

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 June 2020

**Public Authority:** Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

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1. The complainant has requested information from some withheld chapters of a partly published report from the Metropolitan Police Service (the 'MPS'). The MPS would neither confirm nor deny ('NCND') whether the requested information is held, citing the exemptions at sections 31(3) (law enforcement,) 40(5) (personal information) and 44(2) (statutory prohibition) of the FOIA. During the Commissioner's investigation, it added reliance on section 30(3) (investigations and proceedings) of the FOIA.
2. The Commissioner's decision is that sections 31(3), 40(5) and 44(2) are not engaged. Section 30(3) is engaged but the public interest favours providing a confirmation or denial as to whether the information is held.
3. The Commissioner requires the MPS to take the following steps to ensure compliance with the legislation:
  - issue a fresh response which must confirm or deny whether the information is held; and
  - either disclose the requested information or issue a valid refusal notice compliant with section 17 of the FOIA.
4. The MPS 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.

## Background

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5. The MPS provided the following background information to the Commissioner:

*"The MPS have published a significantly redacted version of Sir Henrique's report:*

*[https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/other\\_information/corporate/mps-publication-chapters-1---3-sir-richard-henriques-report.pdf](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/other_information/corporate/mps-publication-chapters-1---3-sir-richard-henriques-report.pdf)<sup>1</sup>*

*Chapter 1 - entitled 'Independent Review' has been published with very minimum redactions in place.*

*Chapter 2 - Operation Midland (allegations from Carl Beech) most of this report was published with minimum redactions.*

*Chapter 3 - is the investigation into Operation Vincente (an allegation of rape made against Lord Brittan to an alleged incident in 1967) this report was published with redactions.*

*Chapters 4-9*

*Chapter 4 - Operation Bixley, an investigation that sat under the wider Operation Fairbank inquiry into allegations of non-recent sexual abuse by politicians.*

*Chapter 5 - An investigation that sat under Operation Yewtree - the inquiry into allegations of non-recent sexual abuse by celebrities.*

*Chapter 6 - An investigation that sat under Operation Yewtree - the inquiry into allegations of non-recent sexual abuse by celebrities.*

*Chapter 7 - An investigation that sat under Operation Yewtree - the inquiry into allegations of non-recent sexual abuse by celebrities.*

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<sup>1</sup> [https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/other\\_information/corporate/mps-publication-chapters-1---3-sir-richard-henriques-report.pdf](https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/other_information/corporate/mps-publication-chapters-1---3-sir-richard-henriques-report.pdf)

*Chapter 8 – An investigation that sat under Operation Yewtree – the inquiry into allegations of non-recent sexual abuse by celebrities.*

*Chapter 9 – An investigation into allegations of non-recent sexual abuse by a celebrity – not part of Operation Yewtree.*

*The scope of [the complainant]’s complaint refers specifically to Chapters 4-9 which after careful consideration and legal advice, were not published by the MPS”.*

## **Request and response**

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6. On 7 October 2019 the complainant wrote to the MPS and requested information in the following terms:

*“The MPS recently published (4th October 2012) [sic] a heavily-censored version of Henriques’ Review (see here: <https://www.met.police.uk/henriques>). Six of the Review’s nine chapters have been withheld from public scrutiny. I seek the following information:*

*1) Is Jimmy SAVILE mentioned – directly or in passing – in Chapter 4 and, if so, how many times?*

*2) Is Jimmy SAVILE mentioned – directly or in passing – in Chapter 5 and, if so, how many times?*

*3) Is Jimmy SAVILE mentioned – directly or in passing – in Chapter 6 and, if so, how many times?*

*4) Is Jimmy SAVILE mentioned – directly or in passing – in Chapter 7 and, if so, how many times?*

*5) Is Jimmy SAVILE mentioned – directly or in passing – in Chapter 8 and, if so, how many times?*

*6) Is Jimmy SAVILE mentioned – directly or in passing – in Chapter 9 and, if so, how many times?”*

7. On 14 November 2019, the MPS responded. It refused to confirm or deny holding the requested information. It cited the following sections of the FOIA as its basis for doing so: 31(3), 40(5), and 44(2).
8. The complainant requested an internal review on 22 November 2019.

9. The MPS provided an internal review on 18 December 2019, in which it maintained its original position.
10. During the Commissioner's investigation, the MPS added reliance on section 30(3) of the FOIA.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 10 February 2020 to complain about the way his request for information had been handled. His grounds of complaint were as follows:

*"A Freedom Of Information request was made to the Metropolitan Police regarding the Sir Richard Henriques Review into the Met's investigations of "non-recent sexual offences said to have been committed by prominent public people" (often wrongly described by the media as a Review into the Met's handling of the now-infamous Operation Midland). The Met chose to hide from public scrutiny two-thirds of the Review. My request was a simple one: was the name of Jimmy Savile mentioned in the redacted chapters, and if so, how many times was his name mentioned. The Met's response was that by providing this innocuous information "victims" (i.e. 'complainants') would be deterred from reporting their allegations to the police. I reject this excuse".*

12. In an effort to informally resolve the case, the complainant agreed that he would accept the total number of times that the name was mentioned in the six chapters, as opposed to receiving a breakdown of the number of times it occurred in each one. This was put to the MPS but it declined to revise its position.
13. The Commissioner will consider the citing of exemptions below.

### **Reasons for decision**

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#### **Neither confirm nor deny ('NCND')**

14. Section 1(1)(a) of the FOIA requires a public authority to inform a requester whether it holds the information specified in a request.
15. The decision to use a NCND response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.

16. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
17. The MPS has taken the position of neither confirming nor denying whether it holds any of the requested information in its entirety, citing sections 30(3), 31(3), 40(5) and 44(2). The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not the MPS is entitled to NCND whether it holds the information requested by the complainant.
18. Put simply, in this case the Commissioner must consider whether or not the MPS is entitled to NCND whether it holds any information about the occurrence of Savile's name in the six unpublished chapters of the Henriques Report.
19. The Commissioner also notes that, although the section 30 and 31 exemptions from the duty to communicate information are mutually exclusive, the NCND provisions in section 30(3) and 31(3) are not mutually exclusive and can be applied to the same information.

#### **Section 40 – personal information**

20. In respect of the application of section 40, the MPS has advised the Commissioner as follows:

*"Although Jimmy Savile is deceased, in the context of a police investigation, the information requested if held could also 'relate' to living individual(s) who could be identified from information within the chapters which relate to specific investigations. This personal information could relate to victims, suspects, witnesses and other third parties who potentially could be identified from disclosure, as there may be individuals with the ability to link information relating to living individuals..."*

*To confirm or deny whether information is held under the Act would publicly reveal personal information about individual(s). In relation to this request, it would be necessary to disclose personal data to either confirm or deny whether the requested information is held as [the complainant] has requested information relating to specific chapters within Sir Richard Henrique's report that mention Jimmy Savile. Each of the chapters within the report focus on separate investigations. These individual investigations would relate to named individual(s) other than Jimmy Savile for example, victims, suspects, witnesses and other third parties. As mentioned, in*

*general, for the type of information being requested, under the Act, the MPS is not required to confirm or deny whether the information requested is held subject to the provisions of Section 40(5) of the Act. The processing of personal data is governed by legislation and as such, the MPS has a legal obligation to take appropriate steps to protect personal data. A statement confirming or denying via FOIA whether information is held would require disclosing personal data and would impair the ability of the MPS to fulfil its legal obligations”.*

21. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the General Data Protection Regulation EU2016/679 ('GDPR') to provide that confirmation or denial.
22. Therefore, for the MPS to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request the following two criteria must be met:
  - Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
  - Providing this confirmation or denial would contravene one of the data protection principles.

**Would confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?**

23. Section 3(2) of the DPA 2018 defines personal data as:-

*“any information relating to an identified or identifiable living individual”.*

24. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
25. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
26. Clearly the main focus of this request is Jimmy Savile, who is deceased, and the MPS had advised that:

*“Each of the chapters within the report focus on separate investigations. These individual investigations would relate to*

*named individual(s) other than Jimmy Savile for example, victims, suspects, witnesses and other third parties”.*

27. Whilst the Commissioner may accept that a scenario might arise whereby assumptions could be made regarding the 'celebrities' who are the subject of the chapters (for example, if he were mentioned 50 times in one chapter and not at all in another, it could be surmised, rightly or wrongly, that he was well known to that particular celebrity), this is not the question which the Commissioner is considering at this point.
28. The Commissioner is simply considering whether, by confirming or denying that Savile is named in any of the chapters, the MPS would be disclosing the personal data of a third party, ie that such an action would permit reidentification of any known individual in any of the chapters.
29. The Commissioner does not accept that this would be possible. She does not consider that the MPS has demonstrated how an individual might be rendered identifiable as a result of the MPS merely confirming or denying whether Savile's name appears in the cited chapters.
30. For the reasons set out above the Commissioner has concluded that, if the MPS were to confirm whether or not it holds the requested information, this would not result in the disclosure of any third party's personal data. Therefore, the first criterion set out above is not met and the MPS cannot rely on section 40(5B) of FOIA in the circumstances of this case to refuse to confirm or deny whether the requested information is held.

#### **Section 44 – statutory bar**

31. Section 44(1)(a) of the FOIA provides an exemption from disclosure for any information whose disclosure would be otherwise prohibited by another piece of legislation.
32. Section 44(2) of the FOIA provides an exemption from the duty to confirm or deny whether the information is held if the mere act of confirming or denying alone would involve the disclosure of information which was otherwise prohibited by another enactment.
33. When applying section 44(2) a public authority is not restricted to considering only the response it would have to provide, it can also consider whether a hypothetical confirmation or a hypothetical denial would engage the exemption. For example, if the public authority did not hold the information, it should not just consider whether denying the information was held would breach the statutory prohibition, it should also consider the consequence if it had to confirm the information was held.

34. In applying this exemption, the MPS has stated:

*"The exemption has been applied as under the Sexual Offences (Amendment) Act 1992, victims and/or alleged victims of sexual offences are provided lifelong anonymity. The publication or broadcasting of their identities or information that may make their identities known is prohibited under this Act".*

35. The Commissioner understands that this would apply were it possible to identify any victim / alleged victim. However, she has already concluded in her consideration of section 40 above that confirmation or denial would not involve the disclosure of any personal data, ie no third party would be identifiable by confirmation or denial on its own. Accordingly, she does not consider that confirmation or denial would result in the reidentification of any individuals and, as such, she does not find this exemption to be engaged.

### **Section 30 – investigations and proceedings**

36. Section 30(3) of the FOIA provides an exclusion from the duty to confirm or deny whether information is held in relation to any information which, if held, would fall within any of the classes described in sections 30(1) or 30(2) of the FOIA.

37. The MPS did not state to the Commissioner which limb of section 30(1) it was relying on. Based on previous experience of the circumstances in which a police force would cite section 30, the Commissioner would expect to see section 30(1)(a) cited here, and she has exercised her discretion and treated it as having been relied on in this case.

14. Section 30(1)(a) 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 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, or*

*(ii) whether a person charged with an offence is guilty of it".*

38. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1) if it relates to a specific ongoing, closed or abandoned investigation. The information requested (if it is held) must be held for a specific or particular investigation and not for investigations in general. Although the MPS did not state which limb of section 30(1) it was relying on, this premise applies to all parts of sub-section (1).



39. Consideration of section 30(3) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test: whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming or denying whether the public authority holds the information.

40. The MPS has explained:

*"The complainants in chapters 3 to 9 provided information to the MPS for the purpose of a criminal investigation and this should remain confidential. To breach this confidence would not just have an effect on these specific complainants and those who were investigated, but more widely could deter victims from reporting matters to police or others from being as open and honest with police as they otherwise would be. Further, lifelong anonymity is afforded to the complainants under the Sexual Offences (Amendment) Act 1992. This Act precludes the publication of information that might lead to their identification".*

41. Clearly, the chapters which are the subject of this request all concern police investigations, and any reference to Savile within them may have some bearing, however slight, on that particular investigation. Therefore, the Commissioner is satisfied that the requested information, if held, would relate to investigations conducted by the MPS.

42. The Commissioner is therefore satisfied that the exemption provided by section 30(3) of the FOIA is engaged.

#### *Public interest test*

43. Section 30(3) is a qualified exemption. Therefore, the Commissioner must consider the public interest test contained at section 2 of the FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming whether or not the requested information is held.

44. In accordance with her guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.

45. 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 confirming whether or not the requested information is held*

46. The MPS has accepted that:

*"In consideration of the high profile, nature of historic sexual offence investigations there is likely to be an increased public interest in confirmation or denial".*

47. It has also argued:

*"It is in the public interest to confirm or deny if information is held in the interests of furthering public debate, transparency and openness regarding the specific chapters, which would increase public confidence in the MPS by dispelling any rumours and suspicion".*

*Public interest arguments in maintaining the exclusion from the duty to confirm or deny whether the requested information is held*

48. The MPS has argued:

*"... all victims have an expectation of confidence when making allegations of crime to the MPS to be investigated, more so matters related to sexual offences due to the sensitivity of the offence. Information provided to the MPS for a criminal matter should remain confidential.*

*Whilst the MPS have been forthcoming and accountable as possible with regards to publishing some chapters we do not believe it would be in the public interest to confirm or deny the information requested in the pending chapters. We believe the public interest has been met and that there is no current pressing need for disclosure for a policing purpose due to the minimum current public interest".*

And:

*"Whilst [the complainant]'s request relates to 'how many times Jimmy Savile has been mentioned directly or in passing within each specific chapter' as previously mentioned may at first glance appear relatively innocuous in its nature especially as it would only be a figure and Jimmy Savile is deceased. However, the MPS have to look at the wider picture and potentially the overall harm. Confirmation or denial would likely to have [sic] the potential to provide intelligence and insight regarding the six chapters. At first glance providing a figure (if any) per chapter would appear harmless on its own, pieced together would give a fuller picture*

*with other information for example information already in the public domain or information provided at a later date may be of increased significance. The outcome could potentially identify/link the investigations and as a result identify /or misidentify individual(s) such as victims, witnesses, suspects and third parties.*

*The principle of consistency has to be applied, as inconsistent applications of NCND across responses would allow inferences to be drawn [sic]. Most importantly, a lack of consistency would potentially allow exempt information/intelligence to enter the public domain over a period of time. Responses which do not maintain the consistent approach form a pattern, which would also potentially allow the identification of individuals. The importance of the present response does not just relate to what a straightforward confirm or deny response may reveal about the specific individual in question, but what it would reveal about other individuals if compared to future requests.*

*The MPS also need to consider the consequences of disclosure into the public domain given that disclosure is [sic] under the Act is disclosure to the world not just the individual making the request therefore must be suitable for all.*

*Once information is in the public domain, it may be difficult to reverse a disclosure decision, as the MPS would no longer have control of the information disclosed. Harm of this nature would have an incremental effect and may need to be factored into any future disclosures.*

*The MPS must ensure a careful and considered approach when confirming information within the chapters as confirming or denying the number of times Jimmy Savile is mentioned per chapter could give a false impression and provide misleading information, for example if Mr Savile was mentioned 20 times within a particular chapter it could be considered that he was the main feature of that chapter and link with information already available in the public domain when in reality Mr Savile could have only been mentioned as background information or in passing.*

*The MPS have to consider the consequences of confirming or denying especially when disclosure could result in identification relating to matters of sexual offences. Victims of serious sexual offences are given lifelong anonymity under the Sexual Offences Act (Amendment) Act 1992, which provides for lifelong anonymity of the victims and alleged victims of sexual offences, prohibiting the publishing or broadcast of their identity, or information that might*

*make their identity apparent. Any disclosure could result in compromising the identity of victims.*

*It is pertinent to note that the public interest is not what interest [sic] the public but what would be of greater good to the community if disclosed as a whole”.*

#### *Balance of the public interest arguments*

49. The MPS concluded that:

*“The strongest reason favouring confirming or denying whether any information is held is to further openness and transparency.*

*The strongest reason favouring non-disclosure is the need to maintain NCND approach for consistency purposes relating to such matters.*

*On weighing up the competing interests, the MPS finds the public interests favours maintaining the need to confirm or deny whether information is held under FOIA due to the overriding need for consistency”.*

50. In respect of engaging both section 30 and 31 of the FOIA, the MPS advised the Commissioner that:

*“Sir Richard Henrique’s report is a review of previous investigations. The withheld chapters contain specific allegations of sexual offences and some serious sexual offences. The chapters in question have not been disclosed by the MPS.*

*The MPS accept that with a few exceptions requests are to be treated applicant blind and motive blind therefore our cases are processed in that way. However, we do need to take into consideration the fact that once data has been disclosed it is subsequently available to all other requesters. Furthermore, it is considered good practice for public authorities to publish disclosures via a disclosure log so that future requestors can have immediate access to the disclosed data.*

*In light of the above it is right and proper that the MPS give due consideration to the way in which data, that may be innocuous in isolation, can be used by an individual or by interested parties. This is sometimes known as the mosaic effect, and we are concerned that disclosure of the requested data would help individuals to piece together enough detail in order to identify individuals or investigations from within the chapters. When considering this we are mindful that interested parties would have a strong degree of*

*determination and should be considered as motivated intruders rather than individuals with a casual interest”.*

*The Commissioner's view*

51. The purpose of section 30 is to preserve the ability of relevant public authorities to carry out effective investigations. Key to the balance of the public interest in a case where this exemption is found to be engaged is whether confirmation or denial could have a harmful impact on the ability of the police to carry out effective investigations. Clearly it would not be in the public interest to jeopardise the ability of the MPS to investigate crime effectively.
52. The Commissioner initially notes that some of the arguments provided by the MPS relate to the actual provision of information, if held, which is not what is currently being considered. They have therefore been afforded limited weight in her considerations.
53. It is also noted that the MPS has provided speculative arguments which focus largely on the requirement of further information being disclosed in the future, which might allow for the parties in the chapters to be identified. She accepts that such identification would not be in the public interest and could be of considerable harm to both the parties and the police service more generally. However, that is not the issue which is under consideration here. All that is being considered is whether confirming or denying that Savile is mentioned in any of the reports would prejudice the MPS's investigations. Any related future requests would need to be considered on their own merits and in conjunction with any information which has already been made available to the public.
54. The Commissioner accepts that disclosure of the actual figures for each report, even were this zero, could allow for assumptions to be made regarding the identities of the 'celebrities' in each report. For example, as mentioned above, were Savile mentioned many times in one chapter and not at all in any other, then it might be inferred (rightly or wrongly) that the subject of that report had associated with Savile at some point. However, this inference would only be based around information in the public domain and any alleged association between the parties. Furthermore, it could actually be a chapter about a party which is actually unknown to the media. Alternatively, Savile may be mentioned the same amount of times in every chapter as they are all drafted in the same manner and have some generic opening wording or conclusions which refer to him in some way; this would not reflect in any association between the parties. Furthermore, he may not be referred to at all, which may imply that he either did not associate with any of the parties or that his connection was not considered relevant to the chapter and he is not named.

55. The Commissioner considers that, in the absence of any actual context, it is not possible to draw any accurate conclusions as to the identities of particular individuals from knowing whether or not Savile is actually named in any of the unpublished chapters. And, as already determined earlier in this notice, she does not consider that any personal data would be disclosed by providing a confirmation or denial in this case.
56. The complainant has not been made aware of the late citing of this exemption and, therefore, the Commissioner has no arguments from him to consider. However, it is noted that there is a general public interest in transparency running through the FOIA, which is always an argument for disclosure.
57. 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, including any prejudice to future investigations and proceedings.
58. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in the MPS confirming or denying whether the requested information is held. She has also considered whether such a confirmation or denial would be likely to harm the investigations concerned, which would be counter to the public interest, and what weight to give to these competing public interest factors.
59. Whilst, on the face of it, the public interest in confirmation or denial in this case is limited, as knowing whether or not Savile is mentioned in any of the chapters would not seem to disclose anything which would appear to be of any particular value to the public, the Commissioner notes that there is always a public interest in transparency and accountability in relation to information held by public authorities. As a counter to this, whilst there is usually an inherent need to protect police investigations, the Commissioner does not consider there is any realistic harm which could be caused on this occasion. This is because the subjects of the chapters are unknown and, were the MPS to confirm or deny whether Savile's name appears in any of the chapters, the Commissioner does not consider that this would serve to either identify any of the parties or allow for any accurate conclusions to be drawn about the content of any chapter.
60. Whilst the Commissioner understands the inherent need to protect police investigations, she does not agree that confirmation or denial in this case would have any impact on the investigations referred to in the report, or on other investigations. Consequently although there is only limited public interest in favour of confirmation or denial, she finds that the arguments in support of transparency are stronger than those in

maintaining the exemption. The MPS was therefore not entitled to rely on section 30(3) to NCND that it held the requested information.

### **Section 31 – law enforcement**

61. Section 31(3) of the FOIA excludes a public authority from complying with the duty to confirm or deny in relation to information if to do so would, or would be likely to, prejudice any of the functions in sections 31(1).
62. The MPS did not stipulate which function it is relying on but its arguments seem to relate to 31(1)(a) (the prevention or detection of crime) so the Commissioner considers this to have been its intention.
63. When considering a prejudice based exemption such as section 31, the Commissioner will:
  - identify the applicable interests within the relevant exemption;
  - establish the nature of the prejudice, the likelihood of it occurring and that the prejudice claimed is real, actual and of substance; and
  - examine whether there is a causal link between confirming / denying and any prejudice claimed.

64. In its internal review, the MPS advised the complainant:

*"... confirming or denying whether information is or is not held would result in an adverse effect, by placing investigative information into the public domain, which would compromise the police service function in the prevention and detection of crime".*

65. It explained:

*"When a member of the public reports an allegation of crime to police, they do so upon the understanding that the allegation will be treated in confidence and only disseminated to further the police investigation or related proceedings. Should the MPS disclose information about the unpublished chapters of Sir Richard's report, this would be likely to have an adverse effect upon the Met's relationship with the complainants in these cases and those that were investigated. The release of this information could also deter victims from reporting matters to police and/or deter others from being as open and honest with police as they otherwise would be. The adverse effect on the general public's relationship with police would result even if no victim, suspect or third party associated with each reviewed investigation is identified.*

*When considering the harm of confirmation or denial, the MPS has to be mindful that to release information that was obtained as part of a police investigation might reveal to others how investigations*

*are conducted and are likely to be conducted in the future. If the requested information was confirmed or otherwise, the methods, tactics and strategies used to deal with matters of this nature would need to be changed as criminals would then know what methods they should use to evade detection.*

*The publication of sensitive intelligence or other material could prejudice other investigations and thereby compromise the safety of the public.*

*The publication of information that could reveal operational methodology could have a prejudicial impact on the investigation of crime generally.*

*The MPS will only disclose information concerning investigations when it considers that no harm will be caused to the investigative process or any individual involved in an investigation. The Review considers that the public interest in this matter has been met by the publication of official MPS press statements and parts of the Henriques Report which it considers would not be harmful to place into the public domain”.*

66. The MPS advised that it believed that confirmation or denial in this case would cause “*considerable harm*” which would effect its relationships with victims and witnesses of crime.

67. The MPS made reference to the ‘mosaic effect’, saying that:

*“Disclosures which appear harmless, pieced together with other disclosures can be used in a ‘mosaic effect’ to give a fuller picture to those wishing to evade detection and valuable intelligence to criminals.*

*This ‘cumulative prejudice’ or the ‘mosaic effect’ whereby the information requested may be of increased significance when combined with other information obtained through other means and/or at a later date”.*

68. It also referred to the ‘precedent effect’ advising that:

*“ ... some requests can set a precedent, ie complying with one request would make it more difficult to refuse requests ... for similar information in the future. It is therefore appropriate to consider any harm that would be caused by combining the requested information with the information a public authority could be forced to subsequently provide if the current requested was complied with”.*



69. The MPS also explained the difference between the chapters of the report which it had disclosed and those which it continued to withhold. It said that the chapters which had been disclosed related to allegations which were proven in court to have been fabricated. Regarding chapters 4 – 9 (which continue to be withheld), it advised that minimal information had been placed in the public domain about the investigations in question, and that it did not intend to publish them as they: “... *contain significant amounts of protected personal data about each complainant, and those they make allegations against*”.
70. Whilst the chapters themselves clearly relate to the prevention or detection of crime, it is for the Commissioner to consider here only whether confirmation or denial as to whether Savile’s name is mentioned in any of them would in itself harm the law enforcement process.
71. As with her consideration in respect of section 30 above, the Commissioner can see potential for harm, should further requests be made and small pieces of information be requested which could have the potential to gradually erode away at the content of the chapters and allow for inferences or conclusions to be drawn. However, she does not consider that there is anything currently in the public domain which would permit any form of reidentification of the parties concerned based purely on an acknowledgement as to whether or not Savile is mentioned in any of the chapters requested.
72. In view of the context, the mere mention of Savile in any of the chapters does not make it possible to conclude with any degree of certainty that any party either referred to Savile in a police interview or had a personal association with him. There could be a myriad of reasons why Savile may be referred to in police investigations involving this type of alleged crime (such as, for example, citing certain investigative approaches adopted in the Savile case).
73. On this basis, the Commissioner is not satisfied that the MPS has demonstrated that that the prejudice which it says would, or would be likely to occur if confirmation or denial was given, is realistic, actual or of substance. Accordingly, she finds that section 31(3) is not engaged.

## Right of appeal

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74. 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)

75. 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.

76. 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**