

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 July 2020

**Public Authority:** Chief Constable of Wiltshire  
**Address:** Wiltshire Police Headquarters  
London Road  
Devizes  
Wiltshire  
SN10 2DN

### Decision (including any steps ordered)

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1. The complainant has requested information about possible drug use by a murderer from Wiltshire Police ("WP"). WP initially refused to confirm or deny holding the requested information, citing section 40(5)(personal information) of the FOIA. It later revised this, instead refusing to confirm or deny holding the information citing section 30(3)(investigations and proceedings) of the FOIA. During the Commissioner's investigation it revised its position again, advising that no information is held.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, no information is held. No steps are required.

### Request and response

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3. On 13 November 2019, following earlier enquiries with the WP Press Office, the complainant, who is a journalist, made the following request for information under the FOIA:

*"I would like to know if, during your investigation of the murderer [name redacted], killer of [name redacted], your officers made any attempt to discover if [name redacted] was a \*long-term\* user of psychotropic [sic] drugs, legal or illegal - for example, marijuana, steroids, SSRI antidepressants. If you did so, I would like to know what they found".*

4. WP responded on 25 November 2019 and refused to confirm or deny whether the requested information was held, citing section 40(5) of the FOIA.
5. On 11 December 2019, following an internal review, WP revised its position, instead citing section 30(3) of the FOIA.
6. During the Commissioner's investigation, WP attempted to informally resolve the complaint by liaising further with the complainant 'outside' the terms of the FOIA. It provided him with further details about the case and an explanation which was a summary of its enquiries in respect of any suspected use of drugs by the offender. WP subsequently advised the Commissioner that the complainant remained dissatisfied and wanted confirmation that WP did not proactively investigate long term drug use.
7. WP then revised its position and advised the Commissioner that no information is held.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 4 February 2020 to complain about the way his request for information had been handled. The Commissioner required further information which was provided on 19 February 2020.
9. His grounds of complaint were as follows:

*"I have been trying for some months to obtain information from Wiltshire police. I asked them if they had investigated the past drug use of a convicted killer.*

*... I believe that they have no reason for refusing this information, and ask for your help".*
10. The Commissioner invited the complainant to provide further submissions in respect of his complaint but none were given.
11. In order to expedite the case, the complainant has not been made aware of the change in position regarding the request, ie WP advising that no information is held – albeit its 'informal' dealings with him do point to this position. The Commissioner does not consider that the complainant will be disadvantaged by this as he has already been given details 'outside' of the FOIA and he is also able to appeal this notice via the First-tier Tribunal.
12. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the

requirements of Part 1 of the FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

## Reasons for decision

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### Section 1 – general right of access

13. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to them.
14. The Commissioner is mindful that when she is dealing with a complaint as to whether or not a public authority holds requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.
15. For the avoidance of doubt, the Commissioner has considered in this decision notice whether, on the civil standard of the balance of probabilities, WP holds information about the 'long-term' use of drugs by the named offender.
16. The Commissioner has noted that, whilst making his earlier enquiries with the force's press office (ie 'outside' of the FOIA), the complainant was variously advised that there was no evidence of any drug use. He was dissatisfied with the level of detail provided. He was then given further details, again outside the terms of the FOIA, in an attempt to informally resolve the case; he again remained dissatisfied.
17. Under the terms of the FOIA, the Commissioner asked WP to explain what enquiries it had made in order to reach its conclusion that no information is held. In response to these enquiries she was advised that it had consulted with the senior officer in charge of the investigation. His full rationale had been provided to the complainant 'informally' and this explained why no information was held.
18. The Commissioner has viewed this submission and is satisfied with the explanation provided. However, as there is concern regarding further intrusion into the privacy of those connected with the murder, names have been redacted and the fuller explanation informally offered to the

complainant outside the terms of the FOIA has not been reproduced here.

19. The Commissioner considers that WP contacted the relevant party to consider whether or not any information was held in respect of the request. Based on the information provided the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. She is therefore satisfied that WP has complied with the requirements of section 1 of the FOIA in this case.

**Right of appeal**

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20. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.

22. 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** .....

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