

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 September 2024

Public Authority: Chief Constable of Thames Valley Police
Address: Headquarters
Oxford Road
Kidlington
OX5 2MX

Decision (including any steps ordered)

1. The complainant has requested information from Thames Valley Police (TVP) regarding a misconduct in public office allegation. TVP relied on sections 30(3) and 40(5) to neither confirm nor deny ("NCND") holding the requested information.
2. The Commissioner's decision is that TVP was entitled to rely on section 30(3) to NCND holding the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 25 January 2024 the complainant wrote to TVP and requested information in the following terms:

"I refer you [to] the lengthy correspondence bundle attached and in this regard hereby make a request under the FOI Act 2000 as follows:

1. In relation to the notifiable office [99/12- Misconduct in Public Office] made against the Leader (etal) of [public authority removed], I

request all information held relating to the recorded decision of the Office of the Force's Crime Registrar following submission of further and better particulars (case law) dated 2nd and 15th August 2022; this to include the following points to prove:

- i. Date and location
- ii. While acting as a public officer
- iii. Wilfully and without reasonable excuse or justification
- iv. Neglected to perform his or her duty or
- v. Misconducted himself /herself ...

3. I request information relating to all correspondence/communication received by and sent from the Office of the Force's Crime Registrar, from/to the Office of the Chief Constable relating to the submission of further and better particulars (case law) dated 2nd and 15th August 2022."

5. TVP responded on 31 January 2024 and explained it would neither confirm nor deny holding the requested information under section 40(5)(a)(b) of FOIA.
6. Following an internal review, TVP wrote to the complainant on 26 March 2024. It stated that it was now refusing the request under section 14(1) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 11 April 2024 to complain about the way their request for information had been handled.
8. During the Commissioner's investigation, TVP informed the Commissioner that it no longer wished to rely on section 14(1) of FOIA. It was now seeking to rely on sections 30(3) and 40(5) of FOIA. The complainant was not made aware of this change in position, but the Commissioner was satisfied that TVP's reliance on the above exemptions would not resolve the complainant's concerns.
9. The Commissioner considers that the scope of his investigation is to consider whether TVP was entitled to NCND holding the requested information under sections 30(3) and 40(5) of FOIA.

Reasons for decision

Neither confirm nor deny ('NCND')

10. Section 1(1)(a) FOIA requires a public authority to inform a requester whether it holds the information specified in a request. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be considering the likely consequences of confirming or denying whether or not particular information is held.
11. Public authorities need to use the NCND response consistently, over a series of comparable requests, regardless of whether or not they actually do hold the requested information. This is to ensure that an NCND response cannot be taken as an indication of whether or not information is in fact held.
12. TVP has decided to NCND holding any of the requested information in its entirety, citing sections 40(5) (personal information) and 30(3) (investigations and proceedings) of FOIA. The issue for the Commissioner to decide is not disclosure of any requested information that may be held, it is solely the issue of whether or not TVP is entitled to NCND holding information of the type requested by the complainant.
13. The Commissioner has first considered whether TVP was entitled to rely on section 30(3) of FOIA.

Section 30(3) - investigations and proceedings

14. Section 30(3) of FOIA provides an exclusion from the duty to confirm or deny in relation to any information which, if it were held, would fall within any of the classes described in sections 30(1) or 30(2) of FOIA. TVP confirmed that, in this case, section 30(1)(a)(i) was the appropriate limb of section 30.
15. Section 30(1)(a) of FOIA states: "(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".
16. The Commissioner considers the phrase "at any time" to mean that information can be exempt under section 30(1)(a) if it relates to a specific ongoing, closed or abandoned investigation. The information

requested (if it were held) must be held for a specific or particular investigation and not for investigations in general.

17. His guidance also states¹: “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”.
18. Consideration of section 30(3) 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 and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
19. The first step is to address whether, if TVP holds information falling within the scope of the complainant’s request, it would fall within the classes specified in section 30(1)(a)(i) of FOIA.
20. TVP advised the Commissioner that the request for information relates to misconduct in public office and, if such information was held, TVP would have a duty under the Police Act to investigate a report of a criminal allegation of this nature.
21. The Commissioner is satisfied that, as a police force, TVP has a duty to investigate criminal offences and allegations of offences.
22. Referring to the wording of the request, and to the explanation provided by TVP, the Commissioner is satisfied that any information, if it were held, would be held in relation to such an investigation. Therefore, the Commissioner is satisfied that, if TVP were to hold the requested information, it would be held for the purpose of criminal investigations. The exemption provided by section 30(3) is, therefore, engaged.

Public interest test

¹ [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](https://ico.org.uk/investigations-and-proceedings-foi-section-30.pdf)

23. Section 30(3) is a qualified exemption. This means that the Commissioner must consider the public interest test contained at section 2 of FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
24. 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.
25. 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.

Arguments in favour of confirming or denying whether the requested information is held

26. TVP acknowledged that confirming or denying whether the information was held would demonstrate that TVP is operating in an open and transparent manner. Confirming or denying would also inform the public whether specific investigations were undertaken by the force.
27. The complainant also advised that confirming or denying whether the information was held would show that TVP is not attempting to shield the conduct of officers.

Arguments in favour of maintaining the exemption

28. TVP stated that, by its very nature, if any information was held it would relate to a specific matter that would contain sensitive information. It added that confirming or denying whether the information is held could disclose facts which may be harmful to third parties and undermine TVP's policing responsibilities.
29. TVP added that confirming or denying whether the requested information is held would also hinder its ability to perform its function and protect third parties and victims.

Balance of the public interest

30. The Commissioner recognises that section 30 exists to preserve the integrity of investigations conducted by public authorities and the ability of the Police (and other applicable public authorities) to conduct them

effectively. It is not in the public interest to jeopardise the ability of the Police to effectively investigate and there is a need to prevent disclosures that could prejudice or obstruct investigatory processes generally.

31. This means that, where section 30 is found to be engaged, the Commissioner must consider whether the act of confirming or denying whether the requested information is held could have a harmful impact on the ability of the police to carry out effective investigations.
32. This does not mean that public authorities should use an NCND response in a blanket fashion. They should base their decision on the circumstances of the particular case with regard to the nature of the information requested and with appropriate consideration given to the public interest test. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.
33. In considering the balance of the public interest in this case, the Commissioner recognises that there is a significant public interest in the need to prevent disclosure (by way of confirmation or denial) 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. This goes to the heart of what the section 30 exemption is designed to protect.
34. The Commissioner also considers that significant weight has to be given to the need to protect TVP's ability to adopt a consistent approach when responding to similar requests in the future.
35. The Commissioner recognises that confirmation or denial in relation to an investigation might generally be harmful to TVP's ability to manage its investigations effectively. He accepts that it has the potential to undermine its present and future investigations and therefore hinder its ability to conduct its policing functions, which would not be in the public interest.
36. However, it also needs to be considered that section 30 is not an absolute exemption and there will be occasions where the public interest overrides any inherent harm in this exemption; this goes, too, for the NCND principle.
37. The Commissioner considers that appropriate weight must given to the public interest in TVP being able to effectively conduct its function of carrying out criminal investigations.

38. Having given due consideration to the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of confirmation or denial do not equal or outweigh those in favour of maintaining the exemption. For this reason, the Commissioner is satisfied that TVP is entitled to rely on section 30(3) of FOIA.
39. As the Commissioner has found that TVP was entitled to NCND whether it held the requested information under section 30(3), he has deemed it unnecessary to consider its reliance on section 40(5) of FOIA.

Right of appeal

40. 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

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
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