)(i) of FOIA.

FOI request 2601/22

6. On 25 July 2022, the complainant wrote to DCP and requested information in the following terms:

“Please provide me with a copy of the statement of the following listed people within the 227-page inquest file into the death of [name redacted] on 1 March 1988.

[9 names redacted]

”.

7. DCP responded on 2 August 2022 and stated that it could not confirm or deny that the requested information is held by virtue of section 40(5) of FOIA.
8. Following an internal review, on 18 April 2023, DCP maintained its original position to refuse the request under section 40(5) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner, via a letter dated 29 June 2022, to complain about the way their request for information had been handled.
10. The Commissioner recognised that there was considerable amount of correspondence on the case and wrote to the complainant to clarify which requests they were pursuing.
11. Following the complainant’s clarification, on 16 February 2023, the Commissioner has focused on the complainant’s FOI request references 2567/22 and 2601/22, as outlined above in paragraph 3 to 6.
12. In considering the two requests the Commissioner has paid particular attention to the information that has been requested. In doing so, he considers that the request for a copy of the entire file pertaining to the death of an individual (FOI reference 2567/22), would also include those witness statements which the complainant has requested in their second FOI request (reference 2601/22). It is also the Commissioner’s view that

both requests would be contained within the 227-page inquest file which DCP have withheld by virtue of section 30(1)(a) of FOIA.

13. Therefore, the Commissioner considers that the scope of his investigation is to determine whether DCP was correct to withhold the requested information under sections 30(1)(a) and 40(5) of FOIA.

Reasons for decision

Section 30(1) - investigations and proceedings

14. Section 30(1)(a) of FOIA states:

“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.”

15. The phrase “at any time” means that information can be exempt under section 30(1)(a) of FOIA if it relates to a specific, ongoing, closed, or abandoned investigation. It is not necessary for the investigation to lead to someone being charged with, or being convicted of, an offence.
16. The exemption is a class-based exemption, which means that there is no need to demonstrate harm or prejudice for the exemption to be engaged. Information must simply have been held for a specific or particular investigation.
17. The complainant has explained that both requests concern a 227-page report compiled by DCP into the death of the named individual. They say that a copy of the report and its annex was provided to the then Coroner, from which 69 pages of written evidence and the annex was used during the inquest in 1988.
18. It is the Commissioner’s understanding that the material relied upon during the inquest may have been informally disclosed to the complainant, ‘outside’ the FOIA regime by the current Coroner and that the complainant was also allowed to view the complete inquest file. However, the complainant wishes to be provided with the remainder of the inquest file containing witness statements, of which his information request reference 2601/22 pursues nine of those statements.

19. The complainant's view is that, if the inquest report contained extremely sensitive information, then DCP could have taken steps to redact it. In their opinion, the amount of evidence gathered by DCP amounts to more than what is contained in the inquest report and its annex.
20. As a police force, DCP has a duty to investigate whether a criminal offence has been committed by virtue of its core function of law enforcement. The Commissioner is satisfied that, as a police force, it has the duty to conduct investigations of the type described in section 30(1)(a)(i) of FOIA. The information that it holds which falls in scope of this request is in its possession by virtue of that core duty. The circumstances of the death of the individual were investigated to determine how they died and also whether any offenders could be apprehended.
21. During the Commissioner's investigation, he considered whether the information requested by the complainant could be an historical record¹ (in accordance with PART VI of FOIA), due to the age of the case and when the inquest took place. However, DCP, in further submissions to the Commissioner, advised that the case is still an ongoing investigation and has logs on it as recently as 2022. It therefore considered that it could not be classed as an historical record.
22. On the basis that records were created as recently as 2022, the Commissioner has taken into account the latest of those records and therefore accepts that the information held is not an historical record.
23. The Commissioner is therefore satisfied that the exemption provided by section 30(1)(a)(i) of FOIA is engaged.

Public interest test

24. Section 30 is a qualified exemption and is subject to the public interest test at section 2 of FOIA. The Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.

¹ <https://www.legislation.gov.uk/ukpga/2000/36>

25. In accordance with his guidance², when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
26. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. 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, and in turn, increase the risk of harm to members of the public from offenders.

The complainant's arguments

27. The complainant argues that the information in question is a public record because it relates to a coronial investigation into the death of the individual. The complainant asserts that they are entitled to receive the information because it provides evidence of the state of mind of the individual at the time of the incident. They also argue that the public has a right to know what happened, and that disclosure would explain why, and what action will follow, where any public authority has demonstrably failed in its duty to those it serves. They contend that the basis for their request is not just personal but one that is in the public's interest.

DCP's arguments

28. In its refusal notice, DCP argued that disclosure of the information to the public would assist awareness and raise more accurate public debate regarding any rumours or speculation circulating about the case from when it first happened. It also argues that there is public interest in knowing whether the force is conducting its investigative duties effectively and disclosure of the requested information would allow the public to debate this.
29. However, in relation to the public interests in favour of non-disclosure, DCP argues that the request relates to a murder investigation which commenced in 1988 and has not yet been closed. It says that although the case is aged it is not so old that those responsible are not still alive and there is a possibility that they are able to be brought before a court. DCP states that premature disclosure of the information would prejudice

² <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

potential avenues for investigation to establish whether someone should be charged.

30. DCP explains that although the case is historical it is still an ongoing case as a suspect has never been identified. DCP contends that it is unlikely that information related to ongoing investigations will be disclosed to the public as to do so will potentially damage the outcome of any future proceedings irrespective of the age of the case.
31. DCP argues that any disclosure of information relating to an investigation would set a precedent for similar disclosure in the future. It says that to set such a precedent could lead people to believe that information they provide to the police would be disclosed via FOIA, and hence lead to the identification of those who provided it. DCP states that the harm that such a precedent could set would impede the flow of information to the police and would lead to the police being unable to investigate and assist in the prosecution of offenders effectively.
32. DCP maintains that the policing purpose for which the information was gathered was to detect the murder and bring the offender/s to justice. It says that, even with the passage of time, this is still its aim, should new information or investigative techniques become available.
33. DCP argues that disclosures under FOIA become public documents accessible to anyone and not just to the requester. For this reason, it contends that this is not the forum to examine details of an investigation that is still ongoing and argues that the balance lies in favour of non-disclosure.

The Commissioner's view

34. When balancing the opposing public interests in a case, the Commissioner will decide whether it serves the public interest better to disclose the requested information, or to withhold it because of the interests served by the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
35. The Commissioner accepts that there is a presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest. As well as this general public interest in transparency, the Commissioner acknowledges the public interest in accountability in law enforcement. The Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law.
36. 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”.

37. The Commissioner agrees that to disclose the information would set a precedent that is likely to jeopardise future police investigations. While noting the public interest arguments in favour of disclosure, the Commissioner is mindful of the purpose of section 30, and he is of the view that it is not in the public interest to jeopardise the ability of the police to investigate allegations of crime effectively.
38. In the current case, there is an ongoing criminal investigation which has not been resolved. Whilst the Commissioner accepts that the coronial investigation ended in October 1988, he agrees with DCP that such investigations are not exclusively separate from the criminal case, in that some of the information gathered as part of the criminal investigation was provided to the coroner as part of the inquest.
39. Having reviewed some of the withheld information, the Commissioner has accorded greater weight to the arguments surrounding the public interest in protecting the ability of DCP to conduct effective investigations. He accepts that it will 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. Such disclosure would impact on any future proceedings which may yet occur.
40. The Commissioner recognises that there is a wider argument surrounding the complainant's reason for their request and the position they have taken on the matter. The Commissioner has considered these wider arguments; however, he is of the view that the impact of a disclosure on an ongoing investigation would have a prejudicial effect on the potential apprehension of an offender.
41. 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 readily outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined.

42. The Commissioner is therefore satisfied that DPC 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.
43. As he has found that section 30(1)(a)(i) is properly engaged, the Commissioner has not found it necessary to go on to consider section 40(5) of FOIA.

Right of appeal

44. 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

45. 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.
46. 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

Esi Mensah
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