

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2016

Public Authority: Independent Police Complaints Commission
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant requested reports and recommendations released to Kent Police by the Independent Police Complaints Commission (IPCC) concerning an incident in which an individual died whilst being restrained by the police. The IPCC partially refused this request and withheld some of the requested information under the exemption provided by section 30(1)(a)(i) (information held for the purposes of an investigation) of the FOIA.
2. The Commissioner's decision is that the IPCC cited section 30(1)(a)(i) correctly and so it was not obliged to disclose the withheld information.

Request and response

3. On 29 July 2015, the complainant wrote to the IPCC and requested information in the following terms:
"Please could you send me all reports and recommendations released to Kent Police regarding the death of Colin Holt."
4. After an earlier holding response, the IPCC responded substantively on 24 September 2015. The request was refused, with the exemption provided by section 30(1)(a)(i) (information held for the purposes of an investigation) of the FOIA cited.
5. The complainant responded on 6 October 2015 and requested an internal review. The IPCC responded with the outcome of the review on 7 January 2016. This response referred to an exchange between the

complainant and the IPCC and stated that a single report of 29 July 2011 was now the only information considered within the scope of the complainant's information request. In relation to that single report, the refusal under section 30(1)(a)(i) was upheld, with section 40(2) (personal information) also cited.

Scope of the case

6. The complainant contacted the Commissioner on 14 January 2016 to complain about the refusal of his information request. The complainant argued that the exemptions cited by the IPCC did not apply.
7. An exchange between the ICO and the complainant followed on the issue of the IPCC having considered only a single report as within the scope of the request at internal review stage. The complainant confirmed that, if all of the recommendations were in the 29 July 2011 report, he was willing for the scope of this case to cover only that report.
8. The IPCC confirmed that all recommendations made by it to Kent Police were contained in this report. Based on this statement and on the agreement of the complainant, this notice covers only the 29 July 2011 report. The Commissioner does, however, comment on his concerns about the approach taken by the IPCC to identifying and clarifying the scope of the request in this case in the Other matters section below.
9. During the investigation of this case the position of the IPCC changed and it disclosed the report, with some of the content redacted under the exemptions previously cited, to the complainant. The complainant confirmed that he wished to continue with this case in relation to the redacted content. The analysis below covers whether the content redacted from the disclosed version of the 29 July 2011 report was correctly withheld under sections 30(1)(a)(i) and 40(2).

Reasons for decision

Section 30

10. The IPCC cited section 30(1)(a)(i). This section provides an exemption for information held at any time for the purposes of an investigation carried out with a view to it being ascertained whether a person should be charged with an offence. Consideration of this exemption involves two stages; first the exemption must be engaged as a result of the information falling within the class specified in this section. Secondly,

this exemption is qualified by the public interest, which means that, unless the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information must be disclosed.

11. Covering first whether the exemption is engaged, section 30(1)(a)(i) is a class based exemption. This means that if the information is of the type described in section 30(1)(a)(i) it is exempt; there is no requirement to consider whether any harm would occur as a result of disclosure. The issue here is, therefore, whether the requested information was held at any time by the IPCC for the purpose of an investigation which it had a duty to conduct into whether an individual should be charged with an offence.
12. As stated above the information in question here is some of the content from an IPCC report of 29 July 2011. This report is titled *"Mr Colin Holt Death during Police Contact with Kent Police on 30 August 2010 Independent Investigation Learning Report"*. The IPCC stated that it held this report for the purposes of an investigation carried out under paragraph 19 of Schedule 3 of the Police Reform Act 2002. That investigation concerned the death of an individual whilst being restrained by the police and covered whether any individual should be charged with an offence over that incident. It stated that amongst the purposes of the report of such an investigation is to indicate whether a criminal offence may have been committed and, if so, whether that should be referred to the Director of Public Prosecutions.
13. Having viewed the content of the report and taken into account the representations from the IPCC, the Commissioner accepts that the information in question was held by the IPCC for the purposes of an investigation into whether a person should be charged with an offence. The exemption provided by section 30(1)(a)(i) is, therefore, engaged.
14. Having found that this exemption is engaged, the next step is to consider the balance of the public interests. In forming a conclusion here, the Commissioner has taken into account the public interest in preserving the ability of the police to carry out effective investigations, which is the process that this exemption is designed to protect. He has also considered what factors there are in favour of disclosure of the information and weighed these against the public interest in the maintenance of the exemption. He has also had regard for the disclosure by IPCC of much of the information in the report which goes a long way to satisfying the public interest in disclosure.
15. Covering first factors in favour of disclosure, the complainant argued that the circumstances of the incident that the report relates to means that there is a public interest in disclosure. He referred to this being an

incident in which a mentally ill individual died as a result of being restrained by the police. He suggested that there was a particular public interest in disclosure relating to concerns about the training of police on restraint techniques.

16. The Commissioner agrees with the complainant that there is significant public interest in disclosure given the circumstances and utmost seriousness of the incident to which the withheld information relates. Disclosure would add to public knowledge about this incident, in particular the details of how it occurred and the actions of individual police officers during this incident. This is a valid factor in favour of disclosure of considerable weight.
17. The Commissioner referred above to the general public interest in the openness of the IPCC. The Commissioner believes that there is a particular public interest in the disclosure of this information in order to strengthen understanding of the actions taken by the IPCC in response to this very serious incident and in general about the work of the IPCC and its role in relation to incidents of this kind. The Commissioner's view is that this adds further to the weight of the public interest in favour of disclosure.
18. Turning to the public interest in the maintenance of the exemption, as mentioned above, section 30(1)(a) exists in order to protect the ability of relevant public authorities to carry out effective investigations. Clearly it is in the public interest for the police to be able to carry out their function effectively, but the weight that this carries as a public interest factor will depend on the circumstances in each case.
19. Of significance in this case is that the investigation to which the withheld information relates is ongoing. As noted in the Commissioner's published guidance on this exemption¹, *"as a general rule there will always be a strong public interest in maintaining the section 30 exemption whilst an investigation is ongoing."*
20. The IPCC explained that, although the report containing the withheld information dates from several years prior to the request, a further investigation relating to this incident was started by the IPCC more recently and is ongoing. It stated that this investigation may result in prosecution and asserted that *"the information is directly relevant to the decisions that have yet to be made by the IPCC and, if required, the CPS"*. Based on these representations from the IPCC, the Commissioner

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

must, in line with his guidance, recognise that the public interest in maintaining the exemption in relation to information concerning an ongoing investigation is of very significant weight.

21. The Commissioner referred above to the serious nature of the incident to which the withheld information relates when covering the public interest in favour of disclosure. This must also be taken into account here; that the ongoing investigation described by the IPCC relates to such a serious incident further strengthens the public interest in preserving a space for that investigation to be carried out effectively.
22. In conclusion, the Commissioner has recognised valid public interest in disclosure of this information in order to improve public knowledge and understanding of the circumstances of this serious incident and the actions taken by the IPCC in relation to it. However, the seriousness of that incident is also relevant in relation to the public interest in preserving a space to carry out the ongoing investigation into it. The Commissioner's view is that this public interest outweighs that in favour of disclosure, and so his finding is that the public interest in favour of maintaining the exemption outweighed that in favour of disclosure. The IPCC was not, therefore, obliged to disclose this information.
23. In light of this conclusion, it has not been necessary for the Commissioner to go on to also consider section 40(2).

Other matters

24. When considering the scope of an information request a public authority must always act on the basis of an objective reading of the request. Where the scope of a request is not clear, or where there are multiple objective readings of it, the public authority must contact the requester for clarification of what they are seeking. A public authority should never proceed on the basis of an assumption or a guess as to what information is sought.
25. In this case, the Commissioner was concerned at the outset about how and why the internal review had reached the point of considering only a single document as within the scope of the request. The wording of the request appeared clear; *"all reports and recommendations released to Kent Police regarding the death of Colin Holt"*, and seemed to potentially cover other information than the single report focussed on. It was not clear why it was necessary for the IPCC to seek clarification and it also appeared that the basis for limiting the scope of the internal review was a comment that the complainant had made without it being his intention that this would restrict the scope of his request.

26. As covered above, the Commissioner has proceeded with this case in relation solely to the report that the internal review covered following the complainant agreeing to that approach in correspondence with the ICO. The Commissioner nonetheless remains somewhat concerned about the scope of the request having been significantly narrowed at the internal review stage and how that came about.
27. In relation to future information requests the IPCC should focus on an objective reading of the request and proceed on that basis. Any subsequent alterations to the scope of the request should be based only on clear clarification and agreement from the complainant, particularly where this results in a narrowing of the scope of the request.

Right of appeal

28. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

29. 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.
30. 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

Ben Tomes
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