

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 14 October 2008

Public Authority: Commissioner of the Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant requested information about two investigations carried out by the public authority. In connection with the first of these, a 1970s fraud case, the Commissioner finds that the public authority is correct in stating that this information is not held, but that it breached section 1(1)(a) when earlier incorrectly suggesting that this information was held. In connection with the second of these, a 1980s murder investigation, the Commissioner finds that the public authority has applied the exemption provided by section 30(1) correctly. The Commissioner has also found that the public authority failed to comply with the procedural requirements of the Act in its handling of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 27 July 2005, the complainant requested information held by the public authority related to the following cases:
 1. Portnall Street riots
 2. Bank of Alderney fraud case
 3. Savoy Hotel murder
 4. Brixton riots
3. The complainant stated that the above were cases that he had investigated whilst

- a police officer with the public authority and specified that he wished to visit the public authority to view the information in situ.
4. The public authority responded to this request initially on 15 August 2005. The request was refused with the public authority citing section 12 as it estimated that the cost of redacting materials believed to be exempt would exceed the cost limit.
 5. The complainant contacted the public authority again on 24 January 2006. At this stage, the complainant stated that he had accessed the information he required about the Portnall Street riots from the National Archives and that he no longer required information about the Brixton riots. The complainant reiterated his request for information relating to the Bank of Alderney fraud case and the Savoy Hotel murder.
 6. The public authority treated this as a new information request. In connection with the Bank of Alderney part of the request, the public authority responded on 2 February 2006 and stated that no information falling within the scope of this request could be located. By way of explanation for this, the public authority stated that *"It may be that files have not survived"*.
 7. The public authority responded to the Savoy Hotel murder part of the request on 10 February 2006. It refused the request, again citing section 12 on the basis of the time that would be taken in redacting exempt information. The public authority also cited sections 31 (law enforcement), 38 (health and safety), 40 (personal information) and 41 (information provided in confidence).
 8. The complainant responded to the public authority on 11 April 2006 and asked that it carry out a review of its handling of his request. The complainant questioned how it could be that the public authority was unaware of whether information relating to the Bank of Alderney part of the request had been retained given the nature of that crime and the investigation. The complainant also questioned the likelihood of the prejudice that the public authority had identified as likely to occur as a result of disclosure of information about the Savoy Hotel murder.
 9. The public authority responded with the outcome of the review on 18 May 2005. This response upheld the refusal of the Savoy Hotel murder part of the request on the basis of section 12 and the exemptions cited in the initial refusal. The public authority amended its position in relation to the Bank of Alderney part of the request, citing the exemption provided by section 21 (information accessible by other means) as this information was available at the National Archives. The complainant was provided with a National Archives reference number for this information.

The Investigation

Scope of the case

10. Prior to the allocation of this case for investigation, the complainant was contacted in order to clarify the scope of his complaint. As well as the requests above, the complainant had also requested from the public authority information relating to a riot at the Greek Embassy and the fraudulent obtaining of a yacht. Following this correspondence with the complainant it was clarified that this case would focus on the request for information relating to the Bank of Alderney fraud case and the Savoy Hotel murder.
11. This Decision Notice relates only to the parts of the request for information relating to the Bank of Alderney fraud case and the Savoy Hotel murder and the stance of the public authority in response to those parts of the request. The additional requests made to the public authority by the complainant are not covered further in this notice.
12. The procedural issues recorded later in this notice are those relating to the request of 24 January 2006.
13. During the investigation of this case, the Commissioner contacted the complainant in order to further clarify the scope of his request. The complainant confirmed that the intention of his request was to access all information held by the public authority about the investigation of the Savoy Hotel murder and that any information that post dated the trial would not be within the scope of his request. Whilst an objective reading of the request may suggest that this was for all information held by the public authority about this case, following this clarification from the complainant about the intention of his request the information held by the public authority about the Savoy Hotel murder that post dates the trial is not considered within the scope of the case.

Chronology

14. The Commissioner contacted the public authority initially on 27 March 2008. The public authority was given the background to the complaint and was asked to respond specifically to the following:
 - Bank of Alderney fraud case
15. It was noted that between the initial refusal and the internal review response the stance of the public authority had changed. Given this the public authority was asked to clarify whether its stance was that information falling within the scope of this part of the request was not held, or whether its stance was that this information is available at the National Archives. As noted above at paragraph 9, the complainant had been provided with a National Archives reference number for this information. This reference number did not, however, relate to the Bank of Alderney fraud case. If the stance of the public authority was that this information was available at the National Archives, it was asked to provide the correct

reference number.

- Savoy Hotel murder
16. The public authority had refused this part of the request under section 12 on the basis of the time that would be taken in considering whether information is exempt and any subsequent time spent on the redaction of exempt information. The public authority was reminded that these activities cannot be taken into account when forming a cost estimate and that it should confirm whether it maintained that the cost limit would be exceeded when taking into account only those factors specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
 17. If section 12 was not now relied upon, the public authority was asked to respond to the following:
 - Section 31
 18. The public authority was asked to specify which subsection of section 31 was believed to apply and to describe how and why prejudice would result, including specifying whether its stance was that prejudice would occur, or would be likely to occur. The public authority was also asked to specify why it believed that the public interest favoured the maintenance of the exemption.
 - Section 38
 19. The public authority was asked to specify whether it believed subsection (1) physical or mental health, and/or (2) safety applied and to explain how it believed that the endangerment would occur as a result of disclosure and which individuals it believed would be subject to this endangerment. The public authority was also asked to specify whether it believed endangerment would occur, or would be likely to occur. The public authority was also asked to specify why it believed that the public interest favoured the maintenance of the exemption.
 - Section 40
 20. It was noted that the stance of the public authority appeared to be that subsection (2) applied here and it was asked to confirm which of the data protection principles it believed would be breached through disclosure and state why.
 - Section 41
 21. The public authority was asked to confirm from whom the information considered subject to this exemption had been provided and why it was subject to an expectation of confidence, for example, did this arise from a specific guarantee of confidence. Alternatively, it may have been the case that the nature of the information would suggest that, even without a specific guarantee, a strong expectation of confidentiality would be held.
 22. In connection with the Bank of Alderney part of the request, the public authority

responded to the Commissioner on 7 April 2008. At that stage the public authority stated that it had been unable to locate any information falling within the scope of this request and requested any further clarification that the complainant was able to provide about this case. The Commissioner contacted the complainant again on 10 April 2008 and asked for further detail about the Bank of Alderney case. The complainant provided the names of the suspects and the start date for the investigation.

23. The additional details that the complainant had provided were passed on to the public authority. In the event that the public authority was still unable to locate any information falling within the scope of the request, it was asked to respond to the following:
 - Specify whether the stance of the public authority is that this information never existed, or that it previously did exist, but cannot now be located.
 - Detail the retention procedures for this type of file, for example, would all criminal case files be passed to the National Archives and, if so, after how long? If such files are eventually disposed of, what is the retention period?
 - What lead to the complainant being provided with an incorrect National Archives reference? Is this an indication that the information he seeks is at the National Archives, but under a different reference number?
24. The public authority responded to this on 18 April 2008, stating that the additional information provided by the complainant had not enabled it to locate information relating to the Bank of Alderney fraud case. In response to the first bullet point above, the public authority stated that it did not dispute that it previously held information about this case. The stance of the public authority was that this information had been destroyed. Although the public authority did not have any record of the destruction of this information as no centralised records of file destruction were kept prior to 2000, its retention policy meant that it was most likely destroyed 10 years after the last entry. The public authority believed that the information in question here was likely to have been destroyed in the mid to late 1980s. Case files that are considered 'significant' will be retained and considered for transfer to the National Archives. As to why the complainant had been given an incorrect National Archives reference, this was attributed to staff error.
25. In relation to the Savoy Hotel murder, the public authority responded on 21 April 2008. The public authority confirmed that the cost estimate had been based largely on the time taken in identifying exempt material and subsequent redaction of that material and withdrew its stance that to comply with the request would exceed the cost limit.
26. The public authority provided a brief description of the background to the case. This centres on a murder at the Savoy Hotel, London on 1 October 1980, the investigation of which resulted in the conviction and imprisonment of the perpetrator.
27. The public authority went on to provide supporting arguments as to why the exemptions cited were believed to apply, stating that section 31 was no longer believed to apply and introducing sections 30 and 42 (legal professional

privilege).

- Section 30

28. The public authority specified subsections 30(1)(a), (b) and (c). The public authority provided no explanation as to why it considered this exemption to be engaged. Whilst it did provide brief prejudice arguments, the Commissioner has taken these as arguments relating to the public interest as the exemption provided by section 30 is class based rather than prejudice based.
29. The public authority acknowledged that the file was 28 years old, but stated that it did not believe that lessened the arguments against disclosure. The public authority stressed the importance of it being able to obtain information for the purposes of its investigations and that any exchange of information is made on the understanding that the use of this information will be restricted to policing purposes. The public authority believed that disclosure here may lead to reluctance to provide information to the police. The public authority also believed that prejudice to its ability to investigate crime would result through disclosure of information that reveals its investigatory techniques.

- Section 38

30. The public authority specified that it believed that both subsections 38(1)(a) & (b) applied here. The public authority believed that disclosing information relating to the witnesses in the investigation and trial may endanger their health and safety by enabling them to be identified.
31. The public authority also believed that disclosure of the post mortem report could endanger the mental health of family members of the victim. The public authority believed that the graphic content of this report would cause substantial mental distress to family members of the victim, even given the period of time that has elapsed.

- Section 40

32. The public authority specified subsection 40(2) and identified the following individuals in relation to whom at least some of the withheld information would constitute personal data:
 - the perpetrator
 - witnesses
 - police officers involved in the investigation.
33. The public authority believed that disclosure of this information would constitute a breach of the first (personal data must be processed fairly and lawfully), second (personal data must be processed only for one or more specified and lawful purposes) and sixth (personal data must be processed in accordance with the rights of individuals under the Data Protection Act 1998) data protection principles.

- Section 41
34. The public authority believed that this exemption applied to information concerning the mental fitness of the perpetrator as this would be subject to doctor/patient confidentiality.
- Section 42
35. The public authority asserted that there is information within the investigation file to which this exemption relates. The public authority provided no detail of which information was considered subject to this exemption, whether the privilege claimed was advice or litigation privilege, or from whom the advice was sought and given.
 36. The public authority went on to state why it believed that the public interest favoured the maintenance of this exemption, stating that disclosure would result in a lower standard of legal advice being provided to the public authority. The public authority believed that this outcome would be counter to the public interest if it prevented it from performing its role effectively.
 37. Having reviewed the withheld information provided to him by the public authority, the Commissioner contacted it again on 22 May 2008 with further queries about its contents. Included within this was a batch of documents entitled "Character Enquiries – Central Search Form". The purpose of these documents or how they related to the investigation was not immediately clear and the public authority was asked to clarify this. The public authority responded on 22 May 2008, stating that these forms were for the purpose of checking the background of individuals interviewed as witnesses during the investigation.
 38. The Commissioner contacted the public authority again on 4 June 2008. In connection with the Bank of Alderney case, the public authority was asked to respond with further clarification of the searches carried out for information falling within the scope of this part of the request. In connection with the Savoy Hotel murder case, the factors that would be taken into account when considering where the balance of the public interest lay in connection with section 30 were set out; the stage of the investigation, whether any relevant information is in the public domain, the significance of the withheld information to the investigation and the age of the information. The public authority was asked to respond providing any comment it wished on these factors.
 39. The public authority responded to this on 2 July 2008. In connection with the Bank of Alderney case, the public authority acknowledged that information about this investigation had been held by it previously, but that this information had since been destroyed, most likely in the late 1980s or the early 1990s. The public authority stated that the complainant, who had lead the investigation of the Bank of Alderney fraud case, had been based at Bow Street Police Station. This Police Station had been closed in 1992 and there was no record of what had happened to any of the information stored at that location when it closed.
 40. The public authority went on to detail the steps that had been taken to locate

information falling within the scope of this part of the request. Searches had been carried out of the MPS Records Management Branch database and the National Archives online database. No information falling within the scope of this part of the request had been located through these searches.

41. In response to the factors that had been identified as relevant to the balance of the public interest in relation to section 30(1) the public authority acknowledged that the Savoy Hotel murder investigation was closed and had been for some time. However, the public authority believed that as this information had been recorded solely in connection with an investigation, the public interest favoured maintenance of the exemption.

Findings of fact

42. The public authority holds information falling within the scope of the request for information related to the Savoy Hotel murder.
43. The public authority carried out an investigation into the Bank of Alderney fraud case. Information relating to this investigation is not held by the National Archives and the public authority has not been able to locate this information elsewhere.

Analysis

Procedural matters

Section 1

44. When responding on 18 May 2006 giving the outcome of the internal review of the handling of the request for information relating to the Bank of Alderney fraud case, the public authority cited section 21 on the basis that this information was held at the National Archives. The public authority has since acknowledged that this information was not held at the National Archives, or by the public authority, at the time of that response. Neither has it been held at any other time by the National Archives.
45. In citing section 21 the public authority effectively confirmed that this information was held. In inaccurately confirming that this information was held, the public authority breached section 1(1)(a).
46. The stance of the public authority is that no information relating to the investigation of the Bank of Alderney fraud case is held. The complainant contends that given the importance of this investigation, it was the first investigation into an entirely fictitious bank created for use in acts of fraud, this information must have been retained by the public authority. The Commissioner has considered whether the public authority has been accurate in stating that it no longer holds this information.

47. When investigating cases where it is disputed whether information is held by a public authority, the Commissioner has been guided by the approach the Information Tribunal adopted in the case *Linda Bromley and others v Information Commissioner and the Environment Agency* (EA/2006/0072; 31 August 2007). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not certainty, but rather whether on the balance of probabilities, the information is held.
48. The public authority acknowledges that it did investigate this case and that it previously held information related to this investigation, but that this information has not been retained. The public authority has not been able to confirm when this information was destroyed, as it has no record of this destruction, beyond stating that this is likely to have been in the late 1980s or early 1990s. Without evidence of this destruction, it is necessary to consider whether the public authority has undertaken a thorough search for information falling within the scope of this request and whether the public authority is correct in stating that this information does not exist, or whether it does exist but the public authority has been unable to locate it.
49. The public authority has indicated that the main area where information falling within the scope of this part of the request may be held would be the MPS Records Management Branch database. The public authority has confirmed that this has been searched and that no relevant information has been located within this database.
50. The public authority also identified the National Archives as a possible location for this information. It has stated that National Archives online database has been searched and that this search located no relevant information. The Commissioner has also conducted a search of the online National Archives database. This search located no information within this resource that falls within the scope of the request.
51. In response to the question of all possible locations where information relevant to the request may be held, the public authority stated that the complainant, who led the investigation into the Bank of Alderney, had been based at Bow Street Police Station. The public authority was able to confirm that this police station is not a possible location for information falling within the scope of the request as it has been closed since 1992.
52. Whilst it may appear inadequate for its record management purposes that the public authority would not hold a record of the destruction of case files of any cases, let alone a case that the complainant has stated was unique at the time of the investigation and of a high profile, there is no evidence available to the Commissioner to suggest that information falling within the scope of this part of the request is held. In the absence of a record of the destruction of this information, some weight has been given to the representations of the public authority that the age of this information suggests that it would have been destroyed in the late 1980s or early 1990s. The Commissioner also notes that the fact that this case was investigated and closed several decades ago means that it is conceivable that the record of this case would have since been disposed of.

53. The complainant may point to the inconsistency of the stance of the public authority, demonstrated by the internal review which advised the complainant that this information was held at the National Archives, constitutes evidence that the public authority does hold information of relevance to the request. The public authority was asked to comment on the specific issue of how the complainant came to be advised that this information was held at the National Archives. The response from the public authority was that this could be ascribed only to staff error. Having verified that no information relevant to this part of the request can be located within the National Archives online database, the Commissioner accepts this explanation from the public authority.
54. The conclusion of the Commissioner is that on a balance of probabilities the public authority does not hold information falling within the scope of this part of the request. In reaching this conclusion, the Commissioner has given weight to the explanation provided by the public authority about the searches it has carried out and the period of time that has elapsed since the Bank of Alderney investigation. Arguably, this means that the public authority's need to retain the information would have reduced thus making destruction of the material a more likely explanation for its absence.

Section 12

55. Prior to the involvement of the Commissioner, the stance of the public authority in respect to the Savoy Hotel murder was that the cost limit of £450 would be breached through compliance with this part of the request. This estimate was based on the cost of redacting information considered exempt. Redaction of information considered exempt is not amongst those functions specified in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 that may be taken into account when forming a cost estimate. Those functions are as follows:
- (a) determining whether the requested information is held;
 - (b) locating this information;
 - (c) retrieving this information;
 - (d) extracting this information from any document in which it is contained.
56. As the cost estimate made by the public authority was based on a factor not listed above, the public authority incorrectly cited section 12(1) as the basis for refusing this part of the request. Whilst this would ordinarily represent a breach of section 1(1)(b), the requirement for such a conclusion here has been superseded by the section 30 finding below.

Section 17

57. In both the refusal of the request for information related to the Savoy Hotel murder and in the subsequent correspondence giving the outcome to the internal review, the public authority did not cite section 30. In correspondence with the Commissioner, the public authority did cite section 30. In failing to identify this exemption at either the refusal notice or internal review stage, the public authority

failed to comply with the requirements of sections 17(1)(a), (b) and (c). Similarly, the public authority also did not cite section 42 prior to the involvement of the Commissioner and, in so doing, failed to comply with sections 17(1)(a), (b) and (c).

58. Whilst the substantive basis for refusing the Savoy Hotel murder request was section 12(1), the public authority also indicated that it believed the exemptions provided by sections 31, 38, 40 and 41 would be engaged if the cost limit had not been exceeded. In failing to cite the relevant subsections of these exemptions, the public authority failed to comply with section 17(1)(b).

Exemption

Section 30

59. Section 30 is a class based exemption. In order to demonstrate that it is engaged it is simply necessary to show that the information being withheld has been held by the public authority for the purpose specified. The public authority has cited subsections 30(1)(a), (b) and (c). The Commissioner will focus here on subsections 30(1)(a)(i) and (ii). In the case of section 30(1)(a)(i) the information in question must relate to a specific investigation which the public authority has a duty to investigate with a view to it being ascertained whether a person should be charged with an offence. In the case of the 30(1)(a)(ii), this information must relate to whether a person charged with an offence is guilty of it. Where this exemption is engaged, if the public interest in maintaining the exemption does not outweigh the public interest in disclosure the information must be released.

An investigation with a view to it being ascertained whether a person should be charged with an offence and/or with a view to it being ascertained whether a person charged with an offence is guilty of it?

60. Only those public authorities with duties and powers to carry out investigations of the kind described in these subsections may cite section 30(1). In considering whether this exemption is engaged, it is necessary firstly to consider whether the public authority has powers to carry out investigations of this kind. As the public authority in this case is a police force, it is clear that it does have such powers.
61. Turning to the content of the withheld information, this relates to the investigation of a murder and covers all stages of this investigation. These stages can be broken down into three broad categories:
- establishing the circumstances of the death;
 - identifying the suspect and establishing if this person should be charged;
 - establishing whether this suspect is guilty of the murder.
62. The first two of these stages can be characterised as falling within 30(1)(a)(i); that is they are part of the process of establishing whether a person should be charged with an offence. The first step was to establish whether an offence had been committed. Whilst this may be described as a case where it was clear from the earliest stage that a crime had been committed, in contrast to a case where,

for example, a body is found in circumstances where the cause of death is unclear, the step of formally establishing the cause of death was part of the investigation.

63. The second step was to identify who may have committed this offence. The withheld information shows that a suspect was identified at an early stage and also covers the process of locating and apprehending this person. Following this, the withheld information covers the public authority going through the process of investigating the now apprehended suspect in connection with the murder.
64. The bulk of the withheld information post dates the stage of identifying and apprehending the suspect. This covers the investigation that followed where the public authority charged the suspect and sought to ascertain whether the person charged with the offence of murder was guilty of it and can be characterised as within the class of information specified in section 30(1)(a)(ii). The information also covers the trial, where the process of establishing whether the suspect was guilty concluded in conviction.
65. The public authority does carry out investigations of the kind described in these subsections and the content of the information withheld does conform to the class described in these subsections. Whilst this investigation has been concluded for a significant period of time, section 30(1) specifies that the exemption will be engaged in respect to information that has been held for the purposes specified in the subsections at any time. The conclusion of the Commissioner is that the information in question was previously held by the public authority for the purposes specified in subsections 30(1)(a)(i) and (ii) and the exemption is, therefore, engaged.

The public interest

66. Having established that the section 30 exemption is engaged, the Commissioner must go on to consider the public interest test as set out in section 2(2)(b) of the Act.
67. Whilst section 30(1) provides a class based exemption and prejudice is not a relevant issue when considering whether this exemption is engaged, the nature of the prejudice that may result through disclosure, its magnitude and the likelihood of it arising is relevant when considering where the balance of the public interest lies. The Commissioner considers that the following factors are pertinent when assessing the aforementioned issues and thereby identifying which public interest arguments in favour of maintaining the exemption are relevant in this case and carrying out the weighing exercise.
 - the stage or stages reached in any particular investigation or criminal proceedings;
 - whether and to what extent the information has already been released into the public domain;
 - the significance or sensitivity of the information; and
 - the age of the information.

Stage of investigation

68. The investigation in this case was completed in 1981. This investigation concluded with a successful prosecution and there is no prospect of this investigation being reopened. Disclosure would therefore have no effect, prejudicial or otherwise, on this specific case.

Information already in the public domain

69. There was a significant amount of media coverage of the Savoy Hotel murder. However the Commissioner is not aware that any of the information about the police investigation has been published, such as witness details or photographic evidence.

The significance or sensitivity of the information

70. Having reviewed the withheld information, the Commissioner is satisfied that it is both significant and central to the investigation carried out by the public authority. It includes witness details, operational policing records and photographic evidence.

The age of the information

71. As referred to above in connection with the stage of the investigation, this investigation concluded in 1981. The age of this information reduces the likelihood of prejudice as a result of disclosure of this information in a number of ways. Firstly, the weight of the public interest in favour of maintenance of the exemption is lower given that the specific investigation in question is completed and there is no prospect of it being reopened. Where there is a genuine likelihood of an investigation being reopened, the public interest in maintaining the exemption will be stronger. However this is not the case in relation to this investigation.
72. Secondly, where disclosure would reveal details of previously unpublicised and current policing techniques, to the extent that this may help anyone seeking to evade a police investigation, this would be a clear prejudice occurring through disclosure. In this case, any techniques revealed through disclosure would be those techniques employed at the time of the investigation recorded in the withheld information. To the extent that the age of the information indicates that these techniques are no longer current, any argument that prejudice would result through the disclosure of these techniques would be weakened. It does appear, however, that the majority of the techniques recorded within the withheld information are standard investigatory techniques that are unlikely to have altered greatly in the period since the Savoy Hotel murder investigation.
73. Thirdly, police forces are often concerned that disclosure of records of investigations, particularly witness statements, will discourage people from cooperating with the public authority and acting as witnesses in future cases. Given the widely recognised difficulty the police often experience in securing cooperation in their investigations, the Commissioner recognises that the

maintenance of any existing confidentiality of contributors to police investigations is a factor that would carry weight when arguing that the public interest favours maintenance of the exemption. In this case, however, the age of the information is significant in that the Commissioner considers it reasonable to conclude that any sensitivity that the contributors to the investigation feel about disclosure is likely to be reduced due to the passage of time.

74. Section 63(1) provides that section 30(1) cannot apply to information 30 or more years old. That the information in question here is close to this time limit is not relevant when considering where the balance of the public interest lies; the Act is explicit in providing this 30 year limit and does not suggest that this can be reduced in particular cases to 27 or 28 years. It is the case, however, that in general the public interest in maintaining an exemption will reduce over time as reflected in the factors covered above.

75. Conversely, the age of this information can be cited in favour of maintenance of the exemption as recognised by the Information Tribunal in *Guardian v The Information Commissioner and Avon and Somerset Police* (EA/2006/0017; 5 March 2007).

“The passage of time was a double-edged argument, whichever side wielded the sword. It probably reduced the risks of prejudice to future investigations but it similarly weakened the legitimate public interest in knowing more of the background facts.”

76. Any legitimate public interest that existed at the time of the investigation about the circumstances of the crime or the conduct of the investigation is likely to have lessened through the passage of time.

Weighing the public interest arguments

77. The Commissioner considers that the relevant public interest arguments in favour of maintaining the exemption are as follows. There is a substantial public interest in ensuring that the police have the space to carry out their work. This is so that they can determine the most effective way in which to run investigations so that offenders can be apprehended and brought to justice. It is obviously in the public interest to ensure that individuals committing crime are caught and are subject to an independent prosecution process.

78. There is also a public interest in ensuring that the public have confidence in police investigations and in protecting the free flow of information to the police for the purpose of investigations. Such information is often crucial to apprehending offenders and resolving cases. Whilst the Commissioner appreciates that there may be circumstances where people can be compelled to supply information, it is also in the public interest to ensure that as far as possible they are willing to co-operate voluntarily with investigations and that they readily supply as much information as they can to assist the police.

79. As covered above, the investigation in this case was completed close to thirty years ago and resulted in a successful prosecution. In the absence of any real

prospect of this investigation being reopened, the possibility of prejudice resulting specifically to this investigation is given no weight as an argument in favour of maintaining the exemption.

80. The age of this information also reduces the weight of the argument that prejudice would result through disclosure of policing techniques as a factor in favour of maintaining the exemption. The policing techniques disclosed within this information will clearly be less representative of current policing techniques than those disclosed within information relating to a more recent investigation. However, as noted above the techniques detailed in the withheld information appear to primarily be standard techniques for investigating a crime of this nature that are unlikely to have altered greatly in the intervening period. To the extent that this information discloses policing techniques that remain in use and the disclosure of which would result in prejudice to ongoing cases, this remains a valid public interest factor in favour of maintenance of the exemption.
81. Similarly to the Information Tribunal case *Guardian v The Information Commissioner and Avon and Somerset Police* (EA/2006/0017; 5 March 2007), the arguments in favour of maintenance of the exemption are not overwhelming. However, the Commissioner has recognised the possibility of prejudice to police investigations through the disclosure of details of policing techniques and in restricting the flow of information to the police. These factors carry some weight, particularly in the absence of compelling arguments in favour of disclosure.
82. Turning to factors in favour of disclosure, a universal public interest factor in favour of disclosure in any case is to enhance the transparency and accountability of the public authority. However the significance of this factor will obviously vary from case to case. The information withheld here shows the actions taken by the public authority when investigating the Savoy Hotel murder. Disclosure of this information would contribute to greater public understanding of the work of the public authority and the Commissioner notes that this is a valid public interest factor in favour of disclosure. He is, however, unaware of any suggestion that the standard of the investigation carried out by the public authority into the crime in question here has been called into question and notes that this investigation resulted in a successful prosecution. Nor does the Commissioner consider that the withheld information contains evidence that calls into question the quality of the investigation. Therefore, he has not given this factor particular weight.

Conclusion

83. The Commissioner concludes that, in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Whilst the age of the information and the status of the investigation means there is no real possibility of prejudice to the investigation that is the subject of the withheld information and the argument that prejudice would result through disclosure of policing techniques carries less weight, the Commissioner recognises that prejudice may result to police investigations where this discourages the public from assisting the police and where, despite the age of this information, it would disclose details of current policing techniques that are

not widely known.

84. Despite the possibility of prejudice occurring to police investigations, the public interest would favour disclosure where there are strong arguments in favour of this. The Commissioner has identified no strong public interest in the disclosure of details of this police investigation. Beyond the argument about improving the transparency and accountability of the public authority, there is no evidence of a particular public interest in this investigation. Had there been, for example, controversy about the conduct of this investigation, this may have indicated that a strong public interest in the details of the investigation did exist. Whilst this case received considerable media attention at the time of the murder and the subsequent investigation, the tone and focus of much of this coverage does not suggest that it is reflective of any genuine public interest, rather than simply reporting the details of a violent crime in an unusual location, in some examples presented in a sensationalist manner. Even had a genuine public interest existed at the time of the investigation, as recognised by the Information Tribunal in *Guardian v The Information Commissioner and Avon and Somerset Police* (EA/2006/0017; 5 March 2007), this public interest would be likely to have reduced over time. Given the period of time that had elapsed since the investigation in this case, it is unlikely that any legitimate public interest in disclosure that existed at the time of the investigation would continue to hold weight.
85. Whilst improving the transparency and accountability of the public authority is a valid public interest argument in favour of disclosure, this alone is not sufficient to carry the argument in favour of disclosure particularly given the conclusive outcome of the investigation. In the absence of compelling arguments in favour of disclosure in the public interest, the balance lies with the argument in favour of maintaining the exemption, despite the reductive effect the age of the information has on these arguments.

Section 38, Section 40, Section 41, Section 42

86. As the section 30(1) conclusion above relates to all the information held by the public authority in connection with the Savoy Hotel murder investigation, it has not been necessary to consider any of the other exemptions cited by the public authority and listed above. Section 40(1) is covered in the 'Other matters' section below.

The Decision

87. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it has stated correctly that it does not hold information about the investigation of the Bank of Alderney case and in refusing the request for information about the investigation of the Savoy Hotel murder under sections 30(1)(a)(i) & (ii).
88. The Commissioner has, however, also found the public authority in breach of

section 1(1)(a) when effectively confirming that information relating to the Bank of Alderney investigation was held by citing section 21 at the internal review stage. The public authority also failed to comply with section 17(1)(a), (b) and (c) in failing to cite sections 30(1) and 42(1) prior to the involvement of the Commissioner and section 17(1)(b) in failing to specify the relevant subsections of the exemptions referred to in the section 12(1) refusal notice.

Steps Required

89. The Commissioner requires no steps to be taken.

Other matters

90. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

As the complainant was involved as a police officer in the investigation of the Savoy Hotel murder, the public authority recognised that some of the information within the investigation file may constitute the complainant's personal data. The Commissioner informed the complainant by letter dated 3 June 2008 of the conclusion of the public authority that some of this information may constitute his personal data and advised that he could make a subject access request under section 7 of the Data Protection Act 1998 if he wished. Following the complainant having been informed of the possibility of some of the withheld information constituting his personal data, the Commissioner gave no further consideration to this issue. The right of the complainant to make a subject access request to the public authority applies regardless of this notice.

91. As noted above, at the internal review stage the public authority advised the complainant that the information requested about the Bank of Alderney fraud case was held at the National Archives. Where a public authority receives a request for information that it does not hold, but that it is aware is held by another public authority, the appropriate step for the public authority that has received the request would be to consider advising the requester where the information is held or transferring the request to the public authority that does hold the information. This is in line with the section 45 code of practice produced by the Ministry of Justice. The exemption provided by section 21 should be cited only in relation to information that is held.

Right of Appeal

92. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

93. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 14th day of October 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

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 12

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 17

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 21

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 30

Section 30(1) provides 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, or

(c) any criminal proceedings which the authority has power to conduct.”

Section 38

Section 38(1) provides that –

“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.”

Section 40

Section 40(1) provides that –

“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.”

Section 40(2) provides that –

“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.”

Section 41

Section 41(1) provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or

any other person.”

Section 42

Section 42(1) provides that –

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”