

## **Freedom of Information Act 2000 (FOIA)**

### **Decision Notice**

**Date:** 21 January 2014

**Public Authority:** Office of the Police & Crime Commissioner for Cleveland

**Address:** Cleveland Police Headquarters  
Ladgate Lane  
Middlesbrough  
TS8 9EH

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to allegations of professional misconduct against the former Chief Constable for Cleveland Police. The Commissioner's decision is that the Office of the Police & Crime Commissioner for Cleveland (the PCC) was entitled to refuse the request in reliance on the exemption at section 31(1)(b) of the FOIA. The Commissioner does not require the PCC to take any steps.

#### **Background**

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2. The complainant first requested the information subject to this complaint from the PCC's predecessor body, Cleveland Police Authority, on 11 October 2012. That request was the subject of a decision notice issued by the Commissioner in May 2013.<sup>1</sup> In that decision notice the Commissioner found that the requested information had been properly withheld under section 31(1)(b) of the FOIA.
  3. The complainant appealed the decision notice issued in May 2013. At the time of issuing this decision notice the First Tier Tribunal had heard the appeal, but the outcome of that appeal had not yet been promulgated.
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<sup>1</sup> Case reference FS50477863

## Request and response

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4. On 21 May 2013, the complainant repeated his request of 11 October 2012 to the PCC:

*"I would like to ask for the outstanding information held on Sean Price's alleged gross misconduct which will now not be heard at a disciplinary given his dismissal last week [ie October 2012]"*.

5. At the time of making the original request the complainant had clarified to the PCC that he intended this to cover the investigation report but not the background evidence.
6. The PCC responded on 5 July 2013. It claimed that the exemption at section 31(1)(b) still applied to the requested information. The PCC did not offer an internal review because in its view the request of 21 May 2013 was in effect a request for the PCC to review its earlier refusal which led to the previous decision notice being issued.

## Scope of the case

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7. On 9 July 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He claimed that circumstances had changed since his request of 11 October 2012 and that the information he requested should now be disclosed to him.
8. The complainant reiterated that he was not seeking information on any ongoing criminal inquiry. The complainant claimed that, as disciplinary proceedings against both individuals were now complete there could be no possibility of prejudice regarding those proceedings. The complainant argued that the disciplinary proceedings against each officer could not have gone ahead if it was considered there was any likelihood of prejudice to any criminal proceedings.
9. The scope of the investigation therefore was to determine whether the PCC was entitled to withhold the information requested by the complainant (the disputed information) on the basis of section 31(1)(b) of the FOIA.
10. The Commissioner is mindful that many of the arguments put forward in the previous case have been reiterated in this case. Therefore the analysis will to a certain extent appear to repeat the previous decision notice. However the Commissioner would stress that he has considered

the circumstances of this case on its own merits and has reached a decision accordingly.

### The disputed information

11. The disputed information is a report (dated 18 July 2012) of an investigation conducted by the former Chief Constable of Warwickshire Police on behalf of the Independent Police Complaints Commission (the IPCC) into allegations of professional misconduct against Sean Price, former Chief Constable for Cleveland Police and Derek Bonnard, former Deputy Chief Constable for Cleveland Police.<sup>2</sup>

### **Reasons for decision**

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#### Section 31(1)(b)

12. The exemption at section 31(1)(b) applies where disclosure would, or would be likely to, prejudice the apprehension or prosecution of offenders. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:
  - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the disputed information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the disputed information and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure '*would be likely*' to result in prejudice or disclosure '*would*' result in prejudice. In relation to the lower threshold (*would be likely*), the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real

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<sup>2</sup> Mr Price was dismissed in 2012, and Mr Bonnard was dismissed in March 2013. See, <http://www.bbc.co.uk/news/uk-england-tees-21931774>. At the time of drafting this decision notice a number of individuals, including Mr Price, remained on police bail, although Mr Bonnard had been released from bail.

and significant risk. The Commissioner considers that the higher threshold places a stronger evidential burden on a public authority to discharge. The chances of the prejudice occurring should be more probable than not.

13. The Commissioner put the complainant's arguments to the PCC and asked it to consider the disputed information in light of the passage of time. The PCC maintained that there had been no material change in circumstances, therefore its position remained that the exemption was engaged.
14. The complainant had pointed out that, in terms of the criminal inquiry, Mr Bonnard had been released from police bail and will not be charged. Therefore the complainant argued that information relating to Mr Bonnard's case should be disclosed.
15. The PCC responded that the request had been for information relating to Mr Price, not Mr Bonnard. The PCC reiterated that its reliance on section 31(1)(b) focused on the prejudice to the ongoing criminal investigation (code-named, Operation Sacristy) into allegations of corruption at the public authority.<sup>3</sup> It explained that the Operation Sacristy team had made strenuous representations to the effect that premature disclosure of the report would seriously prejudice the ongoing criminal investigation. That team had expressed concern that disclosure could lead to contamination of evidence as witness accounts could be tailored or witnesses interfered with.
16. The complainant also referred to regulation 9 of the Police Conduct Regulations 2008. He asserted that the Police Authority cannot send any matter to a hearing if doing so would prejudice any criminal proceedings. As a hearing has taken place the complainant concluded that the information in question must have been considered not to prejudice any criminal proceedings.
17. The PCC clarified that the Police Authority no longer existed; therefore the assessment of prejudice was a matter for the PCC. The PCC added that the fact that some allegations had led to a disciplinary hearing did not indicate that disclosure of the disputed information now would not prejudice criminal proceedings. The Commissioner considered this argument in the previous decision notice and found that

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<sup>3</sup> See, <http://www.bbc.co.uk/news/uk-england-tees-21013872>

*"It is difficult to see how revealing details of the misconduct proceedings would not have had a prejudicial effect on the criminal investigation."*

18. The complainant further argued that the disciplinary hearing could have been held in public, in which case information would have been disclosed into the public domain. However the PCC clarified that the hearing had not been held in public.
19. Having had regard to the arguments set out above the Commissioner accepts that the alleged prejudicial effect to the ongoing criminal investigation code-named Operation Sacristy relates to the applicable interests in section 31(1)(b) because prejudice to the investigation would consequently also prejudice the apprehension or prosecution of offenders. To the extent that the prejudice to other ongoing misconduct allegations could consequently prejudice the apprehension or prosecution of offenders, the Commissioner accepts that it relates to the applicable interests in section 31(1)(b). He also finds that there is a causal link between prejudice to Operation Sacristy and disclosure of the disputed information.
20. With regard to the third criterion, the Commissioner had to consider whether the higher threshold of the likelihood of prejudice was met. As mentioned, the public authority submitted that disclosing the report *would* prejudice Operation Sacristy, the ongoing criminal investigation into allegations of corruption at Cleveland Police.
21. It is clear that Operation Sacristy is directly linked to the investigation conducted by the IPCC into allegations of professional misconduct against the former Chief Constable and the former Deputy Chief Constable for Cleveland Police. The Commissioner accepts that premature disclosure of the report would prejudice the apprehension or prosecution of offenders. The report is very detailed and includes transcripts of interviews. It is highly likely that disclosure could infringe on the right of individuals to a fair trial. Disclosing information which is highly likely to generate adverse publicity about the individuals concerned (ie individuals who could potentially be prosecuted in the future) would prejudice their right to a fair trial and therefore equally prejudice the ability to successfully prosecute them.
22. The Commissioner acknowledges that at the time of the request of 21 May 2013 both Mr Price and Mr Bonnard had been dismissed. However the disputed information relates Mr Price and other individuals who remain on police bail, and who could therefore potentially be prosecuted following Operation Sacristy. The Commissioner also accepts that disclosure is highly likely to lead to contamination of evidence because witness accounts could be tailored or interfered with.

23. In the Commissioner's view, the circumstances of this case demonstrate that the exemption at section 31(1)(b) remained correctly engaged. As the Commissioner commented in the previous decision notice, the exemption is engaged because of the likelihood of prejudice to the apprehension and prosecution of offenders and *not* solely because it would prejudice an ongoing criminal investigation. Disclosure could infringe on the right of individuals to a fair trial, which would undermine the successful prosecution of any individuals charged with committing offences following the completion of Operation Sacristy.
24. The Commissioner therefore finds that the exemption at section 31(1)(b) was correctly engaged in relation to the disputed information. The Commissioner has therefore gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

#### Public interest arguments in favour of disclosure

25. The complainant did not offer any new public interest arguments as he was of the view that the exemption was not engaged.
26. The PCC reiterated its previous acknowledgment that there is a public interest in providing the fullest possible account of the IPCC's investigation. It also acknowledged the general public interest in disclosing the disputed information for reasons of accountability and transparency in the expenditure of public funds.
27. As the Commissioner stated in the previous decision notice, he agrees that there is a strong public interest in disclosing the disputed information. The Commissioner believes the public is entitled to be informed how the conduct of the highest ranking officers in Cleveland Police may have brought that force into disrepute.

#### Public interest arguments in favour of maintaining the exemption

28. The PCC stressed that the disputed information was still 'live' in the sense of it being part of an ongoing major large scale, complex and wide-ranging criminal investigation. Therefore in the PCC's view there remained an overriding public interest in avoiding damage to the integrity of the investigation by disclosing the disputed information.
29. The PCC also argued that the public interest lay in protecting the right to a fair trial of the individuals who could potentially be charged following the conclusion of the criminal investigation. Infringing their right to a fair trial by disclosure of the disputed information would undermine their prosecution and would therefore not be in the public interest.

*Balance of the public interest*

30. The Commissioner has considered the competing public interest arguments in the context of the ongoing criminal investigation. The Commissioner remains of the view that there is a very strong public interest in ensuring that the prosecution of individuals following the completion of Operation Sacristy is not undermined by the disclosure of the disputed information.
31. The Commissioner finds that circumstances have not changed to the extent that the disputed information could be disclosed without prejudice to any future prosecutions resulting from those allegations. Therefore the Commissioner does not believe he should reach a different conclusion from that set out in the previous decision notice.
32. The Commissioner is therefore satisfied that on balance, the public interest in maintaining the section 31(1)(b) exemption outweighs the public interest in disclosing the disputed information.

## Right of appeal

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33. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0116 249 4253  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Alexander Ganotis  
Group Manager – Complaints Resolution  
Information Commissioner’s Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**