

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

### **Decision notice**

**Date:** 7 July 2023

**Public Authority:** Chief Constable of South Wales Police

**Address:** Cowbridge Road  
Bridgend  
Mid Glamorgan  
CF31 3SU

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

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1. The complainant requested a copy of a final report produced by South Wales Police (SWP) that relates to Operation Dolomite.
2. SWP initially refused the request, citing a number of exemptions under FOIA; section 30(1) – investigations and proceedings, section 31(1) – law enforcement, section 38(1) – health and safety, section 40(2) – personal information, section 42(1) – legal professional privilege.
3. At the internal review stage, SWP revised its position, confirming it was now relying solely on section 14(1) of FOIA as its basis for refusing the request.
4. The Commissioner's decision is that SWP has failed to provide sufficient evidence to support its claim that section 14(1) is engaged.
5. In addition, as SWP failed to issue a refusal notice within 20 working days, the Commissioner has found a breach of section 17(1) of FOIA.
6. The Commissioner requires SWP to take the following step to ensure compliance with the legislation.
  - Issue a fresh response to the request that does not rely on section 14 of FOIA.

7. SWP must take this step 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.

## **Request and response**

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8. On 1 December 2021, the complainant wrote to SWP and requested information in the following terms:

"I would like to request the final report/findings produced as a result of Operation Dolomite. This was set up to look into matters raised concerning the Clydach murders, and followed the broadcast of the BBC Wales Investigates' programme The Clydach Murders: Beyond Reasonable Doubt. South Wales Police have released selective conclusions from the report but I believe there is a very strong public interest in releasing the full report/ findings."

9. SWP provided its response on 14 June 2022, advising that it was refusing the request under the following exemptions:

- section 30(1) – investigations and proceedings
- section 31(1) – law enforcement
- section 38(1) – health and safety
- section 40(2) – personal information
- section 42(1) - legal professional privilege

10. On 30 June 2022, the complainant requested an internal review. Following the intervention of the Commissioner, on 4 April 2023, the SWP issued its internal review response. This confirmed that SWP had revised its position, and was now solely relying on section 14 of FOIA as its basis for refusing the request.

## **Scope of the case**

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11. The complainant originally contacted the Commissioner as SWP had not responded to their request for an internal review.
12. Following receipt of SWP'S internal review response, the complainant confirmed to the Commissioner that they remained dissatisfied with SWP'S handling of their request, believing that the relevant information should be disclosed.

13. On 16 May 2023, the Commissioner contacted SWP to request further details about its decision to refuse the request under section 14 of FOIA. The Commissioner asked SWP to provide its response by 31 May 2023.
14. An extension to the time given to SWP to respond to the Commissioner was subsequently granted. Then, on 22 June 2023, an officer at SWP contacted the Commissioner again, advising that the new deadline would not be met. They explained that a substantial amount of time had already been spent considering the request and the withheld information; however, further input was still required from officers within other departments. The officer stated that, given this, they were unable to give a definitive time as to when SWP would be in a position to respond to the Commissioner's enquiries.
15. The Commissioner considers that SWP has now been given ample opportunity to present further submissions in support of its position.
16. In light of the above, and after consideration of the full circumstances relating to the request, the Commissioner considers it to be appropriate to make a decision based on the information that has been made available to him.
17. The Commissioner will therefore decide whether SWP is entitled to rely on section 14 as its basis for refusing to comply with the complainant's request.

## **Reasons for decision**

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### **Section 14(1) – vexatious requests**

18. Section 14 is designed to protect public authorities by allowing them to refuse a request that has the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This exemption can be used by public authorities where the cost and time to redact exempt information would create an oppressive burden on its resources.
19. SWP said in its internal review response to the complainant that the purpose of FOIA is to allow the public to "shine a torch on the decision making and workings of a public authority", but that this does not necessarily mean that information must automatically be disclosed. It states that to do so "without significant thought process would be reckless" and, in a case such as this, would lead to the disclosure of exempt information.
20. SWP advised the complainant that the documents that are held by Operation Dolomite form the basis of the final report, and that for true

context and understanding to be provided to that report, "numerous documents and supporting material" would also need to be disclosed.

21. SWP said that it holds over 1,000 pages of identified material and that several thousand documents are held within 16 storage boxes. In addition, more than 21,000 records are held on its IT systems. SWP claimed that "to retrieve, review and possibly redact this supporting material would be a massive task and would be extremely time consuming."
22. SWP explained to the complainant that all the withheld information would require careful consideration, with a view to identifying harm in disclosure and redacting the information accordingly. SWP said that any potentially exempt information cannot be easily isolated because it is scattered throughout the requested material. It states that officers within the legal, and the crime and criminal justice, departments would have to carefully examine each document in order to identify harm, if any, and apply redactions accordingly.
23. SWP goes on to say that the information would then need to be reviewed again by an officer within the Freedom of Information team in order to apply the correct exemptions, and to ensure that the appropriate public interest tests are carried out.
24. SWP goes on to say that whilst it could not quantify how long it would take to go through all the supporting documentation and the findings for the final report, it said that it could conclude it would take an enormous effort and would be a huge strain on the time and resources of SWP. As such, SWP confirmed that it considered that to deal with the request would cause an unreasonable burden and that section 14 of FOIA was engaged.
25. The Commissioner considers that there is a high threshold for refusing a request on the grounds that it would cause an oppressive burden, and that in most instances the public authority would need to demonstrate the following:
  - The requester has asked for a substantial amount of information, and
  - The public authority has real concerns about potentially exempt information, which it is able to substantiate, if asked to do so by the ICO, and
  - It cannot easily isolate any potentially exempt information because it is scattered throughout the requested material.
26. With regard to the first criterion, the complainant has asked only for a copy of the final report. The SWP has given no indication that this

information, in itself, is substantive in volume, or that there are a significant amount of additional documents or appendices that are already directly attached to the report.

27. Based on the information currently available, the Commissioner is not persuaded that the final report is likely to represent a "substantial amount of information".
28. In relation to the second criterion, the Commissioner accepts that SWP has genuine concerns about information being exempt from disclosure. Whilst the Commissioner has not had the opportunity to view the requested information, given the matter to which it relates, he does not consider it to have been unreasonable for SWP to claim that a considerable amount of care and caution would be required when considering what, if any, information can be released into the public domain. The Commissioner therefore accepts that it might require some additional time and resources to consider the information contained within the final report. However, once again, based on the information available, he has not been persuaded that this would cause an unreasonable burden.
29. In terms of the third criterion, the Commissioner has also been unable to establish with any certainty from the information available that any exempt information would be difficult to isolate.
30. SWP's response to the complainant suggests that, for true context and understanding of the content of the final report, information contained within a substantial number of other documents would need to be considered for disclosure; it then goes on to describe the task involved in retrieving, reviewing and redacting such information.
31. The Commissioner, whilst appreciating the sensitivity of the matter to which the request relates, has been unable to establish why consideration of the release of information contained within a recent report would require such extensive analysis of such a large amount of additional information.
32. In addition, SWP stated that when applying section 14(1) of FOIA, there is no requirement to consider the public interest test. However, the Commissioner's [guidance](#) says that when considering whether a single request is vexatious solely on the grounds of burden, a public authority needs to take into account the public interest in the subject of the request; this will assist in establishing whether the value in the release of the information does, or does not, outweigh the burden that has been described.

33. The Commissioner's guidance states that satisfying section 14(1) is a high hurdle, and that the public authority should be able to provide clear evidence to substantiate any claim that a request is grossly oppressive.
34. In the absence of more detailed submissions from SWP in support of the reasoning for its decision, the Commissioner concludes that there is not sufficient evidence that the request is vexatious. He therefore finds that section 14(1) is not engaged.
35. The Commissioner requires SWP to respond to the request again, without relying upon section 14 of FOIA.

### **Procedural matters**

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36. The complainant submitted their request for information on 1 December 2021; SWP then issued its response on 14 June 2022, over six months after the request was received.
37. As SWP failed to issue a refusal notice within 20 working days, the Commissioner has found a breach of section 17(1) of FOIA.

### **Other matters**

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38. Although they do not form part of this decision notice, the Commissioner regards it to be appropriate to highlight the following matters of concern.
39. Not only did SWP take six months to provide its first response to the request, there was then a further delay of nine months before it provided its internal review response to the complainant; both these delays are significant.
40. SWP has also failed to provide information that the Commissioner requested within a reasonable time period.
41. SWP's poor handling of this case will be recorded.

## Right of appeal

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**