

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 September 2022

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

#### **Decision (including any steps ordered)**

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1. The complainant requested 12 pencil sketches drawn by convicted killer Christopher Halliwell.
2. Wiltshire Police refused to provide the requested information, citing sections 30(1) (investigations and proceedings) and 38(1) (health and safety) of FOIA.
3. The Commissioner's decision is that Wiltshire Police was entitled to rely on section 30(1)(a) to withhold the sketches.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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5. On 22 September 2021, the complainant wrote to Wiltshire Police and requested information in the following terms:

"I am writing to make a request for information under the terms of the Freedom of Information Act 2000.

The information I am seeking are the 12 pencil sketches drawn by convicted killer Christopher Halliwell and seized in 2011.

I am aware of the request previously made to you in similar terms which was refused on internal review but believe that the information should be disclosed”.

6. The request was made using the 'whatdotheyknow' website.
7. Wiltshire Police responded on 11 October 2021. It refused to provide the requested sketches, citing sections 30(1) (investigations and proceedings) and 38(1) (health and safety) of FOIA as its reason for doing so.
8. Following an internal review Wiltshire Police wrote to the complainant on 29 October 2021 maintaining its position.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 15 November 2021 to complain about the way his request for information had been handled.
10. He disputed that the exemptions at sections 30 and 38 apply in this case, but considered that, if found to be engaged, the public interest favours disclosure.
11. The Commissioner wrote to the complainant addressing the issues he has raised. The complainant was dissatisfied with the Commissioner's observations, and requested a decision notice in this case.
12. During the course of the Commissioner's investigation, Wiltshire Police confirmed its reliance on sections 30 (investigations and proceedings) and 38 (health and safety).
13. In its submission, Wiltshire Police acknowledged that there is "an abundance of information surrounding this case already in the public domain".
14. The analysis below considers Wiltshire Police's application of section 30(1) of FOIA to the withheld information. If the Commissioner considers that it has been incorrectly cited, he will then consider its application of section 38(1) to the same information.
15. For the purposes of this decision notice, the Commissioner will refer to the withheld information as 'the sketches'.

### **Reasons for decision**

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

16. Section 30 of FOIA states that:

“(1) 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...”.

17. The Commissioner considers that the phrase ‘at any time’ means that information can be exempt under section 30(1) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.

18. Consideration of section 30(1) 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. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Is the exemption engaged?**

19. The first step is to address whether the requested information falls within the class specified in section 30(1) of FOIA.

20. In its correspondence with the complainant, Wiltshire Police told him:

“Although every effort should be made to release information under the Freedom of Information Act, to disclose this type of information would prejudice any investigations, whether current or future”.

21. In its submission to the Commissioner, Wiltshire Police acknowledged that it has been widely reported that it is believed there may be other victims of Christopher Halliwell.

22. In that regard, it told the Commissioner that Wiltshire Police have a duty and obligation to protect the integrity of ongoing and future investigations.

23. In his guidance<sup>1</sup>, the Commissioner states:

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

“Section 30 is a class based exemption. Information simply has to fit the description contained in section 30 to be exempt. There is no need for the information to prejudice, for example, the investigation or set of proceeding that it was obtained for”.

24. He also states:

“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. However, the purpose of the investigation must be to establish whether there were grounds for charging someone, or if they have been charged, to gather sufficient evidence for a court to determine their guilt. Section 30(1)(a) will still protect information if a police investigation fails to establish that an offence has been committed, or concludes that there is insufficient evidence to charge anyone”.

25. The Commissioner is satisfied that the withheld information is held by Wiltshire Police for the purpose of an investigation of the type described in section 30(1)(a) of FOIA. He is therefore satisfied that the exemption provided by section 30(1)(a) is engaged.

### **Public interest**

26. Section 30(1)(a) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

27. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the disclosure of the requested information could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.

### **Public interest arguments in favour of disclosure**

28. The Commissioner acknowledges that the complainant considers that there is a public interest in determining whether Halliwell is responsible for other serious crimes. He told the Commissioner:

“Disclosure may assist in linking Halliwell to other crimes or help to disquiet fears that these matters have not been appropriately investigated”.

29. He also considered that disclosure will serve the public interests in transparency and accountability.

30. Wiltshire Police recognised that disclosure of the sketches would lead to a better-informed public and promote trust by demonstrating openness, transparency and accountability, telling the complainant:

“This is especially important in relation to high profile and emotive cases”.

### **Public interest arguments in favour of maintaining the exemption**

31. Arguing against disclosure Wiltshire Police told the complainant:

“... there is a very strong public interest in safeguarding the integrity of police investigations, especially regarding a very serious and high-profile case. This, in turn, would reassure the public that the police are highly secure and would not disclose any information to the world, not just the requester, which may jeopardise any investigation”

and

“Disclosing this information would provide to the world, not just the requester, information which may prejudice current or future investigations into a high-profile case. This would highlight that Wiltshire Police does not take the security and integrity of its investigations seriously, which would cause a large drop in public confidence. This would lead to people not wanting to report incidents and engage with police investigations”.

32. Mindful of the nature of the requested information, Wiltshire Police told the Commissioner that, if the sketches were disclosed, the scenes depicted “could become the focus of public/media attention”. It argued that this would have a negative impact on current or future investigations.

## **Balance of the public interest**

33. In accordance with his 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.
34. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations.
35. In reaching a conclusion on the balance of the public interest in this case, the Commissioner has considered the public interest in Wiltshire Police disclosing the requested information. The Commissioner has also considered whether disclosure would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.
36. He has also taken into account that, while the existence of the sketches is not in dispute, their exact nature is not in the public domain.
37. The Commissioner recognises that there is a general public interest in promoting transparency and accountability. FOIA is a means of helping to meet that public interest, so it must always be given some weight in the public interest test.
38. The Commissioner recognises that, in addition to the general public interest in transparency and accountability, and any public interest arising from the issue concerned, there may be a specific public interest in disclosing the information in question. In this case, he is aware that the complainant referred to the public interest in determining whether Halliwell is responsible for other serious crimes.
39. The Commissioner acknowledges the importance of the public having confidence in public authorities that are tasked with upholding the law. He recognises that the public interest will be served by disclosures which serve that purpose. In this case, he also recognises that disclosure of the requested information would meet the public interest in transparency and accountability of Wiltshire Police.
40. However, while noting the public interest arguments in favour of disclosure, the Commissioner is mindful that the purpose of section 30 is to protect the effective investigation and prosecution of offences. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.
41. The Commissioner states in his guidance:

“When considering the public interest in maintaining the exemptions it is necessary to be clear what they are designed to protect. 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”.

42. He also addresses the situation where a criminal offence is unsolved, recognising that an investigation may be reopened, for example as a result of new witnesses coming forward or advances in forensic techniques.
43. In the circumstances of this case, the Commissioner has accorded greater weight to the arguments surrounding the public interest in protecting the ability of Wiltshire Police to conduct effective investigations.
44. He accepts that it would not be in the public interest to disclose information that would prejudice the investigatory and prosecution process by undermining the investigation and detection of criminal activities.
45. This is the very activity which the exemption is formulated to protect.
46. Taking all the above into account and having given due consideration to the arguments put forward by both parties, while the Commissioner accepts that disclosing the withheld information would be likely to promote transparency, he considers that the public interest in disclosure is outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined.
47. The Commissioner is therefore satisfied that Wiltshire Police was entitled to rely on section 30(1)(a) of FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
48. As the Commissioner has concluded that this exemption is properly engaged in respect of the withheld information in its entirety, he has not considered the other exemption cited.

## **Right of appeal**

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49. 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: 0203 936 8963  
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)

50. 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.
51. 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 .....**

**Laura Tomkinson  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
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SK9 5AF**