

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 22nd February 2006

Public Authority: Avon & Somerset Constabulary

**Address: PO Box 37, Valley Road, Portishead,
Bristol BS20 8QJ**

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

2.1 The complainant has advised that on 17 February 2005 the following information (the "requested information") was requested from Avon & Somerset Constabulary in accordance with section 1 of the Act.

2.2 'My request relates to the case of the former liberal leader Jeremy Thorpe. In a trial which ended in June 1979 he was acquitted of conspiring with three others – John Le Mesurier, George Deakin and David Holmes – to hire a hitman known as Andrew Newton to murder Norman Scott. The allegation dated back to 1975. The case was investigated by the Avon & Somerset police force. Under the act I would like to see complete copies of the force's files on this case. Under section 11 of the act I would like to inspect these files and I believe that this would be the best way for the force to provide this information. Under section 11 of the act I would also like to be given the opportunity to take away photocopies. Under

section 16 of the act I would be grateful if you could discuss with me how many documents are kept on this case by your force and how I would be able to inspect them.'

Avon & Somerset Constabulary informed the complainant on 15 March 2005 that his request would incur costs over the £450 limit. He was also informed that the information he had requested was considered exempt from disclosure under section 30 of the Act (investigations and proceedings conducted by public authorities), section 31 (law enforcement), section 40 (personal information) and section 41 (information provided in confidence). On 24 March the complainant asked Avon & Somerset Constabulary for assistance in narrowing his request and whether an index could be provided to enable him to do this. Avon & Somerset Constabulary refused this request on April 14 and cited section 44 of the Act (prohibitions on disclosure) as an additional reason for withholding the information. The complainant appealed on 27 April. On 31 May 2005 Avon & Somerset Constabulary's review upheld the original decision not to disclose the information. Its review cited section 38 of the Act (health and safety) as an additional reason for withholding the information along with section 30 and section 40(2).

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

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.*

Section 11 provides that –

- (1) *Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely*
 - (a) *the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,*
 - (b) *the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and*
 - (c) *the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,*

the public authority shall so far as reasonably practicable give effect to that preference.

Section 16(1) provides that –

It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

4. Review of the case

The complainant asked the Information Commissioner to investigate Avon and Somerset Constabulary's decision to withhold the Senior Investigating Officer's report. Accordingly, the public authority's application of the exemptions under sections 30, 38 and 40 of the Act as the basis for withholding the information was examined.

Secondly, the complainant asked the Commissioner to investigate the constabulary's response to his request under section 16 of the Act for advice and assistance. The request concerned the provision of an index to allow the complainant to request a more limited number of documents.

The Commissioner requested a copy of the Senior Investigating Officer's report to the Chief Constable. The report related to the police enquiries at the time concerning the alleged conspiracy to murder Norman Scott. It gives a clear indication of the nature and extent of the requested information as a whole. The Commissioner examined the report in order to ascertain the appropriateness of the exemptions that were engaged by the public authority to withhold the requested information. He also requested a copy of any index that may have been compiled of all documents relating to the case.

5. The Commissioner's Decision

In reaching his decision in this matter, the Commissioner has looked closely at the arguments put forward by both the Avon & Somerset Constabulary and the complainant

Section 30 (investigations and proceedings)

Avon & Somerset Constabulary relied upon section 30 of the Act which states that:

30. - (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,*
- (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, or*
- (c) *any criminal proceedings which the authority has power to conduct.*

The Commissioner is satisfied that the requested information falls within the scope of the exemption provided by section 30. Despite the passage of time, he notes the inclusion of the words "at any time" in the introductory words to section 30(1).

Section 30 is a qualified exemption and (in accordance with section 2 of the Act) is subject to the public interest test as set out in that section. Avon & Somerset Constabulary asserted that the public interest in maintaining the exemption outweighs the public interest in releasing the information. The Commissioner considered the public interest arguments for and against maintaining the exemption.

There are three possible arguments which could be deployed in favour of disclosure.

1. Release of the information may help to ascertain or demonstrate the vigilance and transparency of the police investigation of a serious offence. However, this case was heard in open court and proceedings were widely reported at the time. Therefore the thoroughness of the police investigation would already have been open to public scrutiny. Given the passage of time, this is not currently a weighty argument for disclosure.

2. Mr Thorpe held a prominent public position at the time - he was the leader of a major political party who was accused of a serious crime. If information has a bearing on the propriety or ability of a public figure to carry out their official duties then arguably its disclosure could be in the public interest. There was considerable media coverage of the trial at the time and therefore much of the information relating to the case has already entered the public domain. Given, however, that the trial ended approximately 27 years ago, and Mr Thorpe was acquitted and has not been active in public life for many years, that is also not a valid public interest argument now.
3. The 'thirty year rule' means that, as a result of section 63(1) of the Act, the section 30 exemption will expire in 2008 when the requested information will become a historical record. There may be a public interest in disclosing material where the 30 year limit is approaching.

There are clearer arguments in favour of maintaining the exemption.

1. Given the extent of time that has elapsed since the police investigation and the trial, and the absence of any suggestion of a miscarriage of justice, it is difficult to envisage the usefulness of a repeated scrutiny of events. With regard to information which did not materialise in court, especially information (if any) which may have been considered or ruled to be inadmissible in evidence at the trial, the public interest in the administration of justice argues strongly against the publication of such information. To the extent that prospective media attention would entail a revisitation of the case this could amount to re-trial by media, which would be wholly undesirable and not in the public interest.
2. Although (see below) the Commissioner does not accept that the section 38 healthy and safety exemption has been engaged, he does accept that publication of the requested information could easily cause distress to individuals involved in the trial, and/or possibly to their families and friends. Given that disclosure of the information would serve little or no useful purpose, the need to avoid unnecessary distress long after the finality of a trial (but during the lifetime of those involved) amounts to a public interest for maintaining the section 30 exemption.
3. Avon & Somerset Constabulary have argued that members of the public believe that information provided by them during the course of police investigations should be treated in confidence and only used for the purposes for which it was provided. The Constabulary believes that people would be discouraged from providing information to the police if they thought their information might be released publicly without a compelling reason to do so. This is a serious argument which carries some weight in a high-profile case of this nature, though the Commissioner does not accept that it would apply in every situation.
4. Avon & Somerset Constabulary have also stated that the Association of Chief Police Officers has taken the approach that while information relating to a criminal investigation may be released in order to serve a 'core

policing purpose', it will rarely be disclosed under the provisions of the Freedom of Information Act. The further away that public interest considerations favouring disclosure are from a core policing purpose, the lighter will be the consideration by the police to disclose. The Commissioner does not consider this to be a valid argument. There is no provision within the Act that restricts disclosure to cases where disclosure would serve an organisation's core purposes.

5. The fact that Parliament has explicitly provided, in section 63 (1) of the Act that information which is exempt under section 30(1) should lose that exemption thirty years after it was created suggests that there is a public interest in maintaining the exemption for the thirty year period unless there are strong public interest arguments in favour of disclosure. This may apply with greater force in situations where there have been expectations that the "30 year rule" will be applied and that date is approaching.

The Commissioner has weighed the competing public interest arguments as outlined above, and has concluded that in all the circumstances of this case, the public interest in maintaining the section 30 exemption is not outweighed by the public interest in disclosure.

Section 40 (personal data)

Section 40(2) of the Act was also applied by the public authority in order to withhold the information. Section 40 states that:

40. - (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles, or

- (ii) *section 10 of that Act (right to prevent processing likely to cause damage or distress), and*
 - (b) *in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.*
- (4) *The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).*

Section 40(2) is engaged by virtue of satisfying the condition at section 40(3)(a)(i). It is an absolute exemption and as such is not subject to the public interest test.

The Commissioner recognises that the interests of individuals who are still alive may be detrimentally affected by the disclosure of the requested information to the extent that it relates to the personal affairs of individuals involved in this case. Those prosecuted were found not guilty of conspiracy to murder by the Court and any disclosure now could damage the personal reputations of those involved and cause distress to them and/or to their surviving relatives. Witnesses and others who cooperated with the police are likely to have had some legitimate expectation that these details would not normally be publicly disclosed except in the course of proceedings.

The Commissioner is satisfied that some (though not all) of the requested information constitutes personal data relating to living individuals and that its disclosure would be unfair and involve contravention of the 1st Data Protection Principle.

Section 38 (health and safety)

Avon & Somerset Constabulary applied section 38 of the Act which states that:

38. - (1) *Information is exempt information if its disclosure under this Act would, or would be likely to-*

- (a) *endanger the physical or mental health of any individual, or*
- (b) *endanger the safety of any individual.*

The Commissioner has not seen any evidence to suggest that disclosure of information relating to the trial would endanger the physical or mental health or safety of any individual as specified in this section of the Act. He is not prepared to accept mere speculation on this point. **He is therefore not persuaded that this exemption is engaged.** As his decision is that the exemption at section 38 of the Act is not engaged, the public interest arguments are not explored further in this Decision Notice.

