



NCN: [2025] UKFTT 00213 (GRC)

Case Reference: FT/EA/2024/0139

**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

**Decided without a hearing
Decision given on: 20 February 2025**

Before

**JUDGE SHENAZ MUZAFFER
MEMBER EMMA YATES
MEMBER PAUL TAYLOR**

Between

IBRAHIM KASHIF

Appellant

and

THE INFORMATION COMMISSIONER

and

CITY OF LONDON POLICE

Respondents

Decision: The appeal is dismissed.

REASONS

1. This is an appeal against a decision of the Information Commissioner (the “Commissioner”) dated 13 March 2024, reference IC-265218-F8G1 (the “Decision Notice”).
2. The parties opted for a paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing in accordance with rule 2 and rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009 (as amended).

Factual background

3. The appeal relates to the application of the Freedom of Information Act 2000 (“the FOIA”). It concerns information held by the City of London Police (“CoLP”) relating to an investigation into Club Penguin/Club Penguin Rewritten.

The request and response

4. The appellant made the request (“the Request”) which is the subject of this appeal on 28 June 2023 in writing as follows:

“Please thank those involved for the prompt disclosure in [earlier request], related to the investigation into Club Penguin relevant for a book which I am writing. One of those requests - my request for interview transcripts - was not provided because such transcripts do not exist, though some details of the interviews were provided. I'd like to therefore make two further requests for disclosure, which clarify that a little.

1) Please provide a copy of the eight interviews relevant to the Club Penguin investigation (as referenced in [earlier request]). I had assumed that transcripts would exist, which would make it easier to redact personal or sensitive information. I am happy to receive this in whatever format is most convenient, even if that means redactions made within audio clips. I note the Information Commissioner's guidance which advises that material stored in one format (ie. audio/video) should be extracted and disclosed in another (ie. written transcript): ‘If you have the “building blocks” necessary to produce a particular type of information, it is likely that you would hold that information’.

However, I am very conscious of the time that would take to do manually, even if it may technically fall within statutory limits. There are widely used tools which can generate transcripts from audio within minutes, if that is easier than redacting audio, but any format would suffice.

2) Please provide copies of any disclosures and items/documents presented in the above interviews, and relevant context as to what they are. I would be grateful for this irrespective of whether (1) can be fulfilled.

I apologise for needing to submit a second request on this to acquire more detail, and I'd like to re-iterate my gratitude for the time spent on it”.

5. CoLP responded on 17 August 2023. It advised that it did not hold the interviews that were the subject of part (1) of the Request, nor did it hold any transcripts relating to them. It confirmed that it held relevant information in relation to part (2) of the Request, but refused to provide it, citing sections 40(2)(a)(b) and 30(2)(a)(ii) of FOIA.
6. The Appellant requested an internal review on 18 August 2023. He disagreed with CoLP's assertion that they did not hold the interviews or transcripts that were the subject of part (1) of the Request on the basis that, in response to an earlier FOI request, CoLP had provided information about the interviews, including how many existed and their length. In relation to part (2) of the Request, he submitted that

personal data could be redacted and that CoLP had taken insufficient account of the outcome of the investigation when assessing the relevance of the data protection principles. He also asserted that the factors that were relied upon by CoLP, including victim confidentiality and the undermining of future law enforcement capabilities, that militated against disclosure had been overstated.

7. In an email dated 18 September 2023, CoLP indicated that the response date had been changed to 16 October 2023 to allow a further consideration of the public interest test under section 30 FOIA.
8. The Appellant complained to the Commissioner on 19 October 2023 about the failure by CoLP to hold an internal review. He also asserted that CoLP had failed to comply with the duty to provide advice and assistance pursuant to section 16 FOIA, and complained that they had misapplied section 30(2) and section 40(2) FOIA.
9. The Commissioner commenced its investigation on 10 January 2024. CoLP provided their response to the request for an internal review on 26 February 2024. They confirmed that they did, in fact, hold copies of the eight interviews that had been referred to in the previous FOI request. They informed the Appellant that no comment was made in the first four interviews and that prepared statements were tendered in the second four interviews. They refused disclosure of the eight interviews pursuant to the exemptions in section 30(1)(a)(b)(c) and section 40(2)(a)(b) FOIA. In relation to the information sought at part (2) of the Request, they confirmed that they held (i) advance disclosures to suspect/legal advisor (ii) suspect risk assessments and (iii) prepared statements tendered by suspect/legal advisor. In relation to that information, CoLP maintained its position that engaging the exemptions in section 30 and section 40 FOIA was correct.
10. Following receipt of the outcome of the internal review, the Appellant submitted revised grounds of appeal to the Commissioner on 04 March 2024. He submitted, in essence, that:
 - a. CoLP's argument that disclosure of the substantive interview material would provide suspects with a 'tactical advantage' was not acceptable, given that interviews were routinely read out in open court. Reliance was placed on *Corke v Information Commissioner & West Yorkshire Police [2016] EA/2016/0011*;
 - b. CoLP erred in their assessment of the level of public interest in the Club Penguin investigation;
 - c. CoLP erred in relying on the exemption in section 40(2)(a) in relation to the prepared statements, as they were provided after caution and would have been read out in interview;
 - d. CoLP had failed to have regard to routes for disclosure other than consent processing, including paragraph 13 of Schedule 1 of the Data Protection Act

2018 (“the DPA”) which permitted disclosure of data for ‘special purposes’, including for the purposes of journalism;

- e. There was a strong public interest in disclosure to allow the decision by CoLP to use an out-of-court disposal to be properly assessed.
11. In a further email to the Commissioner on 05 March 2024, the Appellant indicated that his grounds of appeal had changed from his initial stance that personal data could be redacted. He stated that he was now arguing that there were two legitimate pathways to disclosure, regardless of redaction, namely consent processing in relation to the interviews (and prepared statements) and “*disclosure relating to unlawful acts for the special purposes*”.
 12. On 09 March 2024, the CoLP responded to the questions that had been posed by the Commissioner’s case officer in January 2024. It confirmed that it was relying on the exemption in section 30(1)(a) FOIA. In their assessment, the limited public interest in the Club Penguin investigation did not outweigh the significant harm that could be caused to the investigative process by the disclosure of questions into the public domain, which would transfer any tactical advantage from the interviewing officer to a suspect. CoLP asserted that the risk assessments contained special category data concerning the health of the suspects, and that all of the information sought under part (2) of the Request constituted criminal offence data, such that disclosure would contravene any of the principles relating to the processing of personal data as set out in the UK GDPR. It was also submitted that CoLP had already made proportionate disclosures to the public and to the Appellant in relation to the investigation.

Decision Notice

13. The Commissioner’s decision was that CoLP was entitled to rely on section 30(1) FOIA to withhold the requested information. He did not require CoLP to take any steps.
14. The Commissioner concluded that the exemption in section 30(1)(a) FOIA was clearly engaged in that the requested information was held by CoLP for the purposes of any investigation which CoLP had a duty to conduct with a view to ascertaining if a person should be charged with an offence.
15. In balancing the public interest in favour of maintaining the exemption with the public interest in favour of disclosure, the Commissioner recognised the public interest in disclosure of requested information to promote accountability and transparency and to maintain public confidence and trust in the investigative capabilities of the police. He also recognised the “*very strong*” public interest in protecting the investigative capabilities of public authorities and in ensuring that the police were able to effectively conduct their function of carrying out criminal investigations.
16. The Commissioner also noted his concerns that the disclosure of information considered as part of a criminal investigation could create a perception among the

wider public that sensitive information about criminal investigations may be disclosed to the world at large, and may deter people from cooperating with the prosecuting authorities. He viewed this as a “*factor of some weight*” in favour of maintaining the exemption in this case.

17. The Commissioner based his findings on the Appellant’s position at the time that he requested the internal review, namely that any personal information “*could and should be redacted*”. However, he used his discretion to clarify his views on the application of the section 40 FOIA exemption in his Decision Notice, based on the latter submissions of the Appellant that redaction was not necessary.
18. The Commissioner was satisfied that the information requested related to the personal data of the four suspects within the meaning of section 3(2) DPA 2018. He concluded that the information contained within the four risk assessments included special category data pursuant to Article 9 of the UK GDPR as it pertained to the health of the suspects. None of the conditions for the processing of special category data in Article 9 of the UK GDPR were met, and therefore processing of that data would breach Article 5(1)(a) of the UK GDPR. In addition, he was satisfied that the remaining requested information constituted criminal offence data within the meaning of Article 10 of the UK GDPR. None of the conditions for the processing of criminal offence data were met, and therefore processing of that data would also breach Article 5(1)(a) of the UK GDPR. Consequently he concluded that the exemption under section 40(2) of the FOIA would also apply to the entirety of the requested data.

Grounds of Appeal

19. The Appellant appealed on 10 April 2024. The Grounds of Appeal are, in essence, that:
 - a. The Commissioner placed undue weight on the contention that disclosure of the interviews would deter witnesses, complainants and suspects from coming forward in this particular case, where the identity of the complainant and owner of the copyright was clear, and where it was difficult to see how witnesses or suspects contributed to the investigation;
 - b. The Commissioner had deferred from the clear precedent (albeit the Appellant accepted that it was not binding) in *Corke v Information Commissioner & West Yorkshire Police* regarding the withholding of police interviews, without any explanation, which was contrary to his duty to consider each case on its merits;
 - c. The Commissioner failed to address the specific submissions by the Appellant in support of disclosure, including the widespread public interest in the manner in which Operation Creative was conducted;
 - d. The Commissioner failed to properly consider the two routes to disclosure that were put forward by the Appellant in relation to the section 40 exemption;

- e. The Commissioner disregarded the argument that each document must be considered for disclosure on its individual merits.

The response of CoLP

20. The brief response by CoLP, dated 26 April 2024, stated that *“the Appeal challenges a disclosure decision originally made by City of London Police and we consider that harm would occur if that decision was to be overturned”*.

The response of the Commissioner

21. The Commissioner’s response, dated 03 May 2024, maintains that the Decision Notice was correct. Whilst the Commissioner recognises that there is a public interest in transparency and accountability, this was outweighed in the circumstances of this case by the public interest in the police being able to investigate copyright offences effectively. Although the Commissioner acknowledges that the relevant investigation was complete, disclosure would forewarn other suspects of the information likely to be sought by the police when investigating copyright offences.
22. The Commissioner outlined the (non-binding) guidance from the First-tier Tribunal in *Digby-Cameron v Information Commissioner Bedfordshire Police and Hertfordshire Police (EA/2008/0023 and 0025)* relating to the public interest balancing exercise when considering the exemption in section 30 FOIA:

“It is therefore necessary to focus on the purpose of the relevant exemption. The general public interest served by the section 30(1) exemption is the effective investigation and prosecution of crime, which itself requires in particular (a) the protection of witnesses and informers to ensure that people are not deterred from making statements or reports by the fear that they may be publicised, (b) the maintenance of the independence of the judicial and prosecution processes and (c) the preservation of the criminal court as the sole form for determining guilt. In assessing where the public interest balance lies in a section 30(1) case relevant matters are therefore likely to include (a) the stage a particular investigation or prosecution has reached, (b) whether and to what extent the information is already in the public domain, (c) the significance or sensitivity of the information requested and (d) whether there is any evidence that an investigation or prosecution has not been carried out properly which may be disclosed by the information”.

23. The Commissioner sought to distinguish the case of *Corke v Information Commissioner & West Yorkshire Police* on the basis that the index case had not gone to trial, which meant that the particular line of questioning and items/documents presented in these interviews had not been made more widely available.

The response of the Appellant

24. The Appellant’s response, submitted on 13 May 2024, continued to place reliance on the First-tier Tribunal decision in *Corke v the Information Commissioner and West Yorkshire Police*, in which the Tribunal were *“not satisfied”* that the argument that disclosure of police interviews could potentially prejudice any future investigation held any weight.

25. Contrary to the view of the Commissioner, the Appellant submitted that the fact that the case did not go to trial increased the public interest in disclosure of the requested information, given existing concerns about the way in which CoLP utilised out-of-court disposals.
26. The Appellant also addressed the 'tactical advantage' argument, submitting that disclosure of the prepared statements would not disclose any questions asked by the interviewing officers and would therefore not result in any 'tactical advantage' to a potential suspect. He submitted that it was likely that at least some of the 100-150 cases that were being conducted by the Police Intellectual Property Crime Unit at any given time would end up in open court, and that it would be surprising if there was something exceptional about the interviews that were the subject of his Request where disclosure would prejudice the 'tactical advantage' that did not arise in any of those other 150 cases.

Background – Previous FOI request

27. By way of relevant background to this Request, the Appellant made an initial FOI request in May 2023. CoLP responded on 28 June 2023 as follows:

“The outcome of this investigation was that conditional cautions were issued to four suspects. The condition, which was adhered to, was that the domain name for Club Penguin was provided to the City of London Police and that all consented to their devices being wiped of anything that related to Club Penguin.

...The Decision was made by Police and was not sent to the CPS as it was believed this disposal option was open to Police to make this decision.

...The investigation was referred to the City of London Police by the Motion Picture Association of America on behalf of Disney.

...Total value obtained by the four suspects - £267,341.71. This is the economic benefit, the loss to industry is hard to quantify in terms of a financial loss. The harm is the most impactful element as Club Penguin Rewritten has the risk of not being regulated and being used as a platform to initiate grooming or cyber bullying”.

28. CoLP also advised that there had been eight interviews in total, with four suspects, lasting around 30-40 minutes each. The interviews had not been transcribed and the case did not go to trial. The response included a redacted copy of the original report.

Legal Framework

29. The relevant provisions of FOIA are as follows:

s.1 General right of access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

s.2 Effect of the exemptions in Part II

.....

- (2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –
 - (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
 - (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

30. Section 30 provides, so far as is relevant:

s.30 Investigations and proceedings conducted by public authorities

- (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, or
 - (ii) whether a person charged with an offence is guilty of it,

.....

31. Section 30 FOIA is a qualified exemption. It is also a class-based exemption, meaning that there is no requirement for any prejudice to any investigation or proceedings to be shown for the exemption to apply.

The role of the Tribunal

32. The Tribunal’s remit is governed by section 58 FOIA. This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner’s decision involved an exercise of his discretion, whether he ought to have exercised it differently. The Tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

Issues

33. The issues for the Tribunal to determine are whether the section 30 FOIA exemption applies and, if so, whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in all of the circumstances of the case.

Evidence

34. We read and took account of an open bundle containing 150 pages including indexes, and a bundle containing two authorities from the Appellant.

35. We also read and took account of a closed bundle held under Rule 14 containing the withheld material (including four audio files) and an unredacted copy of the correspondence contained at pages D122-D137 of the open bundle.

36. It is necessary to withhold the above closed information from the Appellant because it consists of the withheld information and to do otherwise would defeat the purpose of the proceedings.

Discussions and conclusions

37. The first consideration is whether the exemption pursuant to section 30 FOIA applies in this case. We are satisfied that CoLP has a duty to conduct investigations with a view to determining whether a person should be charged with an offence, and that all of the requested information was held for this purpose. The fact that the investigation has concluded is irrelevant to the issue of whether the exemption applies, as the relevant consideration in section 30 FOIA is whether the information was held "*at any time*" for the purpose of any investigation.

38. The Appellant does not seek to argue that the exemption in section 30 FOIA is not engaged in relation to all of the requested information.

39. We then considered each of the requested sets of documents in turn, albeit we have outlined our decision in relation to the prepared statements, advance disclosure and interviews in consolidated paragraphs given the degree of overlap in our considerations for each document.

Risk assessments of the suspects

40. We are satisfied that there is no public interest in the disclosure of the risk assessments. The Appellant acknowledges this position in his Grounds of Appeal (page A28-29).

Interviews, prepared statements and advance disclosure

41. We take note of the (non-binding) guidance in *Digby-Cameron v Information Commissioner & Bedfordshire Police and Hertfordshire Police (EA/2008/0023 & 0025)* that “*In applying section 2(2)(b) it is important to note that the relevant interest in disclosure is the public interest and that the purely private interests of the requester are irrelevant*”. Whilst we understand that the Appellant has a personal interest in gaining access to the requested information to provide material for a book that he is writing, we reiterate that a disclosure under FOIA is a disclosure to the world at large, not just to the requestor of the information.
42. We fully recognise the strong public interest in maintaining confidence and trust in the police’s investigative abilities, and in promoting transparency and accountability in their investigations. This includes transparency in the use of out-of-court disposals.
43. Conversely, we also recognise that there is a strong public interest in ensuring the effective investigation and prosecution of crime. One aspect of that is ensuring that people – including suspects – are not deterred from making statements (either in prepared statements or witness statements) for fear that they will be publicised to the world at large, particularly in circumstances where a case does not proceed to trial. We view this as a significant factor in favour of maintaining the exemption in relation to the prepared statements.
44. Prepared statements are largely self-serving statements, used as a mechanism to inform the police of facts that are likely to be relied upon at trial or to provide an account to the police. They are often, although not always, followed by a no comment interview. Where a document or information is generated solely by a suspect (or defendant) for their own purposes, the public interest in disclosure for the purposes of promoting confidence in the police’s investigative abilities is reduced. We also note that the case resolved by way of caution for four suspects, which could only have been administered following an admission of guilt. In that context, the public interest in the disclosure of the prepared statements is further reduced.
45. Prepared statements are prepared in response to advance disclosure or information provided by the police. The contents of a prepared statement may therefore give information as to the areas of focus in a police investigation involving copyright offences, and also the type of submissions that may be adduced in defence of such allegations. The prepared statements in this case have never been in the public domain. We agree with CoLP’s contention that disclosure of these documents could impede further investigations by tipping off suspects as to potential lines of enquiries or strategies in the investigation of copyright cases.
46. We are satisfied that similar considerations apply to disclosure of the interviews and advance disclosure also, namely that disclosure could impede further investigations by alerting suspects in copyright cases to the investigative approach taken by the

police. This may include how much information the police chose to disclose prior to an interview, the type of questions asked in interview, the order of questions asked, and the factors that are deemed to be relevant.

47. We recognise that, if a case proceeds to trial, the prepared statement and interview (or a summary thereof) would be read out in open court. However that, in itself, would not be a conclusive factor in favour of disclosure. We have regard to the (non-binding) decision in *Armstrong v Information Commissioner and The Commissioner's for Her Majesty's Revenue and Customs EA/2008/0026* at paragraphs 85-86, which reads:

“We also consider that even if the disputed information had entered the public domain by virtue of having been referred to during the Siddiqui trial in 2001, it does not necessarily follow that it remains in the public domain. We agree with the observation of the Commissioner in the Decision Notice that knowledge obtained in the course of criminal trials is likely to be restricted to a limited number of people and such knowledge is generally short-lived..... Even if the information had previously entered the public domain, that is not in itself conclusive of whether the public interest weighs in favour of disclosure, it is merely one consideration to be weighed in the public interest balance”.

48. We do find that there is a distinction to be drawn between disclosure to the world at large following an FOI request, and a disclosure during the course of a criminal trial, which will likely be to a more limited number of people and for a much shorter duration.
49. Finally, we accept that CoLP has already made some disclosures in relation to the Club Penguin investigation, including two press releases, information provided in response to the Appellant's first FOI request, and information relating to the interviews and the documents held following the Request that is the subject of this appeal (page C83-84). We take the view that the disclosures already made are proportionate in the circumstances of this case.
50. We have considered the two authorities put forward by the Appellant. We reiterate that neither case is binding on this Tribunal. Whilst we recognise that interviews are normally read out in open court if a case proceeds to trial, we repeat our observations above that that, in itself, will not automatically mean that the public interest will weigh in favour of disclosure. As noted above, we have considered disclosure of each of the categories of documents that form the requested information separately.
51. Taking into account all of the matters outlined above, the Tribunal is satisfied that the Commissioner's Decision Notice was correct in law and that he exercised his discretion correctly in concluding that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, in all of the circumstances of the case.
52. The Tribunal dismisses the appeal for the reasons outlined above.

Signed: Judge Shenaz Muzaffer

Dated: 03 February 2025