

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2017

Public Authority: Chief Constable of Leicestershire Police
Address: Force Headquarters
St Johns
Enderby
Leicester
LE19 2BX

Decision (including any steps ordered)

1. The complainant requested copies of transcripts of police interviews conducted with the late Greville Janner (Lord Janner of Braunstone).
2. Leicestershire Police withheld this information under the exemptions provided by sections 30(1)(a), (b) and (c) (information held for the purposes of an investigation), 31 (law enforcement), 38 (health and safety) and 40(2) (personal information) of the FOIA.
3. Having considered its application of section 30(1)(a), the Commissioner's decision is that Leicestershire Police was entitled to rely on that section to withhold the requested information.
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. The Independent Inquiry into Child Sexual Abuse (IICSA)¹ will investigate:
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¹ <https://www.iicsa.org.uk/>

"... whether public bodies and other non-state institutions in England and Wales have taken seriously their responsibility to protect children from sexual abuse, and make meaningful recommendations for change in the future".

6. The Inquiry has launched 13 investigations into a broad range of institutions. One of those is an investigation into the responses of institutions to allegations of child sexual abuse involving the late Lord Janner of Braunstone Q.C².
7. The first preliminary hearing was heard on 9 March 2016. Its purpose was to consider the next steps in the Inquiry's investigation into institutional responses to allegations of child sexual abuse relating to the politician Lord Greville Janner.
8. The second preliminary hearing was held on 26 July 2016.
9. References to 'the Goddard Inquiry' reflect that in February 2015, Justice Lowell Goddard, a serving judge of the High Court of New Zealand, was in charge as the inquiry began hearing directly from victims and survivors. She had resigned her post by August 2016.

Request and response

10. On 1 July 2016, the complainant wrote to Leicestershire Police and requested information in the following terms:

"Under the FOI Act, I would like released to me all interviews carried out by Leicestershire Police with the late Greville (Lord) Janner. I understand that he was interviewed in 1991, 2002 and finally in 2006. It would be normal procedure for the interviews to have been recorded in audio format and then transcribed. If both formats still exist, I would like the audio and transcript for each of the three interviews. Where this is not possible, the remaining record (in whatever form) will suffice".

11. Leicestershire Police responded on 6 September 2016. It confirmed it held information within the scope of the request but refused to provide it. It cited the following exemptions as its basis for doing so:

² <https://www.iicsa.org.uk/investigation/investigation-allegations-child-sexual-abuse-involving-lord-janner-braunstone-qc>

- section 30(1) (a)(b)(c) - Investigations
 - section 31 – Law enforcement
 - section 38 - Health and safety
 - section 40(2) – Personal information
12. Following an internal review, Leicestershire Police wrote to the complainant on 3 January 2017. It upheld its original position.

Scope of the case

13. The complainant contacted the Commissioner on 27 February 2017 to complain about the way his request for information had been handled.
14. He disputed Leicestershire Police's application of exemptions. He considered they were *'at best only partially engaged'* and *'could not possibly be engaged (in part or in full) by each and every individual piece of responsive material'*.
15. He also considered that there was substantial public interest in releasing the requested material.
16. As is her practice, the Commissioner wrote to Leicestershire Police inviting it to revisit its handling of the request. Leicestershire Police responded, confirming that it considered that the exemptions apply equally to all of the withheld information.
17. During the course of her investigation, the Commissioner found it necessary to serve Leicestershire Police with an Information Notice requiring it to provide her with further information in order to progress her investigation.
18. The analysis below considers Leicestershire Police's application of exemptions to the withheld information. That information comprises records of interviews collated during the investigation of Lord Janner.

Reasons for decision

19. Leicestershire Police has applied multiple exemptions to the same information in this case. The Commissioner has first considered its application of section 30.

Section 30 investigations and proceedings

20. Section 30(1) of the FOIA states:

"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, or

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

21. In this case, Leicestershire Police consider subsections (a), (b) and (c) apply.
22. The complainant disputed that the exemption is engaged, describing the material he had requested as:

"... no longer subject to pre-criminal proceedings, since the suspect is dead and there will never be a trial of any summary or indictable offence".

Is the exemption engaged?

23. The Commissioner has issued guidance on section 30³ which states that section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings.
24. It also states that section 30 is class based and that information which has been held at any time for the purpose of these investigations and proceedings will be exempt.
25. The public authority in this case is Leicestershire Police. As a police force Leicestershire Police clearly has a duty to investigate offences and allegations of offences. The Commissioner is therefore satisfied that it has the power to carry out investigations of the sort described in section 30(1)(a).

³ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

26. The Commissioner's guidance explains the types of scenario in which the subsections of section 30(1) apply.

27. For example, with respect to section 30(1)(a), her guidance says:

"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged.

*Any investigation must be, or have been, conducted with a **view** to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it.*

It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence...."

28. In correspondence with the complainant, Leicestershire Police told him that the requested information:

"...was formulated as part of a wide reaching investigation that has been discussed in length in the media and other outlets. However, the fact remains that this information was generated as part of a criminal investigation and it is of paramount importance that investigative material is not released as part of the freedom of information act. ...The confidentiality of criminal investigations is of paramount importance".

29. The Commissioner is mindful of the complainant's argument that there will be no trial as the suspect is dead. However, despite the passage of time since interviews took place, she notes the inclusion of the words 'at any time' in the introductory words to the section 30 exemption.

30. The phrase 'at any time' means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.

31. In light of the above, the Commissioner is satisfied that the exemption is engaged.

Public interest test

32. Section 30(1)(a) provides a qualified exemption and is therefore subject to the public interest test under section 2(2)(b) of the FOIA. Section 2(2)(b) provides that such an exemption can only be maintained where:

"... in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information".

33. In accordance with her guidance, when considering the public interest in maintaining the exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
34. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.

Public interest arguments in favour of disclosure

35. In favour of disclosure, the complainant argued that there is a substantial public interest in releasing the requested information:

"... in order to learn about Janner's crimes and in order to restore public faith in the functioning of Leicestershire Police, which failed to charge him with any offences during his lifetime and which failure has therefore caused scepticism to be cast upon the Force's reliability and integrity".

36. The complainant considered that disclosure would improve public confidence in the police.
37. The complainant told Leicestershire Police, albeit in respect of section 31, that a precedent has already been set:

"... and it is in favour of disclosure".

38. In that respect, he referred to the release after the death of Jimmy Savile in 2011 of:

"... transcripts of Surrey Police's 2009 interviews with Savile ...during the period when Savile's offending was under posthumous investigation (i.e. there was no prospect of any criminal proceedings".

39. He therefore considered there was no reason why Leicestershire Police should feel constrained from behaving similarly in the case of Lord Janner.
40. Leicestershire Police acknowledged that there has already been some information about the investigation of Lord Janner placed into the public

domain through media articles. It considered that the public would therefore have a genuine interest in being informed about any information related to the investigation. In that respect, it told the complainant that disclosure:

"...would enable the public to have satisfaction that the investigation was conducted properly".

Public interest arguments in favour of maintaining the exemption

41. In favour of maintaining the exemption, Leicestershire Police told the complainant that it would not be in the public interest to disclose information held as part of a high profile inquiry that remains ongoing.
42. Leicestershire Police argued that it was of paramount importance that the confidentiality of any criminal investigation is maintained without fear that information would be released under the FOIA.
43. It told the complainant:

"There is a very real public interest in ensuring that [the] Goddard Inquiry can continue to investigate the offence without the information we hold being released piecemeal under the Act.

I see no tangible benefit to the community at large if this information was released on this occasion".

44. In correspondence with the Commissioner, Leicestershire Police emphasised that, due to the seriousness of the investigation being undertaken by IICSA, there is an overwhelming public interest in ensuring that the inquiry can take place *"without vital information being released piecemeal under the FOI legislation"*.
45. With respect to the complainant's view that the release of the Jimmy Savile tapes set a precedent, Leicestershire Police argued strongly that under the FOIA each case must be considered on its merits.

The balance of the public interest

46. In her published guidance on section 30⁴, the Commissioner recognises that:

⁴ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

"In a democratic society it is important that offences can be effectively investigated and prosecuted. However, the public needs to have confidence in the ability of the responsible public authorities to uphold the law and the public interest will be served by disclosures which serve that purpose".

47. While the Commissioner notes the complainant's comments about interview tapes having been disclosed previously, she considers that that was a discretionary disclosure and not one ordered by the ICO. She also considers, in any event, that each case must be considered on its own merit.
48. The Commissioner recognises that the subject matter of this case - historic allegations of sexual abuse - is a sensitive issue. She acknowledges that there is public concern about how allegations of abuse were handled at the time in the criminal justice system.
49. She also notes that considerable public concern remains about apparent historic failures to prosecute high profile figures who allegedly committed offences against children.
50. The Commissioner recognises the importance of the public having confidence in those public authorities tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases.
51. She recognises that releasing the requested information in this case would aid transparency and increase accountability and could add to the public's knowledge of the actions taken by Leicestershire Police.
52. However, in the circumstances of this case, the Commissioner has given greater weight to the arguments surrounding the public interest in protecting the ability of Leicestershire Police to conduct investigations, including into allegations of abuse committed over a number of years. In that respect, she notes that the Leicestershire Police told the complainant that the requested information:

"... is linked to a high profile investigation that concerned the sexual abuse of individuals who were and remain vulnerable".
53. While restricted in what she is able to say due to the sensitive nature of the withheld information, the Commissioner is satisfied that it would not be in the public interest to disclose information relating to a high profile investigation involving allegations of serious offences.
54. The perception that information provided by witnesses may be disclosed to the world at large may deter them coming forward and cooperating

with prosecuting authorities, particularly where sensitive offences are alleged.

55. Furthermore, she considers that the wider public interest in transparency and openness about whether Lord Janner should have been charged is served to a large extent by the Independent Inquiry into Child Sexual Abuse.
56. In her view, it would not be in the public interest to disclose information which might prejudice or jeopardise the work of that inquiry, which will publish a report and make recommendations as part of its outcomes.
57. Having given due consideration to the arguments put forward by both parties, on this occasion the Commissioner accepts that the public interest favours maintaining the exemption at section 30(1)(a).

Other exemptions

58. As the Commissioner has concluded that Leicestershire Police correctly applied section 30(1)(a) of the FOIA to all of the withheld information in this case, she has not gone on to consider the other exemptions cited by LP in relation to the same information.

Right of appeal

59. 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

60. 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.
61. 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

Gerrard Tracey
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