

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 April 2017

Public Authority: Chief Constable of Durham Police
Address: Durham Police HQ
Aykley Heads
Durham
DH1 5TT

Decision (including any steps ordered)

1. The complainant has requested information about the recent court case concerning the football player Adam Johnson. Durham Police withheld the information under sections 30(1) (investigations), 38 (health and safety) and 40(2) of FOIA.
2. The Commissioner's decision is that Durham Police have applied section 30(1) of FOIA appropriately.
3. The Commissioner does not require Durham Police to take any further steps as a result of this decision.

Request and response

4. On 3 March 2016, the complainant wrote to Durham Police (DP) and requested information in the following terms:

"I would be grateful if you would provide some information related to the recent court case involving Sunderland footballer Adam Johnson. I note the football club's statement referred to contact with relevant agencies. It is not clear which agencies the club was referring to though I would presume Durham Police would be one. I would be grateful if you would provide the information Durham Police holds in relation to its contact with Sunderland football club over this case whether that be in correspondence or other recorded information. I suspect the bulk of this

information would relate to the period following the player's arrest on March 2, 2015 and up to and subsequent to a meeting the club held on May 4, 2015 in relation to the case. However, if there was later information up to the current date I would be grateful if you would provide it. Should there be any information relating the identity of the girl in the case I would expect this to be redacted – I am concerned with actions/communications relating to Johnson."

5. DP responded on 31 March 2016. It withheld some information, citing section 30 (investigations and proceedings) and refused to confirm or deny whether it held information under section 23(5) (security matters).
6. Following an internal review DC wrote to the complainant on 19 May 2016, upholding its original decision.

Background

7. Adam Johnson, a footballer for Sunderland Association Football Club, pleaded guilty to offences of grooming a female child aged 15 and also sexual activity with the same child. Following a trial at Bradford Crown Court on 2 March 2016, he was found guilty of an additional offence of sexual activity with a girl aged 15. He was found not guilty of a second count of sexual activity with the same girl.
8. Adam Johnson was jailed for six years by Bradford Crown Court on 24 March 2016.
9. Initially, he had been suspended for two weeks but then allowed to play again. SAFC explained that it understood that he was going to deny all the charges against him.
10. SAFC sacked Adam Johnson on the first day of his trial after he admitted grooming and kissing the girl.

Scope of the case

11. The complainant contacted the Commissioner on 19 May 2016 to complain about the way his request for information had been handled. He explained that he was relying on his arguments set out in his request for an internal review which includes the following:

"The force has applied section 30 in relation to the information requested though the information is focussed on the contact with Sunderland FC relating to safeguarding, rather than investigating whether someone should be charged with an offence.

The response hasn't identified specifically how the contact with Sunderland FC relates to a criminal investigation."

12. During the Commissioner's investigation, DC explained that it also wanted to rely on the sections 38(1) (health and safety) and 40(2) (personal information) exemptions for withholding the requested information.
13. DP also confirmed that it was no longer relying upon the section 23(5) exemption therefore the Commissioner will not consider the application of this exemption any further.
14. The Commissioner will consider DP's application of section 30(1), 38 and 40(2) and how it dealt with the request under FOIA.

Reasons for decision

Section 30 – investigations and proceedings

15. Section 30(1)(a)(i) of FOIA states 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."

16. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1)(a)(i) if it relates to an ongoing, closed or abandoned investigation
17. In order for the exemption to be applicable, any information must be held for a specific or particular investigation and not for investigations in general. Section 30(1) is a class-based exemption; if information falls within its scope there is no need to demonstrate harm or prejudice in order for the exemption to be engaged.
18. The Commissioner notes that the complainant has argued that the information relating to safeguarding is unrelated to the specific criminal actions undertaken by Johnson for which he either pleaded guilty or was convicted.
19. DP explained that safeguarding is something which runs throughout any investigation. As public servants, the police are in a position of responsibility which includes safeguarding known victims or otherwise.

20. DP also explained that throughout an investigation there are searches made, especially of electronic devices including victims and suspects phones and tablets, (as in the Adam Johnson case). Officers are always aware that these searches could reveal evidence or intelligence which could identify other victims or potential victims.
21. Furthermore, DP confirmed that this would be an ongoing line of enquiry as there was always the potential for other victims to voluntarily come forward and for example disclose their abuse. DP also explained that this was why safeguarding remains an ongoing aspect of an investigation.
22. Taking the above into account, the Commissioner is satisfied that the issue of safeguarding does form part of the criminal investigation into Adam Johnson.
23. The Commissioner has viewed the withheld information and is satisfied that it relates to a specific criminal investigation, which had been concluded by the date of the request.
24. The Commissioner is satisfied that DP has a duty to conduct investigations of the sort described in section 30(1)(a). She therefore considers that the exemption is engaged.

Public interest test

25. As section 30(1) is a qualified exemption it is subject to the public interest test ie in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of maintaining the exemption

26. DP argued that the public interest in maintaining section 30(1)(a) outweighed the public interest in disclosure.
27. It explained that the investigation was ongoing, as Adam Johnson had appealed both his conviction and sentence. DP argued that for this reason the public benefit in releasing the information was reduced as it must be measured against the fact that any disclosure may compromise the hearing before the higher court. DP also argued that there was a stronger public interest in seeing that the proper and fair procedures are followed in order to allow the judicial process to run its course.
28. DP explained that, following the court hearing and before sentencing at court on 24 March 2016, the case's Senior Investigating Officer (SIO) DI Sampson, disclosed necessary and proportionate additional investigative details to the media on 3 and 4 March 2016 about some of DP's interactions with SAFC. DP also explained that it had done this both in

the wider public interest and in direct response to the strength of the reaction arising from the questions raised and explored in court, regarding what SAFC knew and when from DP, about Adam Johnson's offending and arrest. In addition, DP also explained that it had recognised the public interest regarding the safeguarding of vulnerable groups in society and that the disclosure could provide an assurance that it had disclosed necessary and proportionate safeguarding information to SAFC.

29. Furthermore, DP explained that the National Police Chiefs' Council's approach is that information relating to an active investigation will rarely be disclosed under the provisions of the FOIA. Whilst such information may be released in order to provide a tangible community benefit (ie to protect life and property and/or assist in prevention and detection of crime and/or in the apprehension and prosecution of offenders), it will only be disclosed following a freedom of information request if there are strong public interest considerations favouring disclosure. It does not consider this to be the case in this instance.
30. In addition, DP argued that there is a greater public interest in encouraging public engagement and confidence in its investigative actions and that any actions that may result in individuals being less willing to co-operate with its investigations would not be in the public interest.
31. With regard to safeguarding, DP acknowledged that there are continuing public interest concerns about the adequacy of SAFC's child protection procedures and SAFC has been widely criticised by the media, MPs and child protection agencies. However, DP confirmed that no criticism was made by the judge, the National Society for the Prevention of Cruelty to Children (NSPCC) or any other child protection and welfare agencies or MPs regarding its disclosures or other interactions with SAFC. DP argued that the continuing press concerns as to what SAFC knew, when it knew it and how it acted do not outweigh the need for DP to protect information obtained as part of a criminal child protection investigation.
32. Furthermore, DP also pointed out that the case was heard in open court during which DP's dealings with SAFC and SAFC's actions following Adam Johnson' arrest, were widely reported at both a local and national level. It argued that as a result of information already disclosed by it in court and post-trial to the media, the thoroughness of its investigation, including any information held about its interactions with SAFC, has already been open to sufficient public scrutiny and therefore has satisfied the public interest. DP also pointed out that after listening to all of the questioning and evidence about what (and when) SAFC knew from DP and/or from Adam Johnson, the judge did not make a court

order directing that DPs and SAFC's information exchanges be made public.

33. DP also argued that disclosure would inhibit the co-operation of employers and their staff, as well as any other witnesses and/or victims to co-operate and contribute to ongoing or future criminal investigations. It explained that it considered that such a disclosure could act as a deterrent to those providing information to DP and the wider police service and therefore act as a disincentive and hindrance to other criminal investigations. DP argued that this diminution of essential public assistance would damage the investigation and detection of crimes and would lead to a reduction in the public's confidence in the criminal processes employed by DP and other forces.
34. DP went on to argue that it was clearly in the public interest to ensure that no damage and/or potential prejudice is done to future DP investigations, as a result of victims/or witnesses seeing/viewing disclosure of case material to the world at large, as a breach of confidence, which could discourage them from providing valuable information.

Public interest arguments in favour of disclosure

35. DP acknowledged that disclosure of the information carries some weight, given the seriousness of the crimes involved and the continuing speculation and concerns about what SAFC knew. It also acknowledged the importance of public debate in building public confidence regarding protection of the public – in this case a young victim; disclosure may also encourage and promote public confidence in the effective and efficient conduct of police investigations into serious crime matters and highlight any issues relating to the conduct of DP.
36. The complainant pointed to the Commissioner's guidance on section 30¹ and explained that it highlights four main areas to consider when regarding disclosure of information under section 30:
 - The stage of the investigation or prosecution: the complainant explained that in this case, the investigation had been concluded and Adam Johnson sentenced. The complaint went on to explain that Adam Johnson had pleaded guilty to some of the offences for which he was sentenced. He argued that the safeguarding issues

¹ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

regarding SAFC were a separate issue from evidence relating to the crimes. The complainant also explained that appeal court judges are among the most senior members of the judiciary in the country and are highly unlikely to be influenced by separate issues relating to safeguarding.

- The extent to which the same or other information is in the public domain: The complainant argued that some information was already in the public domain, either through a very widely reported court case or subsequent public comments from DP and SAFC. He explained that the Commissioner's guidance says that where similar information is in the public domain, it is harder to argue there could be any great harm in disclosure.
- The value of information obtained from confidential sources: The complainant argued that the information at issue is not from confidential sources. He also pointed out that the sources have been publicly acknowledged in court and subsequently proactively [disclosed] by DP and SAFC.
- The significance of the information: The complainant explained that the information in question had already been widely acknowledged to carry very significant public interest and had raised significant questions regarding safeguarding.

Balance of the public interest

37. The Commissioner has considered the public interest arguments from both parties, including the public interest in transparency.
38. The general public interest served by section 30(1) is the effective investigation and prosecution of crime. The police service is charged with enforcing the laws, preventing and detecting crime and protecting the communities it serves. Anything which interferes with this ability to deliver this service will clearly be against the public interest.
39. The Commissioner notes the complainant's comment regarding appeal judges and the likelihood of any influence. She acknowledges that this is usually the case. However, DP has provided further arguments on this point. The Commissioner cannot discuss the confidential information provided by DP in the main body of the decision notice, as to do so would risk divulging withheld information. The confidential arguments are contained in a confidential annex.
40. The Commissioner also notes the complainant's argument that some information was already in the public domain, either through a very widely reported court case or subsequent public comments from DP and

SAFC. She notes the complainant's point regarding her section 30 guidance which points out that where similar information is in the public domain, it is harder to argue there could be any great harm in disclosure.

41. The Commissioner is satisfied that the withheld information contains more information than is out in the public domain. She considers that this information is operational in nature and also contains confidential information. She is therefore satisfied that it is sufficiently different from the information already in the public domain and it would not be in the public interest to disclose it.
42. The Commissioner notes that DP released information about its interactions with SAFC into the public domain after the trial. She further notes DP's explanation that this was done because of issues raised in the court hearing regarding what SAFC knew and also about safeguarding. The Commissioner considers that this disclosure goes some way to satisfying the public interest regarding what SAFC knew and when, DP's interactions with it and safeguarding.
43. Furthermore, the Commissioner notes the complainant's third argument regarding confidential sources. However, she notes that under section 30 'confidential sources' relates to section 30(2), not section 30(1).
44. The Commissioner also notes the complainant's fourth argument in relation to disclosure of the information being in the public interest ie the significance of the information. The Commissioner notes his explanation that the information in question had already been widely acknowledged to carry very significant public interest and had raised significant questions regarding safeguarding.
45. However, as explained above, she is satisfied that the information already disclosed by DP post trial above goes some way to satisfying the public interest.
46. The Commissioner notes that the police service is charged with detecting crime and protecting the communities it serves. She considers that anything that could interfere with this, including breaching confidences, is not in the public interest and would interfere with its duties set out under section (30)(1)(a)(i).

Conclusion

47. Taking all of the above into account, the Commissioner is satisfied that section 30(1)(a)(i) has been applied appropriately in this case and that

the public interest in maintaining the exemption outweighs the public interest in disclosure.

48. As the Commissioner considers that section 30(1)(a)(i) is engaged, she will not consider the other exemptions cited.

Other matters

49. The complainant requested an internal review on 31 March 2016. DP responded on 19 May 2016.
50. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
51. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
52. The Commissioner is concerned that it took over 20 working days for DP to complete the internal review.

Right of appeal

53. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.

55. 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

**Jon Manners
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