# Freedom of Information Act 2000 (FOIA)

# Decision notice

**Date:** **20 May 2019**

**Public Authority:** **Chief Constable for British Transport Police**
**Address:** **Force Headquarters**
**25 Camden Road**
**London**
**NW1 9LN**

## Decision (including any steps ordered)

1. The complainant has requested from British Transport Police ('BTP'), images of the suspects involved in the theft of his property. BTP refused the request on the grounds that section 30 (investigations and proceedings) and section 40 (personal information) of the FOIA applied.

2. The Commissioner's decision is that BTP was entitled to rely on section 30(1)(a)(i) to refuse the request. She requires no steps to be taken as a result of this decision.

## Request and response

3. On 17 September 2018, the complainant wrote to BTP and requested information in the following terms:

> *"I've had a bike stolen and the police has CCTV footage of the thief that has stolen it, without wearing any masks.*
>
> *I asked the police for a photo of the thief at least so that I could do my own research in finding the thief (post to facebook, search on images.google.com, so on), but was told I can't have it.*
>
> *Now after multiple requests they've finally told me that I can put a FOIA request in."*

4. BTP responded on 15 October 2018. It said that the information was exempt from disclosure under section 30 (investigations and proceedings) and section 40 (personal information) of the FOIA.

5. The complainant complained about the response on 16 October 2018, which BTP treated as a request for an internal review. BTP provided the outcome of the internal review on 13 November 2018. It upheld its original decision not to disclose the information.

## Scope of the case

6. The complainant contacted the Commissioner on 7 January 2019 to complain about the way his request for information had been handled. He said he wanted the information so that he could conduct his own enquiries into the theft, BTP having told him that the case had been closed without his property being recovered or anyone having been charged.

7. The complainant's request refers to the existence of both CCTV footage and photographs, without specifying which he would prefer. BTP interpreted the request as for being for still images of the suspects captured on CCTV. The Commissioner considers this to be a reasonable interpretation, as the complainant had indicated he wanted the information to try to identify the suspects himself. The Commissioner has viewed the still images when investigating this matter.

8. BTP told the Commissioner that it considered the information to be exempt from disclosure under section 30(1)(a) of the FOIA. The analysis below has therefore considered BTP's application of section 30(1)(a) of the FOIA to withhold the requested information. Since the Commissioner's finding is that section 30(1)(a)(i) applies to the withheld information in its entirety, it has not been necessary to go on to consider the other exemption cited.

## Reasons for decision

### Section 30 – investigations and proceedings

9. Section 30(1) of the 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…".*

10. The Commissioner considers that the phrase "*at any time*" means that information can be 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 held and used for this purpose.

11. BTP explained to the Commissioner that it had recorded the complainant's allegation of theft and assigned it to a police officer for criminal investigation. It was later linked with another offence which had been reported in the same time frame.

12. BTP obtained CCTV footage of suspects who were of interest to it with regard to the offences. The police officer circulated images derived from the footage internally to attempt to identify the suspects, and also to the local police force in case the suspects were known to it. BTP also explained to the Commissioner other steps that were taken to try to identify the suspects during the investigation.

13. Unfortunately, no suspects were identified as a result of these steps, and the complainant was informed that the case was being closed. BTP explained to the Commissioner that closure of a case means that an officer will not periodically be reviewing and carrying out proactive investigatory actions on it. Details of the case remain on BTP's live crime recording system and should any further evidence emerge, such as the identification of a suspect (which could occur because someone is arrested in relation to another matter or detected when committing further offences), the case would be reopened.

14. Section 30 of the FOIA 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. In order for the exemption to be applicable, information must be held for a specific or particular investigation and not for investigations in general. The Commissioner is satisfied that in this case the withheld information relates to a specific investigation (the theft of the complainant's bike).

15. Section 30(1)(a)(i) may only be claimed by a public authority that has a duty to investigate offences. As a police force, BTP clearly 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)(i) and that the exemption is engaged.

**Public interest test**

16. Section 30(1)(a)(i) is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of the FOIA and whether 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 disclosing the information*

17. The complainant believed that it was in the public interest that he be provided with information that might help him to identify the suspects and even recover his property.

18. The public interest arguments BTP had considered were as follows:

- Disclosure would aid the transparency of police investigations and allow the general public more knowledge and understanding of the kinds of evidence available for specific crimes or for certain types of crimes.

- Disclosure would aid public understanding and appreciation of the limitations of the CCTV evidence and investigative techniques currently available to the police service.

- Specifically in relation to cycle theft crimes, disclosure would inform the public about the nature and commission of these sort of offences.

- In relation to the specific offence in question, disclosure of the images of the suspects could lead to British Transport Police receiving information about the possible identities of persons believed to have committed this currently undetected crime.

*Public interest arguments in favour of maintaining the exemption*

19. The public interest arguments BTP had considered were as follows:

- The risk of the uncontrolled release of potentially evidential material which could not then be withdrawn from the public domain. Suspects have yet to be identified, much less formally accused, prosecuted or convicted for any crime.

- The risk that the material could be used to conduct online or real world 'vigilante'-style efforts against any individuals rightly or wrongly identified as being one of the suspects pictured.

- Potential prejudice to a future trial if a suspect is later identified and prosecuted.

- Media appeals for information or identification of suspects can be a vital tool for the police in the investigation of serious crimes. If this was expanded to images of suspects being available for disclosure in relation to any offence regardless of the circumstances, this would create a lot of 'noise' that would lessen the impact of these existing media appeal circulations and potentially therefore reduce the effectiveness and likelihood of offences being detected.

- All of the above risks would be likely to affect public confidence in the ability of the police to investigate and detect crime.

- There would also be a risk of a detrimental effect on public confidence in the police's handling of evidential material which could make individuals less likely to report incidents or provide witness testimony or other incidents to the police.

*Balance of the public interest*

20. BTP explained to the Commissioner that, in considering the balance between competing public interest arguments, it considered that the public interest fell heavily in favour of preserving the integrity of the evidential process and maintaining the police's existing procedures for assessing whether there is a necessity for disclosing information in the circumstances of a particular crime.

21. The purpose of section 30 is to protect the effective investigation and prosecution of offences. The Commissioner considers that it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.

22. The complainant would doubtless argue that with the active investigation of his complaint effectively having ceased, disclosure would not jeopardise this ability. However, the Commissioner recognises that the disclosure of material obtained in a criminal investigation might be harmful to BTP's general responsibility to manage its investigations effectively. The police do not always disclose images of suspects into the public domain. The decision whether to do so is made on a case by case basis, depending on the nature of the offence, the nature and quality of the evidence and on other operational considerations. The Commissioner accepts that, ultimately, the police should be the arbiter of whether disclosure in individual cases is appropriate. She considers that the unfettered disclosure, under FOIA, of information that may identify suspects, could undermine BTP's present and future investigations and hinder its ability to conduct its policing functions, which would not be in the public interest.

23. The Commissioner considers that the disclosure of the images in this case could also create a perception among the wider public that BTP (or

any police force) is not fully able to control access to information provided to it in the course of an investigation, and thus that communications with the police may prove not to be truly confidential.

24. She considers that it is vital that, where appropriate, BTP is able to give a guarantee of confidentiality to anyone who approaches it about criminal matters. This guarantee extends to suspects who are entitled to expect that, at least until formally charged, information about them will not be disclosed for reasons not directly to do with and necessary for, the police investigation.

25. If the credibility of such guarantees is undermined, the Commissioner considers that the perception that information provided to the police may be disclosed to the world at large might deter people from coming forward and cooperating with prosecuting authorities. This would be likely to disrupt the flow of information and intelligence to BTP and there would be an inevitable impact on its ability to conduct efficient and well evidenced criminal investigations, which would be strongly against the public interest.

26. In the circumstances of this case, the Commissioner has accorded significant weight to the arguments surrounding the public interest in protecting the ability of BTP to conduct effective investigations.

27. The Commissioner also considers that if information about suspects' identities was disclosable under FOIA, this might encourage more victims of crime to try to track down perpetrators. Given the potential this has for, amongst other things, mistaken identity, evidential contamination and the commission of further offences, the Commissioner considers it to be counter to the public interest that such material should be routinely accessible under FOIA. She considers that criminal investigations should be left in the hands of the appropriately trained authorities.

28. The Commissioner understands the complainant's reasons for wanting access to the information in this case, and she can understand his frustration at learning that his case was being closed without anyone being charged or his property being recovered. However, BTP has shared with the Commissioner the measures that it took to investigate the theft and it seems to be the case that the available evidence simply has not resulted in anyone being identified, rather than the police not having taken sufficient steps to investigate the matter.

29. The complainant has voiced a belief that if he could share the photos on social media, someone might be able to identify the suspects. While this is a possible outcome, the Commissioner considers that the complainant over-estimates the likelihood of this course of action resulting in the identification of one or more of the suspects.

30. Taking all of the above into account, the Commissioner is satisfied that the public interest in maintaining the exemption at section 30(1)(a)(i) outweighs the public interest in disclosing the withheld information. It follows that she is satisfied that BTP was entitled to rely on section 30(1)(a)(i) of the FOIA to withhold the information.

**Right of appeal**

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

32. 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.

33. 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 .....**

**Samantha Bracegirdle**
**Senior Case Officer**
**Information Commissioner's Office**
**Wycliffe House**
**Water Lane**
**Wilmslow**
**Cheshire**
**SK9 5AF**