

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2023

Public Authority: Chief Constable of Cleveland Police
Address: St Mark's House
St Mark's Court
Thornaby
Stockton on Tees
TS17 6QW

Decision (including any steps ordered)

1. The complainant requested from Cleveland Police, information regarding police interview transcripts from September 2006 to July 2008 of [names redacted]. Cleveland Police withheld the information under section 40(2) (personal information) and section 30(1) (investigations and proceedings) of FOIA.
2. The Commissioner's decision is that Cleveland Police was entitled to rely on section 30(1) of FOIA to withhold the information requested. Due to this decision, it has not been necessary for the Commissioner to consider the application of any other exemptions.
3. The Commissioner does not require Cleveland Police to take any further steps as a result of this decision.

Request and response

4. On 12 June 2023, the complainant wrote to Cleveland Police and requested information in the following terms:

"Please can you disclose an electronic copy of any police interview transcripts you hold, in which [names redacted] were interviewed."

I am interested in transcripts from 1 September 2006 to 31 July 2008. These transcripts will have been read out in court and so will not engage the couples' reasonable expectation of privacy."

5. On 25 July 2023 Cleveland Police responded and confirmed it holds information pertinent to this request. It cited section 40(2) (personal information) and section 30(1) (investigations and proceedings) of FOIA.
6. On the same day the complainant asked Cleveland Police for an internal review. On 15 August 2023 Cleveland Police provided its review response and maintained its original position.

Reasons for decision

7. This reasoning covers why Cleveland Police was entitled to rely on section 30(1) of FOIA to refuse to provide the requested information. In its submissions to the Commissioner and having revisited the request, Cleveland Police also applied section 38(1) (Health & Safety) of FOIA.

Section 30 – investigations and proceedings

8. Section 30(1) of the FOIA states that:

"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,"
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct."

9. The phrase "at any time" means that information is exempt under section 30(1) if it relates to a specific ongoing, abandoned or closed investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.
10. Consideration of section 30(1)(a) is a two-stage process. Firstly, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test.
11. The first step is to determine whether the requested information falls within the class described in section 30(1)(a) of FOIA.

12. Section 30 is a class based exemption. This means it is not necessary to demonstrate that disclosure would lead to any kind of prejudice in order to engage the exemption, only that the request falls within the class of information which the exemption is designed to protect.
13. Section 30(1)¹ can only be relied upon by public authorities that have a duty to investigate whether someone should be charged with an offence.
14. The withheld information in this case consists of police interview transcripts, in which [names redacted] were interviewed.
15. Cleveland Police explained to the Commissioner that; "Although the case is now concluded, with outcomes for the individuals concerned, to disclose the transcripts would disclose the interviewing techniques and operational policing investigative tactics used, this could be used to circumvent and prejudice future investigations." Cleveland Police also confirmed the investigation was complete at the time of the request.
16. It further explained reasons why the withheld information is needed by Cleveland Police to fulfil the investigatory functions set out in sections 30(1)(a) to (c) of FOIA. It said; "The ability to deliver effective law enforcement is of paramount importance to the Police Service. Releasing this information could undoubtedly compromise law enforcement. As much as there's public interest in knowing that policing activity is appropriate and balanced in matters of investigative matters both locally and nationally. It is our opinion that for these issues the balancing test for disclosure is not made out."
17. The Commissioner has viewed the withheld information, he is satisfied that it was held by Cleveland Police for the purposes of an investigation, and that it falls within the definition of section 30(1)(a) and (b) of FOIA.
18. The information contained within the interview transcripts, relate to investigations and proceedings conducted by Cleveland Police. Therefore, the Commissioner finds that section 30(1)(a) and (b) exemption is engaged.

Public interest test

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

19. The Commissioner will now determine whether the public interest lies in disclosure or in maintaining the exemption.

Public interest arguments in favour of disclosing the information

20. Cleveland Police acknowledged that because the transcripts had previously been read out in court during the trial in 2008, extracts will have been available in the public domain.
21. Cleveland Police said it appreciates this case is of interest to members of the public, and that they're entitled to know what their public funds are spent on. It added, "investigations may be closed and any proceedings may have been completed, but the investigations may have been high profile and had national implications."
22. The complainant didn't present any additional arguments.

Public interest arguments in favour of maintaining the exemption

23. Cleveland Police stated; "The public interest will not be served if disclosure breaches the obligations placed on an authority under the European Convention on Human Rights, particularly article 3 prohibition of torture, article 6 the right to fair trial and article 8 the right to privacy. This principle applies to all those individuals who are mentioned within the interview transcriptions. The public interest will favour non-disclosure when individuals or third-party interests might be jeopardised by release of information that relates to personal affairs of individuals, this can include reputations. Such disclosure may lead to unwanted and unsolicited intrusion from the media or others interested in the facts of the matter and could cause the families embarrassment, alarm, or distress."
24. Cleveland Police reaffirmed its argument about the transcripts that were read out in court during the trial in 2008. It said these will have been caught in a "window of opportunity" and therefore not a formal acknowledgment into the public domain. Cleveland Police argued that by releasing the information requested, "the Force's future law enforcement capabilities could be affected and this would hinder the prevention and detection of crime."

Balance of the public interest arguments

25. In reaching a conclusion on the balance of the public interest, the Commissioner has taken into account the nature of the requested information and the views of both the complainant and Cleveland Police.
26. The Commissioner accepts it is important for the public to have confidence in Cleveland Police and its investigative capabilities. Accordingly, there is a general public interest in disclosure of requested information in order to promote accountability and transparency and to maintain confidence and trust. He also accepts disclosure of the information would provide reassurance that Cleveland Police conducted a thorough investigation into the case in question.
27. The Commissioner understands the complainant's personal interest in gaining access to the requested information. However, it is important to reiterate that a disclosure under FOIA is a disclosure to the world at large and not just a private transaction between the public authority and the applicant.
28. The Commissioner recognises there is a very strong public interest in protecting the investigative capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – in this case, the public interest in Cleveland Police being able to effectively conduct its function of carrying out criminal investigations.
29. The Commissioner accepts that organisations with functions to investigate and prosecute criminal offences, rely on the voluntary co-operation of victims and witnesses, as well as those under investigation. Whilst those bodies usually have enforcement powers to require information to be provided, these are most effective when used sparingly and it is important not to obstruct the voluntary flow of information.
30. Having given due consideration to the arguments put forward by both parties, the Commissioner considers the public interest in disclosure is outweighed by the public interest in ensuring the investigation and prosecution of offences is not undermined. Also that the ability of Cleveland Police to investigate crime effectively is not jeopardised.
31. The Commissioner's decision is on balance, the public interest in disclosure is outweighed by the public interest in maintaining section 30(1)(a) and (b) exemption.

Conclusion

32. The Commissioner has concluded that Cleveland Police was entitled to rely on section 30(1)(a) and (b) of FOIA to refuse the request. He has therefore, not gone on to consider the other exemption cited - section 40(2) and the subsequent application of section 38(1) of FOIA.

Right of appeal

33. 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

34. 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.
35. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF