

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 March 2023

Public Authority: Chief Constable of South Yorkshire Police
Address: South Yorkshire Police Headquarters
Carbrook House
Carbrook Hall Road
Sheffield
S9 2EH

Decision (including any steps ordered)

1. The complainant has requested various sets of information held by South Yorkshire Police (SYP) about an investigation into a serious offence which was committed in 2018.
2. Whilst SYP provided information in response to part of the request, it refused the remaining elements, citing section 30(1)(a) – investigations and proceedings, and section 40(2) – personal data of third parties, of FOIA.
3. The Commissioner's decision is that SYP is entitled to rely on section 30(1)(a) of FOIA as its basis for refusing all parts of the request (with the exception of that part where it has already released the information).
4. The Commissioner does not require further steps.

Request and response

5. On 11 May 2022, the complainant sent two emails to SYP requesting information in the following terms:

"1) in date order the number of communications SYP received from the public (directly or through some external organisation giving to SYP) after the initial appeal for information about [name redacted - to be referred to as Person A within this decision notice] SYP made when his photograph was publicly disclosed in 2018? And:

- (a) how many of (1) directly claimed to have seen [Person A] plus gave a location as to his whereabouts?
 - (b) of all instances in (1) that were not received via some external organisation could you break down the means of communication used into the following categories: social media, telephone, email, postal, other?
 - (c) In date order the number of all instances in (1) that were received via some external organisation (e.g. Crimestoppers or other public authority)?
- 2) Does [Person A] have any other birth names which have not been given to the public?
- 3) the photograph of [Person A] which your organisation has circulated via your social media channels and which has been used in appeals elsewhere was disclosed to the public in 2018. What date was it:
- (a) taken?
 - (b) first entered into police records?
- 4) what police force took the photograph in (3) (as in, used a camera to take his picture)?
- 5) In a [area name redacted] news article on 7th September 2018 appealing for information about [Person A], [area name for Police redacted] link [Person A] to [area name redacted]. In an article from 17th September 2018, it is repeated that [Person A] has links to [area name redacted]. Warnings were also given by authorities in 2018 not to help him evade authorities. In an article from 2019 the then – SIO is quoted to have said: "We began looking for [Person A] on 24 August, 2018 [...]." Can you provide

- (a) What is the date (s) your investigations learned information which gave them confidence [Person A] was or could be in [area name] in 2018?
 - 6) In the 2019 article mentioned in (5) the then - SIO is quoted to have said "As soon as we became aware of [Person A], and wanted to find and speak to him, the relevant authorities were put on notice to assist us in tracing him." Can you provide:
 - (a) what date did SYP become aware of [Person A] as indicated in the quote?
 - (b) What date did SYP want to speak to him as indicated in the quote?
 - (c) What date(s) were relevant authorities sent such notices as indicated in the quote?
 - (d) What "relevant authorities" are being referred to specifically as indicated in quote?
 - 7) in the same article as in (6) the then – SIO is also quoted as having said "Checks have been done at ports and airports and continue to be refreshed as part of our ongoing work[...]". Can you provide:
 - (a) the dates of the "checks" that have been done that the then – SIO was referring to, up to and including the date of this correspondence
 - 8) the dates of all appeals SYP made in relation to the investigation [Person A] is wanted in connection with?
 - 9) The date(s) people in [area name redacted] were warned (by visitation) not to give him assistance in evading authorities?"
6. SYP responded on 14 June 2022; whilst it provided the complainant with the information relevant to part 8 of the request, SYP advised that it was refusing the remaining parts of the request under section 40(2), and section 30(1)(a), of FOIA. SYP also confirmed that it had considered the public interest in respect of that information subject to section 30(1)(a), and considered that this favoured maintaining the exemption.
 7. At the internal review stage, SYP maintained its position to refuse all parts of the request (with the exception of part 8, where it had already released the information). However, SYP further clarified that it was refusing parts 1, 5, 6, 7 and 9 of the request under section 30(1), and parts 2, 3 and 4 of the request under section 40(2), of FOIA.

Scope of the case

8. The complainant has not raised concerns about the information which was released in response to part 8 of their request (which was for information that would already have been known to the public).
9. The Commissioner understands that the complainant has received some information from SYP about matters to which the request relates; however, this was provided to the complainant outside the scope of the FOIA, and after SYP had taken into account their personal circumstances.
10. The complainant has stated that they require all the information that they have requested to be released under FOIA, as they believe such information should be in the public domain.
11. The Commissioner will firstly decide whether (with the exception of part 8 of the request) SYP is entitled to rely on section 30(1)(a) of FOIA, as its basis for refusing any parts of the complainant's request.
12. If necessary, the Commissioner will then go on to consider SYP's application of the exemption at section 40(2) of FOIA to the request.

Reasons for decision

Section 30 – Investigations and proceedings

13. Section 30(1)(a) of FOIA states:

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose 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.”
14. The Commissioner considers that the phrase “at any time” means that information can be exempt if it relates to a specific ongoing, closed or abandoned investigation.
15. The exemption at section 30(1)(a) is also subject to the public interest test.

Is the exemption engaged?

16. 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.
17. The Commissioner accepts that SYP, as a police force, has a duty to investigate offences. Furthermore, having taken into account all of the available information, he is satisfied that all of the withheld information is held by SYP for the purpose of a live, ongoing investigation that is being conducted with a view to ascertain whether a person should be charged with an offence.
18. As a result, the Commissioner is satisfied that the exemption at section 30(1)(a) is engaged in respect to all parts of the request that are under consideration.

Public interest test

The complainant's position

19. The complainant has argued that there is a public interest in providing accurate and quality information about such a serious offence; they state that disclosure would allow media outlets and similar to correct any misleading statements that may be in the public domain about the matter.
20. The complainant has also said that they believe that the information they have requested is descriptive rather than operationally sensitive, and that there is no risk associated with the disclosure.

SYP's position

21. SYP has said that it recognises that there is a public interest in making sure, where possible, that there is transparency in work carried out by the police. In addition, SYP says that, generally speaking, the release of details about an investigation may encourage individuals who have not previously come forward to contact the police with information.
22. However, SYP has gone on to say that, in this case, it believes that disclosure of the withheld information could not only impede the investigation, but could also deter individuals and communities from coming forward with crucial evidence. SYP has argued that if individuals were fearful that any of the information that they provide would not be treated in confidence, and were deterred from sharing information as a result, it could jeopardise both the police's relations with the public, and also further lines of enquiry in respect of this, and other investigations.

23. SYP has said that the request relates to an ongoing investigation into an extremely serious crime and the police should not take any action that puts such an investigation into jeopardy of failing, or which might place any member of the public in danger.
24. SYP has also argued that as Person A is not yet in custody, the release of information into the public domain about the investigation would provide both them, and their associates, with details of the lines of enquiry pursued, both geographical and otherwise; SYP claims that this could not only endanger the success of the police locating them, but also the future success of securing a conviction.
25. SYP maintains that, on balance, there is no public interest in the relevant investigation, or any other investigation, being hampered in a way that would endanger members of the public, officers, the success of the investigation, and increase the risk of not bringing a perpetrator to justice. It states therefore that the public interest lies in favour of withholding the information in this instance.

The Commissioner's view

26. The Commissioner recognises the importance of the public having confidence in those public authorities who are tasked with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining actions and decisions which have been taken in relation to a particular case.
27. In this instance, the Commissioner accepts that the release of the requested information would aid transparency and increase accountability, and could add to the public's knowledge of the actions taken by SYP in respect of an investigation into a very serious crime.
28. Furthermore, the Commissioner notes that the investigation concerns a crime that was committed in 2018, and despite a subsequent public appeal for information about Person A, their whereabouts remain unknown, and the case is ongoing. Therefore, there is some weight that can be attached to the public interest in understanding how the investigation has been managed to date, and what efforts have been made by the police to locate Person A.
29. The Commissioner accepts that the request relates, in the main, to information that is already in the public domain, as claimed by the complainant. However, this does not necessarily mean that this lessens the risk of any prejudice which may be caused to the investigation, should further information be released.

30. It is the Commissioner's view that the requested information is more than descriptive data, as has been suggested by the complainant. It would reveal details of the level of the response received by the police from the public appeal for information, and it will also indicate the level of police activity that was likely to have then been carried out in response to that appeal. It also provides intelligence about when, how and where the police were operating, their response to other information they have obtained, and their activities in certain geographical areas.
31. In addition, the information requested that directly relates to Person A will disclose intelligence that SYP hold about them in relation to the investigation. Even the release of information that may be held about the timing and source of a photograph used in a public appeal for Person A would, in the Commissioner's view, reveal details that have some relevance to the investigation, and any future action that may be taken in relation to Person A.
32. The Commissioner considers it to be reasonable for the police to release information into the public domain about criminal matters; it is in the public interest, and it will assist them with their investigations and to allow them to fulfil their obligations.
33. However, any disclosure of information about an offence, or alleged offence, or similar, should be restricted to that which is regarded to be necessary, and where it will not prejudice the investigation, and future prosecution, or cause harm to any person. Where the release of information into the public domain includes the personal information of an individual, disclosure beyond that which is necessary for the purpose of the investigation not only risks breaching data protection legislation (if the release of personal information is found to be unlawful), but could also prejudice the investigation itself, and any future prosecution of an alleged offender.
34. The Commissioner regards it to be pertinent to his consideration of the balance of the public interest in this case that the release of the withheld information will provide not only the public, but also Person A, and their associates, with an insight into the investigation which was, and still is, ongoing. It will tell them what was happening with the investigation at a particular point in time, the level of response from the public about their possible location, how active SYP was in relation to the efforts being made to locate their whereabouts, and what intelligence sources SYP were receiving and using to assist with the investigation.
35. The Commissioner considers there to be a real risk that the release of such information could assist Person A with evading arrest, even at the present time, and could also cause prejudice to any future prosecution case.

36. The Commissioner has given consideration to the information which is already in the public domain about the relevant case. He is satisfied that this goes some way in meeting the public interest in understanding the position of the investigation without creating a risk of harm to the process, or any one person. Should any member of the public be concerned about the conduct of the investigation, or the accuracy of information that is being published, then there are appropriate mechanisms available in which to raise concerns.
37. The Commissioner, having considered the complainant's representations in full, has sympathy for their position. However, there is a very strong public interest in protecting the law enforcement capabilities of a police force, and he considers that appropriate weight must be afforded to the public interest inherent in the exemption – that is, the public interest in avoiding prejudice to the prevention or detection of a crime.
38. The Commissioner is satisfied that the disclosure of the requested information could provide useful intelligence to Person A and their associates about how the investigation is being conducted. Furthermore, the release of any of the withheld information could, in the Commissioner's opinion, pose a real risk to an investigation which remains live and ongoing, and also future action that may be taken.
39. The Commissioner has therefore decided that the public interest in further transparency about how SYP is conducting an investigation does not outweigh the risks associated with disclosure in this instance.
40. The Commissioner concludes that SYP is entitled to rely on the exemption at section 30(1)(a) of FOIA as its basis for refusing all of the request.
41. Whilst it may be the case that SYP has a legitimate basis for relying on section 40 as its basis for refusing parts 2, 3 and 7 of the request, given that the Commissioner has already found that SYP is entitled to rely on section 30(1)(a) in respect of the request in its entirety (with the exception of part 8), he does not regard it to be necessary to consider the application of section 40(2) of FOIA to any parts of the request.

Right of appeal

42. 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

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

43. 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.
44. 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

Suzanne McKay
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