

**FREEDOM OF INFORMATION ACT 2000 (SECTION 50)
DECISION NOTICE**

Date: 9 June 2006

**Public Authority: Metropolitan Police
New Scotland Yard
8 – 10 Broadway
London SW1H 0BG**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has dealt with the complainant's request in accordance with the Freedom of Information Act 2000.

He has decided that the exemption at section 30 of the Act is engaged and that, for the reasons set out below, the public interest requires that the information should not be disclosed. Accordingly there is no remedial action that the Commissioner requires the Public Authority to take.

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
- 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
- 1.2 Where a complainant has made an application for a decision, unless:
 - a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

2.1 The Complainant has advised that on 8 February 2005 he requested from the Public Authority, the Metropolitan Police Service (the Police), in accordance with section 1 of the Act, the following information:

A list of all reviews and audits of the police prosecution of Colin Stagg for the murder of Rachel Nickell in 1992.

The complainant alleges that the Police failed to provide him with that information because they applied inappropriately the exemptions contained within the Act under Section 30 (Investigations and proceedings conducted by public authorities); Section 38 (Health and Safety); Section 40 (Personal Information), and Section 41 (Information provided in Confidence).

3. Relevant Statutory Obligations under the Act

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 30 provides 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,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or ...

(2) Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct, ...

4. Review of the case

- 4.1 The complainant sought: “a list of all reviews and audits of the police prosecution of Colin Stagg for the murder of Rachel Nickell in 1992”. He said that he was seeking a review of the Police procedures rather than any information which would affect the likelihood of the case reaching a satisfactory conclusion. In refusing his request, the Police cited Sections 30, 38, 40 and 41 of the Act. All except Section 41 are qualified exemptions and so are subject to the public interest test.

The Exemption: investigations and proceedings conducted by public authorities (Section 30)

- 4.2 The Commissioner’s staff have held detailed discussions with senior Police officers about the complainant’s request and have visited the Police investigation team. A member of the Commissioner’s staff spent two days on site with the Police investigation team viewing relevant papers and discussing the information request with the Detective Chief Inspector leading the Police investigation. The Commissioner is satisfied that the Police have cooperated fully with his inquiry and that the Police investigation is active, with significant resource being devoted to it.
- 4.3 The Commissioner is satisfied that the Police investigation of the murder of Rachel Nickell is properly described by the Police as a ‘live’ investigation and that it is not currently either suspended or abandoned. He has therefore decided that the section 30 exemption is engaged.

The public interest test

- 4.4 Section 30 is a qualified exemption and therefore attracts the public interest test. The Commissioner considered whether the public interest in maintaining the section 30 exemption outweighed the public interest in waiving it.

The complainant's view

- 4.5 The complainant emphasised that he was not requesting evidential information relating to the active enquiry but merely reviews and audits of the police prosecution of Colin Stagg. Accordingly he did not see as relevant that this was a live investigation or that disclosure might lead to potential suspects evading justice. He did not see that a review of the actions of the Police need necessarily involve disclosure of statements made to them by members of the public.
- 4.6 The complainant did not accept that sending him an audit or review of Police activities need take officers away from their normal duties or that the risk of possible future civil action should obstruct transparency.

The Public Authority's view

- 4.7 The Police consider that the reasons not to disclose outweigh those in favour of disclosure.
- 4.8 The Police accept that the material could: be of interest to the public; assist public understanding of the rationale for the investigation; increase public confidence in their conduct of it; and inform public debate.
However they maintain that disclosure is not in the public interest as:
 - 4.8.1 material which could be classified as a review or audit of the police actions would form part of the investigative file.
 - 4.8.2 this is currently a live investigation and to disclose any part of it may lead to potential suspects evading justice by jeopardising any future arrests and prejudicing any trial.
 - 4.8.3 disclosure would unavoidably involve disclosing elements of statements by members of the public provided for the purposes of criminal investigation; revealing them could inhibit continued public engagement with, and support for, the criminal justice system.
 - 4.8.4 disclosure that identified certain individuals could put them at risk of harm or could risk interference with potential witnesses during any proceedings that might arise from the re-investigation.
 - 4.8.5 assessing the material would take officers away from their normal duties during an active investigation with minimal benefit to the Police or the community.
 - 4.8.6 Colin Stagg has, the Police say, stated an intention to seek civil redress in respect of his prosecution and to release material might impact on those proceedings.
 - 4.8.7 the decision to prosecute was taken by the Crown Prosecution Service; communications between them and the Police are subject to public interest immunity.

The Commissioner's analysis

- 4.9 The murder of Rachel Nickell on 15 July 1992 acquired an immediate and very high public profile. It has received extensive media coverage ever since and has been the subject of several books and other publications – some of them by former members of the Police investigation teams. The investigation remains open and fully resourced and the Commissioner has decided that the section 30 exemption is engaged. In general the Commissioner considers that the public interest in disclosure is likely to be weaker while an investigation is being carried out - or when an investigation has been suspended but may be reopened - rather than when it has been concluded or abandoned. Once an investigation has been concluded, the public interest in disclosure will generally be much stronger in order to enhance public understanding of how and why the investigation proceeded as it did.
- 4.10 The Commissioner did find that there were, within the relevant reviews and audits, fragments of text containing facts that are public knowledge and which could therefore be released to the complainant without causing harm to the investigation or to any subsequent prosecution. In isolation, however, they would add nothing to the information that is already in the public domain and they are also integral to other information in the documents that has not been made public. The Commissioner's staff have viewed archive material and case papers from the investigations that have taken place since 1992 and which could reasonably be regarded as reviews and audits of the prosecution of Mr Stagg. Following the review of that material, the Commissioner accepts, as a significant public interest factor in favour of maintaining the exemption, the view that significant disclosure of information at this stage could put at risk future investigations by the Police or prejudice the fairness of any future trial.
- 4.11 The Police also took the view that release of the information would bring to public notice information provided in statements by members of the public and that this could risk interference with potential witnesses or prejudice future investigations by making potential witnesses more reluctant to come forward to give evidence. The Commissioner recognises the need for caution and accepts that making public the identity of witnesses and some or all of their evidence could be prejudicial to the current Police investigation and to the conduct of any future possible prosecution arising from it.
- 4.12 In respect of officers being taken away from their normal duties with minimal benefit to the public, the Commissioner does not accept that this in itself can ever be a satisfactory reason for not complying with the Act, subject to the cost limits applicable under the Act. From the review of

material by his staff, however, it became clear to the Commissioner that recognition of material that is, and is not, already in the public domain could realistically only be carried out by members of the Police investigation team.

- 4.13 The complainant maintained that the risk of possible future civil action should not obstruct transparency. The Police for their part were concerned that Colin Stagg had announced an intention to seek civil redress following his failed prosecution. That may be so. However the Commissioner does not accept that as a reason not to release information in cases where, unlike here, no other barriers to release applied. Indeed the Commissioner believes that the interests of justice would not be served were a party who felt he had suffered injury as a result of action by the Police to be denied relevant information simply on the grounds that it might assist his case against them.
- 4.14 From his investigation, the Commissioner has concluded that the relevant information held by the Police relates to a live investigation and that to release any part of the information relating to it could put at risk any future arrests and the fairness of any future trial. The material that could be classified as reviews or audits of the actions of the Police currently forms part of the relevant investigative papers and draws heavily on investigative material that remains integral to the current investigation. There is no part of it which can safely be regarded as outwith the current investigation.
- 4.15 In the Commissioner's view, therefore, Section 30 is the most relevant and clearly applicable exemption and as such is of itself sufficient to warrant withholding the information while the investigation continues. Accordingly he did not proceed to a decision on each of the other sections of the Act cited by the Police although he accepts that those sections may well be relevant to the circumstances.

5. The Commissioner's Decision

- 5.1 The Commissioner is satisfied that the investigation of Rachel Nickell's murder is being treated by the Police as a live investigation and that the public interest at present supports withholding of the information requested. Accordingly the Commissioner's decision in this matter is that the Police have dealt with the Complainant's request in accordance with the requirements of the Act.

6. Action Required

6.1 In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he agrees that Section 30 of the Act applies and that the public interest requires that the Police continue to withhold the information requested.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 9th day of June 2006

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**