



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2015/0128

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50577249
Dated: 26 May 2015

Appellant: Michael Rawson

First Respondent: The Information Commissioner

Second Respondent: Chief Constable of Bedfordshire Police

Heard at: Field House

Date of Hearing: 13 October 2015

Before
HH Judge Shanks
Judge
and
Henry Fitzhugh and Narendra Makanji
Tribunal Members

Representation:

Appellant: In person

First Respondent: Did not appear

Second Respondent: Kevin Sharp (Information Services Manager)

Date of Decision: 19 October 2015

Subject matter:

Freedom of Information Act 2000

s.30	Qualified exemption: <i>Investigations and proceedings conducted by public authorities</i>
------	--

DECISION OF THE FIRST-TIER TRIBUNAL

For the reasons set out below the Tribunal dismisses the appeal.

REASONS FOR DECISION

Factual background

1. On 14 February 2015 at 06.45 there was a road traffic accident in the hard shoulder on the M1 northbound between junctions 12 and 13 which involved a collision between a coach and a car and the death of three occupants of the car.
2. Nine days later, on 23 February 2015, the Appellant, Mr Rawson, who is a retired police officer, made a request for information under FOIA addressed to the Bedfordshire Police in these terms:

[1] At the time of the accident was the hard shoulder being used as a running lane?

[2] What information was displayed on the overhead gantry prior to the location of the accident? (If the hard shoulder was in use as a traffic lane what speed limit was displayed on the gantry?)
3. The Bedfordshire Police responded to the request by saying they did hold the information requested but that they were not obliged to supply it by reason of section 30(1)(a) of FOIA (which provides that information is exempt if it is has at any time

been held by a public authority for the purposes of an investigation which it has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence). That decision was upheld on an internal review completed on 27 March 2015 and in a decision notice issued by the Information Commissioner dated 26 May 2015. Mr Rawson has appealed against that decision notice to this Tribunal.

Our conclusions

4. Mr Rawson accepts as he must that section 30(1)(a) of FOIA applies to the information he requested. The only issue for us to consider is therefore whether in all the circumstances the public interest in maintaining that exemption outweighed the public interest in disclosing the information as at March 2015 when disclosure was refused.

The public interest in disclosure

5. Mr Rawson and his witness, Brendan Shardlow, also a retired police officer with many years experience in traffic policing and accident investigation, are both extremely concerned about the safety implications of the policy of using the hard shoulder as a running lane on motorways. Mr Rawson was perfectly open in saying that the reason he sought the information in question was that, if the hard shoulder was being used as a running lane on the relevant part of the M1 on 14 February 2015, he would wish to draw the public's attention to the apparent consequences in this case. He said that he would have wished to write an article about the accident and would have mentioned it in evidence to a Parliamentary Select Committee which he had recently addressed on road safety.
6. We have no doubt about the importance of this public safety issue. However, we are less persuaded of the importance of the specific information in question being disclosed in March 2015. The strength of the safety arguments which Mr Rawson wishes to advance are, we would have thought, fairly obvious and must be supported by numerous other similar examples where the full facts are already available to him. Further, it is accepted that the information will in due course be publicly available

(probably at the latest if and when a trial of the coach driver takes place). Whilst recognising the importance of the underlying safety issues, we consider that the public interest in the disclosure of the requested information in March 2015 was of very little weight in this case.

The public interest in maintaining exemption

7. The purpose of the section 30(1) exemption is to protect the effective investigation and prosecution of crime and it is the weight of that public interest in this case that needs to be put in the balance. The relevant date for assessing its weight was March 2015 (and not, as Mr Rawson's notice of appeal suggested, when the Commissioner considered matters).
8. The information requested was obviously directly relevant to the investigation of a possibly very serious crime at a very early stage in the police investigation, when papers had certainly not been sent to the Crown Prosecution Service for a charging decision and when there was a reasonable possibility that the coach driver had not even been interviewed by the police. In those circumstances the public interest in maintaining the exemption would generally be considered quite weighty.
9. Mr Rawson (and Mr Shardlow through his witness statement) challenge that conclusion in this case. They say the answers to Mr Rawson's questions are matters of pure fact and that their early disclosure and publication therefore simply could not impact on the investigation or the prosecution of any crime arising from the accident. We do not accept that the question of the status of the hard shoulder on the occasion in question was necessarily completely uncontentious: it may possibly be something which was and remains in dispute so that there could conceivably be consequences for the eventual trial if the information was made public in a way which may influence potential jurors. In any event, as was pointed out at the hearing, in the event that the police had still not interviewed the coach driver in March 2015 they may legitimately have wished to keep the information out of the public domain until they had been able to do so. The point made by Mr Rawson in his notice of appeal that as a retired police officer he could have been trusted to give an undertaking not to publicise the

information until a trial does not meet these points: disclosure under FOIA is unconditional and tantamount to disclosure to the world.

10. Although we see some force in the strongly expressed views of two retired police officers on this issue and rather doubt that in practice there would have been any prejudice to the investigation or prosecution of any offence if the information had been disclosed, we nevertheless consider, looking at the whole picture, that the public interest in maintaining the exemption had some weight and that it was certainly equal to if not greater than the weight of the public interest in disclosure.

Disposal

11. In those circumstances, we agree with the Bedfordshire Police and the Commissioner that the Police were entitled to withhold the information requested under section 30(1) FOIA and we dismiss the appeal.
12. Our decision is unanimous.

HH Judge Shanks

Date: 19 October 2015