

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 October 2024

**Public Authority:** Chief Constable of Hampshire Constabulary  
**Address:** Operational Headquarters  
Mottisfont Court  
Tower Street  
Winchester  
Hampshire  
SO23 8ZD

#### Decision (including any steps ordered)

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1. In a series of requests, the complainant requested information relating to a specific investigation.
2. Hampshire Constabulary neither confirmed nor denied holding the requested information, citing sections 40(5) (personal information) and 30(3) (investigations and proceedings) of FOIA.
3. The Commissioner investigated Hampshire Constabulary's application of section 30(3) to the requested information.
4. The Commissioner's decision is that Hampshire Constabulary is entitled to rely on section 30(3) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of the requests.
5. The Commissioner requires no steps to be taken as a result of this decision.

#### Request and response

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6. On 26 February 2024, Hampshire Constabulary received the following requests for information from the complainant, numbered for ease of reference: (The requests have been redacted to protect the individuals concerned.)

#### Request 1

"I [redacted] Ex Husband of [redacted] along with our daughters [redacted] would like to request a copy of the Detective Sergeant's submitted 'Closing Report' sent [date redacted]. We are referring to the he submitted 'Closing Report' indicating that the matter [name redacted] Death) was not a UK Police investigation sent to the coroner Mr [name redacted]. Senior Coroner for [redacted]. We also want the name of the Detective Sergeant and his badge number to remain on the requested 'Closing Report'".

#### Request 2

"I [redacted] would like to request a copy of RMS record [reference redacted] (Highlighted to us by Chief Inspector [redacted] Hampshire Constabulary Professional Standards Dept) which shows that it was me [redacted] the Ex Husband of [redacted] that on [date redacted] sent an email to Detective Sergeant [redacted] [that] referred to the death of [redacted] as suspicious. Along with a copy of my email that I sent Detective Sergeant [redacted] to that fact".

#### Request 3

"I [redacted] would also like to request a copy of the email/letter that was sent to the coroner on my behalf that showed my concerns that I thought [redacted]'s death was suspicious and subsequently, on the strength of that email/letter, prompted the coroner to tell Hampshire Constabulary that, in his view, Hampshire Constabulary should be looking at a Home Office Post Mortem".

#### Request 4

"I [redacted] (Ex Husband of [redacted]) and my daughters [redacted] would like to request a copy of the Review into the Investigation of [redacted] carried out in the summer of [date redacted], by 5 retired Hampshire Constabulary Police Officers, at the instruction of Detective Superintendent [redacted] Head of Serious and Organised Crime Investigation Command Hampshire Constabulary Detective Superintendent [redacted] told us that the review was an in-house unofficial review carried out by 5 retired police officers, both he and Hampshire Constabulary have made reference to this review on many occasions, for transparency we request a copy of it".

#### Request 5

"I [redacted] (Ex Husband of [redacted]) and my daughters [redacted] would like to request a copy of Professor [name

redacted] review carried out in [date redacted] into Home Office pathologist Dr [redacted] report carried out in 2014. Dr [redacted] was asked in [date redacted] by Hampshire Constabulary to give his opinion relating to the injuries identified by two earlier post mortems, Professor [redacted] opinion on report was actioned by Detective Superintendent [redacted] and Senior Investigating Officer Detective Inspector [redacted]”.

#### Request 6

“I [redacted] (Ex Husband of [redacted] and my daughters [redacted], would like to request a copy of the following from Solicitors.

[...]

Detective Superintendent [redacted] told us on [date redacted] that she could confirm that the investigative team did apply for a Court Order to obtain the documentation from [redacted]. This Order was refused by the Court. We sought further legal advice on this point and were advised that there were no further legal avenues to pursue in relation to this. We would Like to request a copy of the Court application to obtain the documentation from [redacted]. The Court's refusal documentation. And a copy of the documentation on the legal advice sought and a copy of the documentation of the advice that there were no further legal avenues to pursue in relation to the matter”.

#### Request 7

“I [redacted] (Ex Husband of [redacted]) and my daughters would like to request a copy of the following from Insurance documentation. This is a 106-page report detailing the following and provided to Police. [...redacted]”.

7. On 27 February 2024, Hampshire Constabulary received the following requests for information from the complainant, numbered for ease of reference:

#### Request 8

“I [redacted] would like to request a copy of the reply from the coroner to the letter/ email that I [redacted] the Ex Husband of [redacted] sent on [date redacted] to Detective Sergeant [name redacted] to pass onto the coroner expressing my concerns that the death of [name redacted] in my opinion was suspicious. The aforementioned letter is referred to in RMS record [reference redacted] (Highlighted to us by Chief Inspector [name redacted] Hampshire Constabulary Professional Standards Dept) which shows

that it was me [name redacted] that on [date redacted] sent an email to Detective Sergeant [name redacted] referred to the death of [name redacted] as suspicious.)”.

#### Request 9

“I [name redacted] would like to request a copy of RMS record [reference redacted] (Highlighted to me by Investigator [name redacted] Hampshire Constabulary Professional Standards Dept) which shows that it was me [...] that made a report on [date redacted] of a number of assaults on [redacted] I would like to request a copy of RMS [reference redacted] encompassing the report made by me on [date redacted]...”.

8. Hampshire Constabulary responded on 7 March 2024, explaining that the response covered the nine requests for information it had received from the complainant.
9. Hampshire Constabulary neither confirmed nor denied (NCND) holding the requested information, citing section 40(5) (a)(b) (personal information) of FOIA.
10. The complainant wrote to Hampshire Constabulary on 7 April 2024 withdrawing request 9 and appealing the decision in respect of the other eight requests.
11. Following an internal review, Hampshire Constabulary wrote to the complainant on 30 April 2024. It maintained that section 40(5) applies.

#### **Scope of the case**

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12. The complainant complained to the Commissioner about Hampshire Constabulary’s refusal to confirm or deny whether the requested information is held. They also considered they had been provided with a generic response rather than individual reasoning.
13. During the course of the Commissioner’s investigation, Hampshire Constabulary revisited its handling of the requests, at this point additionally citing section 30(3) (investigations and proceedings) of FOIA.
14. The complainant remained dissatisfied.
15. In this case, Hampshire Constabulary has taken the position of neither confirming nor denying whether it holds any of the requested information, in its entirety, citing sections 30 and 40 of FOIA. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether

or not Hampshire Constabulary is entitled to NCND whether it holds any information within the scope of the requests.

16. In light of the above, this notice considers whether Hampshire Constabulary is entitled to neither confirm nor deny holding the requested information. The Commissioner has not considered whether the information – if held – should be disclosed.
17. The Commissioner has first considered Hampshire Constabulary's application of section 30(3) to the requested information. Should section 30(3) not apply to all the requested information, the Commissioner will go on to consider the application of 40(5).

## Reasons for decision

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### Neither confirm nor deny (NCND)

18. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. This is called the 'duty to confirm or deny'.
19. Therefore – when dealing with a request for information – a public authority must **first** consider whether it can either confirm holding it or, if an exemption applies to the duty to confirm or deny, whether it can give a NCND response.
20. 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 theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
21. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.

### Section 30 investigations and proceedings

22. 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.
23. Subsection (1) exempts, as a class, any information held at any time by a public authority for the purposes of a criminal investigation or criminal proceedings conducted by it. Subsection (2) additionally exempts, as a class, information relating to the obtaining of information from

confidential sources (informers) if it was obtained or recorded for the purposes of the authority's functions relating to such investigations or proceedings.

24. In this case, Hampshire Constabulary considers that, if held, the information would fall under 30(1) and 30(2).
25. The Commissioner's guidance<sup>1</sup> on section 30 states that the phrase "at any time" means that information can be exempt under section 30(1) if it relates to a specific, ongoing, closed or abandoned investigation.
26. His guidance also states:

"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."
27. 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.
28. The first step is to address whether, if Hampshire Constabulary holds information falling within the scope of the complainant's requests, it would fall within the classes specified in section 30(1) or (2) of FOIA.
29. The Commissioner accepts that, in its correspondence with the complainant, Hampshire Constabulary recognised that, by its very nature, information held relating to specific cases is sensitive.
30. However, he considers that Hampshire Constabulary relied to a large degree on the requested material being self-evidently exempt, without making extensive effort to provide supporting material or penetrating analysis.
31. In its submission to the Commissioner, Hampshire Constabulary acknowledged the requested information comprises very specific

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

information relating to the death of the individual named in the request and its involvement with a related investigation.

32. It explained that, if held, the requested information about the investigation would fall under sections 30(1) and 30(2) "as when the police do conduct a criminal investigation it is also the case that we may need to obtain information from confidential sources".
33. The Commissioner is satisfied that, as a police force, Hampshire Constabulary has a duty to investigate criminal offences and allegations of offences.
34. Given the context and wording of the requests, the Commissioner is also satisfied that if Hampshire Constabulary holds information falling within the scope of the requests, it would be held for the purpose of criminal investigations. However, in the circumstances of this case, whilst he accepts that 30(1) could be properly engaged, he does not accept that Hampshire Constabulary has demonstrated that 30(2) could be relevant. This is on the basis that section 30(2), in these circumstances, is intended to relate to confidential sources, ie someone who provides information on the basis that they will not be identified as the source of that information; Hampshire Constabulary has provided no evidence to support that this would be the case.
35. As the information, if held, would fall within the class described in section 30(1)(a) Hampshire Constabulary is entitled to rely on section 30(3) to neither confirm nor deny whether it holds this information. The exemption provided by section 30(3) is, therefore, engaged.

### **Public interest test**

36. Section 30 is subject to the public interest test, as set out in section 2 of FOIA. This means that although section 30 is engaged, confirmation or denial must still be provided unless, 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.
37. 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.
38. 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.

39. However, it needs to be borne in mind 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.

### **Public interest arguments in favour of confirming or denying**

40. The complainant considers that there is a public interest in transparency. They also have a personal interest in the information.
41. Hampshire Constabulary acknowledged that confirming or denying that the requested information is held would lead to a better informed public, improving their knowledge and understanding of how the Police Service undertakes investigations.

### **Public interest arguments against confirming or denying whether the information is held**

42. Hampshire Constabulary told the complainant:

“The Police Service will never disclose information under FOIA which could identify investigative activity and therefore undermine their past, present and future investigations. To do so would hinder its ability to perform this function”.

43. In its submission to the Commissioner, Hampshire Constabulary recognised the difference between the public interest in confirming or denying that any information on the subject is held, and confirming or denying that the specific detail in scope of the requests is held.

### **Balance of the public interest**

44. The purpose of section 30 is to preserve the ability of 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 act of confirming or denying whether the requested information is held could have a harmful impact on the ability of the public authority to carry out effective investigations.
45. This does not mean that public authorities should use a 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 a public authority to investigate crime effectively.
46. The issue for the Commissioner to determine is whether it is in the public interest to disclose, by way of confirmation or denial, that the requested information is held. In that respect he is mindful that the



request in this case is not about whether an investigation took place, rather it is in relation to specific information that, if held, relates to an investigation.

47. In reaching a view on where the balance of the public interest lies in this case, the Commissioner has taken into account the nature of the requested information as well as the views of both the complainant and Hampshire Constabulary.
48. The Commissioner has read the comprehensive correspondence that the complainant provided in support of their complaint. He accepts that the complainant has a strong personal interest in the requested information.
49. However, FOIA section 2(2) refers to the **public** interest. Furthermore, disclosures of information under FOIA are in effect to the world at large and not just to the individual requester. The requester's private interests are not the same as the public interest and what may serve those private interests does not necessarily serve a wider public interest.
50. The Commissioner accepts that it is important for the public to have confidence in the Police's investigative capabilities. Accordingly, there is a general public interest in disclosure, by way of confirmation or denial, of the requested information in order to promote accountability and transparency and to maintain confidence and trust.
51. He also recognises that there is a very strong public interest in protecting the investigative capabilities of public authorities. The Commissioner has also taken into account the need to protect Hampshire Constabulary's ability to adopt a consistent approach when responding to similar requests for detailed information about its investigations in the future.
52. 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.
53. The Commissioner recognises that confirmation or denial in relation to the specifics of an investigation might generally be harmful to Hampshire Constabulary'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.
54. 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. Accordingly, the Commissioner is satisfied that Hampshire Constabulary is entitled to rely on section 30(3) of FOIA.

### **Other exemptions**

55. In light of his decision above, the Commissioner has not found it necessary to consider the application of section 40(5) in this case.

### **Other matters**

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56. Separate legislation confers rights on individuals to access information about themselves.
57. The Commissioner considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that legislation.
58. In that respect, he is satisfied that Hampshire Constabulary explained to the complainant what to do if they wished to consider applying for their personal information under the Right of Access contained in the Data Protection Act 2018.

## **Right of appeal**

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59. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

60. 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.
61. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**