

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 March 2022

Public Authority: Chief Constable of Thames Valley Police
Address: Police Headquarters
Oxford Road
Kidlington
Oxfordshire
OX5 2NX

Decision (including any steps ordered)

1. The complainant requested information from Thames Valley Police relating to an incident involving the Kimblewick Hunt.
2. Thames Valley Police withheld the information, citing sections 30(1) (investigations and proceedings) and 40(2) (personal information) of FOIA.
3. The Commissioner's decision is that Thames Valley Police was entitled to rely on section 30(1)(a)(i) to withhold the information.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 16 March 2021, the complainant wrote to Thames Valley Police and requested information in the following terms:

"I understand that the conclusion from the investigation into the Kimblewick Hunt chasing and killing a fox in December 2020 is that no further action is being taken by the [sic] yourselves.

It is clearly in the public interest for the Thames Valley Police to make known the detail of the investigation and why no prosecution

has occurred, given the damning video footage of the incident which is easily available to view.

The police clearly have a difficult job, particularly during the Covid pandemic, however your credibility is at stake and a comprehensive review of the decision making process will help you retain public confidence.

I look forward to hearing from you with the requested information, namely details of the investigation and how Thames valley police came to a no action decision”.

6. Thames Valley Police responded on 30 March 2021. It refused to provide the requested information, citing the following exemptions:
 - section 40(2) (personal information);
 - section 30(1) (investigations and proceedings conducted by public authorities).
7. It did, however, confirm that a statement from Thames Valley Police clearly stated that the Crown Prosecution Service (CPS) declined to prosecute the case. It provided a relevant link.
8. Following an internal review, Thames Valley Police wrote to the complainant on 30 April 2021 maintaining its original position.

Scope of the case

9. The complainant contacted the Commissioner on 5 May 2021 to complain about the way his request for information had been handled.
10. He told the Commissioner:

“It is in the public interest that the reasons for no action are explained by the police as clearly the law was broken”.
11. In his correspondence, he told the Commissioner that he understood that Thames Valley Police was citing three exemptions. In addition to sections 30 and 40, he referred to section 31 (law enforcement) of FOIA.
12. During the Commissioner’s investigation, Thames Valley Police confirmed its application of sections 30(1) and 40(2) in this case. The Commissioner has found no reference to section 31 in its correspondence.

13. During the course of his investigation, Thames Valley Police provided the Commissioner with details of the information within the scope of the request.
14. Thames Valley Police considers that all the information within the scope of the request is exempt by virtue of section 30(1), specifically section 30(1)(a)(i). It confirmed that it also considers that some of the information is exempt by virtue of both sections 30(1) and 40(2).
15. The analysis below considers Thames Valley Police's application of section 30(1) to the withheld information. If the Commissioner considers that it has been incorrectly cited, he will then consider whether section 40(2) applies.

Reasons for decision

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)(a)(i) 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)(a) of FOIA.

20. Explaining its application of section 30(1)(a) in this case, Thames Valley Police told the Commissioner:

“This was a criminal investigation into an offence under Section 1 of the Hunting Act 2004”.

21. The Commissioner has issued guidance on section 30¹ which states that section 30(1)(a) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence.
22. The Commissioner’s guidance describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the 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...”.

23. As a police force, Thames Valley Police has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. It therefore has the power to carry out investigations of the type described in section 30(1)(a)(i) of FOIA.
24. The Commissioner is satisfied that the withheld information was held in relation to a specific investigation conducted by Thames Valley Police of the type described in section 30(1)(a)(i) of FOIA. He is therefore satisfied that the exemption provided by section 30(1)(a)(i) is engaged.

The public interest test

25. Section 30(1)(a)(i) 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.

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

26. 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.
27. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations.
28. In applying the public interest test in a case such as this, where this exemption is found to be engaged, the Commissioner must consider 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, and in turn, increase the risk of harm to members of the public from offenders.

Public interest arguments in favour of disclosure

29. The complainant argued that it was in the public interest to disclose the requested information. He told the Commissioner:

“The key is the decision making process of TVP [Thames Valley Police], how did they decide not to proceed given the evidence available”.

30. Thames Valley Police acknowledged a general public interest in being open and transparent “in how it carries out its role of protecting the communities it serves”.

31. It told the complainant:

“The hunting debate continues to be a passionate one and it may provide reassurance if information surrounding the police investigation were provided in this respect”.

Public interest arguments in favour of maintaining the exemption

32. Arguing in favour of maintaining the exemption, Thames Valley Police argued that there is a strong public interest in safeguarding the police investigation process in circumstances similar to this case which do not result in any criminal action. Thames Valley Police also argued that it was imperative that the Police and CPS are able to maintain confidentiality between communications, describing it as “an essential part of the investigation process”.

33. It considered that disclosure of the data held in connection with this investigation:

“... would undermine the Police’s investigation process and the process of gaining legal advice from the CPS. It would also

undermine the relationship we have with victims, witnesses and suspects when a case is not proceeded to criminal trial as they have no expectation that the material will be made public. As such this would significantly undermine the reassurance we provide to individuals who assist us with criminal investigations. This would have the broader effect of undermining the future relationship the Police have with the community when it comes to criminal investigations and their understanding and expectations in respect of police disclosure”.

34. Thames Valley Police also told the Commissioner:

“Witnesses are a vital part of the prosecution process and it is crucial they are able to provide statements without the fear that one day they may be placed in the public domain. Individuals would be less likely to come forward, or co-operate with the police if they believe information they provide to the police will be disclosed in circumstances outside of the judicial process”.

35. Thames Valley Police told the Commissioner that the Police have provided media statements to inform the public on the steps taken in connection with this incident and also informed them why no criminal charges were being progressed.

36. It considered that those statements provided sufficient information to manage the public’s interest in this specific case.

Balance of the public interest

37. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in Thames Valley 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.

38. As set out above, 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.

39. Set against this, the Commissioner recognises the importance of the public having confidence in public authorities that are 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.

40. The Commissioner also recognises the public interest in promoting transparency, accountability and public understanding with regard to decisions made by public authorities.
41. In addition, he recognises that there may be a specific public interest in disclosing the information in question.
42. The withheld information comprises information about the incident that is the subject of this request. The Commissioner accepts that the subject matter – hunting - is a sensitive issue.
43. In his guidance, the Commissioner acknowledges that the stage an investigation or prosecution has reached will have a bearing on the extent of any harm caused by the disclosure.
44. The Commissioner acknowledges that the investigation did not lead to someone being charged.
45. The Commissioner has also taken into account that Thames Valley Police's arguments relate to the investigatory process that was followed in respect of the investigation, as well as to the specific investigation itself.
46. In that regard, the Commissioner does have concerns that disclosing information considered as part of a criminal investigation, which identifies individuals who assisted with the investigation, could create a perception among the wider public that sensitive information about criminal investigations may be disclosed to the world at large, even where the evidence has not resulted in a prosecution. He considers that there is a real chance this may deter people (including witnesses, complainants and suspects) from coming forward and cooperating with prosecuting authorities, particularly where criminal offences have been alleged. There is a very significant public interest in avoiding that outcome and it is a factor of some weight in favour of maintaining the exemption in this case.
47. Taking all the above into account, and having given due consideration to the arguments on both sides, 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.
48. The Commissioner is therefore satisfied that Thames Valley Police was entitled to rely on section 30(1)(a)(i) of FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.

49. 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

50. 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

51. 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.
52. 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
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