

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 March 2016

**Public Authority:** Chief Constable of the Thames Valley Police

**Address:** Police Headquarters

Oxford Road

Kidlington

Oxfordshire

OX5 2NX

### Decision (including any steps ordered)

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1. The complainant requested the Individual Management Review (IMR) compiled by the Thames Valley Police force (the police) following a lengthy criminal investigation which led to the conviction of several adult males for serious sexual offences against children. The Commissioner decided that the IMR had a policing purpose. It is therefore held by the police for their own purposes in addition to its use as a source document for the Serious Case Review (SCR) prepared for, and published by, the Local Safeguarding Children Board (LSCB). The LSCB is not a public authority for the purposes of FOIA.
2. The Commissioner partly upheld the complaint and decided that parts of the IMR should have been disclosed. Redactions are set out in the confidential annex to this notice. He did not uphold the remainder of the complaint and decided that the police had relied correctly on the section 30(1) and 40(2) FOIA exemptions to withhold the remaining information. The police delay in responding to the request breached section 10(1) FOIA.
3. The Commissioner's decision is that the police response to the information request did not fully comply with FOIA in that some information should have been disclosed within the statutory time period.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

- Provide information to the complainant in the form of a copy of the IMR, redacted in accordance with the confidential annex to this notice which has been sent to the police only.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. On 3 March 2015, the complainant wrote to the police and requested information in the following terms:

*Please provide a copy of the internal review carried out by the force in relation to the recent high-profile child sexual exploitation case in Oxfordshire. The internal review is mentioned by the recently retired [named officer] in the following article: <http://www.bbc.co.uk/news/uk-england-oxfordshire-31696276>*

*My request is for a copy of the review referred to by [named officer].*

7. The police responded on 30 April 2015 confirming that a relevant Individual Management Review (IMR) was held and applying the following FOIA exemptions: section 23(5) (Information supplied by, or relating to, bodies dealing with security matters), section 30(1)(a) and (b) (Investigations and proceedings conducted by public authorities), section 31(1)(a)(b)(c) (Law enforcement), section 38(1)(a)(b) (Health and safety), section 40(2)(a) and (b), (3)(a) and (b) (Personal information), section 44(1)(a) (Prohibitions on disclosure).
8. Following an internal review of their refusal of the request, the police wrote to the complainant on 27 May 2015 maintaining their reliance on those FOIA exemptions and concluding, for the qualified exemptions at sections 30, 31 and 38 FOIA, that the public interest in maintaining those exemptions outweighed that in disclosure.

## Background

9. The request followed the trial and conviction of several adult males for offences involving the serious sexual abuse of children A - F. Following the trial, the police carried out a review of their investigation which was reported in the form of the IMR.
10. Thames Valley Police is one of several partner organisations which collectively make up the relevant LSCB. The core objectives of the LSCB

are set out in the Children Act 2004 while its functions are set out in the HM Government publication 'Working together to safeguard children' 2013.

11. The LSCB's aims cover communication, quality assurance, learning from serious case reviews, reviewing child deaths and ensuring sound safeguarding policies and procedures are in place within its local area. As a multi-agency organisation, the LSCB commissioned IMRs from its partners. These which were then used as source documents for compiling the SCR which the LSCB published in March 2015.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 30 May 2015 to complain about the way his request for information had been handled. He said that this had been a case in which the then lead detective had subsequently said publicly that the police had let down the child victims of sexual abuse. He said that disclosure of the IMR was capable of improving public confidence in the police by demonstrating that they had carried out a robust investigation into their failings and had taken appropriate corrective action.
13. In his investigation the Commissioner received and considered representations from the complainant, the police, and the LSCB. The Commissioner considered whether or not the IMR is 'held' by the police for the purposes of section 1(1) FOIA.
14. The Commissioner's staff reviewed the IMR and he considered the scope for its disclosure having regard for the exemptions relied upon by the police and the evidence presented to him.
15. It is common ground between all the parties that any disclosed information must be carefully anonymised to fully protect the identities of the child victims of abuse, their families and acquaintances.
16. For the reasons set out below, the Commissioner's analysis has focussed on the section 30 and 40 FOIA exemptions. In the light of his findings on those exemptions he did not proceed to consider the application of the section 23, 31, 38, 44 FOIA exemptions.

## Reasons for decision

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### Section 1 – General right of access to information held by public authorities

17. Section 1(1) of the FOIA states that an individual who requests information from a public authority is entitled to be informed whether the information is held and, if it is held, to have that information communicated to them unless it is exempt from disclosure.
18. Following a high profile investigation into child sexual exploitation, the police prepared an IMR as did some of the other LSCB partner agencies. The LSCB then used the IMRs as source documents in preparing a SCR which was drafted by an independent reviewer. This has been published and may be viewed at: <http://www.oscb.org.uk/2015/03/serious-case-review-published/>.
19. When deciding whether or not the police IMR should be published in response to a FOIA request, the key issue for the Commissioner is whether or not the police hold the information to any extent for their own purposes. If they do, then the information is held for the purposes of FOIA and they must respond to the request. However if it was prepared solely for the LSCB then the police are simply holding it on behalf of the LSCB. It then becomes a question of fact as to whether or not the IMR has any policing purpose.
20. On 20 November 2015 the LSCB wrote to the Commissioner to express its concern that any part of the police IMR might be made public which, it said, ran contrary to independent legal advice it had received. The LSCB said:

*“... LSCBs are separate statutory bodies in their own right and are not subject to Freedom of Information requests. This deliberate exclusion from the Act means recorded information held by the [Local] Safeguarding Children Board for the purpose of a SCR, such as the Thames Valley Police IMR, should not be subject to the Freedom of Information Act. Furthermore, [our] understanding of the Information Commissioner’s 2011 decision related to Doncaster Metropolitan Council (FS50368110), in particular paragraph 18, reinforces this advice.*

*The exclusion of LSCBs from the Act reflects the important public interest in maintaining the integrity and confidentiality of their investigations. Personal information is provided in confidence for SCRs, which enable the reviews to be an important means of learning; ensuring effectiveness of the child protection system; and insisting on systemic improvement across a partnership. In [our] view the statutory requirement to place the completed SCR into the public domain provides the necessary transparency and public accountability regarding child deaths or serious incidents, without compromising confidential information*

*relating to individual children, families and professionals. As authorities are required to provide IMRs to an LSCB as part of a SCR, as was the situation here, it should not therefore be said that the contributing authorities hold the IMRs for their own purposes under the FOI Act; rather, the IMRs falls [sic] under the SCR and therefore under the LSCB. So whereas the process and officers involved may require transparency ... the report itself does not fall to be disclosed."*

The precedent ICO case referred to by the LSCB, reference FS50368110, was a request to a local authority for the full text of a SCR. At paragraph 18 of that decision, the Commissioner found as fact that the LSCB was a statutory body in its own right, distinct from the local authority, and was not a public authority for the purposes of FOIA. The LSCB in this matter is likewise not a public authority for the purposes of FOIA.

21. On 12 November 2015 the police told the Commissioner of their concern about disclosure, even in redacted form. The police said that:

*"the IMR was drafted and produced for police and safeguarding partners only and the [SCR] is the public facing document which meets the public interest. Leaving the Police Service in the position whereby we would need to redact future IMR's is something that does not sit comfortably with the business when it is clear that the SCR is produced with the intention that it can be released into the public domain."*

The police submission appeared to accept that the IMR had a policing purpose in addition to its use in preparing the case SCR.

22. The police said that those aspects of the matter that were able to be put into a public facing document had already been made public in the SCR. They added that guidance, published in 2010 by the then Secretary of State for Children and Families, supported their view that the entire IMR document needed to be protected from release. The Commissioner noted that further guidance to agencies working to safeguard children, giving further detailed guidance on the preparation, distribution and publication of SCRs, had been published in March 2013 'Working together to safeguard children'. The 2013 guidance said that anonymised copies of the IMRs should be provided to Ofsted, the relevant GO Children and Learners Team, the Strategic Health Authority and the Department for Education.
23. The complainant told the Commissioner that an IMR has previously been disclosed to him by another police force. The complainant provided the Commissioner with a copy of that IMR by way of supporting evidence. That IMR had been subject to only minor redactions and the Commissioner has seen no evidence that harm resulted from its disclosure.

24. The Commissioner's staff reviewed the Thames Valley Police IMR dated 15 August 2014. It is entitled "*Children A-F Major Crime Investigation Review Team*" and is 553 pages long. The document sets out in detail the police strategy, tactics and actions taken during the relevant investigation. The police rehearsal of the actions taken and analysis of events leads to a section of "Learning Points and Actions So Far" and concludes with (mainly policing) "Recommendations". From his own review and analysis of the contents of the IMR, the Commissioner did not accept that the document itself, and the process of preparing it, had no policing purpose whatsoever.
25. There is no class exemption for IMRs. The Commissioner has seen that the 2013 government guidance presumes a significant distribution of IMRs in anonymised form to the prescribed agencies; distribution is not restricted to the police and the LSCB only. He has seen that at least one IMR has previously been disclosed to a member of the public by another police force. The Commissioner therefore sees no barrier in principle to disclosure of information contained in an IMR which is not otherwise exempt information.
26. The Commissioner determines each case on its merits and in this matter he decided that the weight of evidence pointed on a balance of probabilities, which is the test he must use, to there being some policing purpose attaching to the police IMR. The Commissioner therefore decided that the IMR is held by the police, and that there is no reason in principle for the police to withhold information contained within the IMR if it would not otherwise be exempt information.
27. Having decided that the police hold the requested information for the purpose of FOIA, the Commissioner proceeded to consider the application of the section 30(1) and section 40(2) FOIA exemptions relied upon by the police.

### **Section 30 - Investigations and proceedings**

28. Section 30 of FOIA states that:

*(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose 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, ...*

29. Section 30 is a class based exemption which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged.
30. In this matter the police said that the sections 30(1)(a) and (b) FOIA exemptions applied to nearly all of the withheld information.
31. The police said that there was a need to withhold information relating to investigations the disclosure of which would, or would be likely to, have an adverse effect upon its investigations and the prosecution of offenders. In this case most of the information within the IMR relates either directly or indirectly to details of policing methods. Disclosing specific details of police knowledge, tactics and methodology could potentially impact and undermine police tactical and strategic techniques planned to target criminal activity.
32. Section 30(1) provides an exemption from the duty to disclose information that a public authority has held at any time for certain investigations or proceedings. As long as the other requirements of the exemption are satisfied, the exemption will apply to information even if it was not originally obtained or generated for one of those purposes and it will continue to protect information even if it is no longer being used for the specified investigation or proceedings. It is only necessary for the information to have been held at some point for those purposes.
33. Section 30(1)(a) can only be claimed by a public authority that has a duty to investigate offences. The public authority in this case is the police. As a police force it has a duty to conduct criminal investigations. The Commissioner is therefore satisfied that it has a duty to carry out investigations of the sort described in section 30(1)(a) and that the exemption was correctly engaged by the police. The Commissioner is satisfied that the exemption covers the information as claimed by the police.
34. Section 30(1)(a) is a qualified exemption and is therefore subject to the public interest test under section 2(2)(b) of FOIA. Where there would be no harm caused by releasing the information, or the public interest arguments in favour of disclosure outweigh those in favour of maintaining the exemption, it will need to be disclosed.

## **The public interest test – information to be withheld**

### *Public interest arguments in favour of disclosure*

35. The complainant said that there is a compelling public interest in disclosure of the IMR which was capable of showing how thorough and robust the police investigation had been. He said that this matter related to a case in which the then lead detective had said publicly that the police had let down 'hundreds of victims of sexual abuse'. He said that it had been alleged that victims' calls for help had been ignored and that the police review of its criminal investigation had been reported to have been 'brutal'. There was therefore, in the complainant's view, a compelling public interest in disclosure of parts of the IMR.
36. The complainant added that disclosure was capable of improving public confidence in the police; it could demonstrate that the police had carried out a sufficiently robust investigation into their failings and had taken appropriate action. Disclosure was also capable of demonstrating that the police were willing to confront allegations of failings within their ranks which would further improve public confidence in policing.
37. In their representations the police acknowledged that release of the IMR would assist in any public debate on their role in these matters, as the trial and subsequent review had been high profile. Disclosure of law enforcement information would enlighten members of the public as to the actions taken by the police. This might promote public awareness and accountability for public spending in this area of policing.

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

38. The police said that the IMR was classed as an internal document. It contained extremely sensitive information which needed to be protected from release. The IMR focused on vulnerable victims of crime and the processes that had been followed during a criminal investigation. The police said that if any of the IMR information were to be released it would hinder policing and that disclosure would not have been expected at the time of writing the IMR.
39. The police added that any disclosure of information from the IMR, other than that disclosed in the SCR which had been drafted using information from the IMR, would seriously prejudice the regime. They saw a need to maintain the IMR in confidence.
40. The police said that information relating to how an investigation is conducted will rarely be disclosed and then only where there is a strong public interest favouring disclosure. In this case, disclosure would show how evidence had been gathered, from victims, witnesses and suspects.



Disclosure could possibly identify the sources of this information and equip individuals with the information to undermine the methodology and techniques employed by the police. As such, it would impede current or future investigations.

41. The release of the extremely sensitive personal information in the IMR could have a detrimental effect of the health and safety of the victims, family members and members of that community. This could compromise individuals' safety if conclusions are drawn, whether correctly or incorrectly, from any information disclosed. The release of the IMR would identify individuals who had spoken in confidence with the police and could put them at physical risk. This would therefore create a risk to the effectiveness of future police investigations.
42. The Commissioner also noted evidence from the police that, at the time of the request, their relevant criminal investigations were not regarded as completed and closed ie parts of the matter were still 'live'.

*Balance of the public interest*

43. The general public interest served by section 30(1) is the effective investigation and prosecution of crime. In the Commissioner's view, the weight given to arguments in favour of disclosure will depend largely on the need for greater transparency in relation to the subject matter and the extent to which disclosure of the information in question will meet that need.
44. The Commissioner acknowledges the validity of the public interest arguments in favour of releasing the exempt information. He recognises the importance of the public having confidence in its policing and accepts that confidence would be increased by allowing scrutiny of the performance and conduct of particular cases. However, he considers that the level of scrutiny that is appropriate and proportionate will depend on many factors including the harm that any disclosure would do to the effective investigation and prosecution of offences and to the victims of crime.
45. In the Commissioner's view, there is a very strong public interest in safeguarding the investigatory process. Disclosing investigative information under the FOIA, without a sufficiently strong public interest reason for doing so, would undermine the existing procedures governing the disclosure of information in relation to criminal investigations. Such disclosure could act as a deterrent to those providing information to the police and act as a disincentive to victims and potential witnesses coming forward thereby hindering other police investigations.

46. The Commissioner considers that timing of the request is key to considering the public interest. He considers that, as a general rule, there will always be a strong public interest in maintaining the section 30 exemption where, as here, an investigation is not yet closed. He is mindful that the emphasis in this case is on protecting connected investigations as well as the victims in this matter. In the circumstances of this case, the Commissioner accepts that disclosure would prejudice related investigations and decided that the public interest would not be served by releasing information that would compromise current law enforcement techniques or risk harming future investigations.
47. Having taken all of the above into consideration, the Commissioner decided that a significant amount of the IMR information should be withheld as the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner therefore finds that the police were entitled to withhold, under the section 30(1) FOIA exemption, the information he has designated to be withheld in the confidential annex to this notice.

### **The public interest test – information to be disclosed**

48. For the information he decided should be disclosed, as set out in the confidential annex to this notice, the Commissioner considered the same parameters for and against disclosure. However, when applied to test disclosure of that information he decided that the balance of the public interest lay in disclosure either because the information was significantly less sensitive or because it was peripheral to the investigation of this matter and the relevant proceedings.

### **Section 40 - Personal information**

49. A small amount of information within the IMR is peripheral to the criminal matter and does not engage the section 30(1) FOIA exemption. This information, some of which potentially identifies victims of crime, their families or acquaintances, also includes the names of junior police personnel, and the personal information of some senior officers. The Commissioner decided that this information had been correctly withheld relying on the section 40(2) FOIA exemption. As it is common ground among the parties that this information is not being requested, he has not set out his detailed reasons for deciding that the exemption has been correctly applied in those instances.

### **Other exemptions**

50. The police initially relied additionally on the exemptions in sections 23(5), 38(1) and 44(1) FOIA but did not make further representations regarding them during the Commissioner's investigation. All of the

information in the IMR to be withheld is caught by either the section 30 or section 40 FOIA exemptions or both and the police accept that these further exemptions do not apply to the information he decided should be disclosed. Accordingly the Commissioner has not proceeded to consider these further exemptions.

51. Section 10(1) FOIA states that: "*Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt*". The police should therefore have issued a full refusal notice or disclosed the requested information within 20 working days. However, the police did not respond to the 3 March 2015 information request until 30 April 2015 and so failed to comply with Section 10(1) FOIA.

## Right of appeal

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52. 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: 0870 739 5836

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)

53. 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.
54. 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** .....

**Steve Wood**  
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