

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 January 2018

Public Authority: Chief Constable of Greater Manchester Police

Address: Openshaw Complex

Lawton Street

Openshaw

Manchester

M11 2NS

Decision (including any steps ordered)

1. The complainant has requested a copy of all reports to the Greater Manchester Police service by a named clinical forensic psychiatrist in relation to the police search for, and arrest of, Dale Cregan in 2012.
2. The Commissioner's decision is that Greater Manchester Police (GMP) has correctly withheld the requested information relying on the section 31(1) FOIA law enforcement exemption. She also found that the police had breached sections 1(1) and 10(1) FOIA in failing to provide a valid response to the request within 20 working days of receipt.
3. The Commissioner does not require the Greater Manchester Police to take any steps to ensure compliance with the legislation.

Request and response

4. The background to this matter includes the fatal shooting of two members of the public and the subsequent murder of two police officers in 2012; the shootings are now known to have been carried out by Mr Cregan who was later arrested. Mr Cregan had been arrested in connection with one of these shootings but had been released on bail on 13 June 2012. He had then failed to answer bail on 7 August 2012 and

evaded re-arrest for a time despite an extensive police search. During this time Dr West and other medical professional colleagues assisted GMP in developing police operations aimed at his re-arrest. During this period Mr Cregan shot and killed a further member of the public. On 18 September 2012 two GMP officers, attending an apparently routine 999 incident report, had been ambushed and they too had been shot dead by Mr Cregan who had then voluntarily surrendered to police custody.

5. On 25 July 2016, the complainant wrote to GMP and requested information in the following terms:

I write with a request for information under the FOIA. My request is as follows:

** Please provide a copy/copies of all report/s by a psychiatrist/psychologist named Adam [sic - Adrian was intended] West in relation to the Dale Cregan manhunt. I understand Mr West was brought in to assist the MIT during the Cregan manhunt and provided advice and a report/s in relation to the request;*

** Please provide copies of all reports/logs/records made on Holmes of Adam West's advice/reports/information provided during the manhunt.*

I look forward to receiving the information within the statutory time limit.

6. On 13 September 2016 GMP issued a refusal notice withholding the requested information relying on sections 31(1) (law enforcement) and 40(2) (personal information) FOIA; GMP also decided that the balance of the public interest favoured maintaining the exemptions.
7. The complainant appealed the GMP decision on 22 September 2016 saying that the force had, in his view, failed to consider the compelling public interest in disclosure of the specific information in this case. He said he understood that Dr West and his medical colleagues had provided GMP with psychological analysis of the suspect and had outlined actions which should, and should not, have been taken to safeguard officers and members of the public while trying to apprehend him. The complainant said that there was a compelling public interest in GMP disclosing what warnings and advice the force had been given and how it had then acted.
8. The complainant added that he understood Dr West had specifically warned that, if pushed, Mr Cregan would kill an officer. He said that there were compelling allegations that this advice had been ignored, something the force wanted to keep secret because Mr Cregan went on to kill two GMP officers. He said that the murder of two police officers had shocked the nation. The force had allegedly ignored Dr West's advice which demonstrated an overwhelming public interest in disclosure. He said his concern was to know what the force had been

told about Mr Cregan, the advice it had been given, and its subsequent actions.

9. In relation to Section 40(2) FOIA, the complainant considered that there was a legitimate interest in disclosure and that disclosure was necessary to meet that interest.
10. Following a delayed internal review, GMP told the complainant, on 9 February 2017 that the information collated in response to his request, comprised sensitive personal data, along with police intelligence and tactical information that were incorporated into the strategy, operational planning and procedures to be used in the policing operation to end a situation where public safety was paramount. Regrettably two young GMP police officers had lost their lives before Mr Cregan could be re-arrested. On 13 June 2017 Mr Cregan was given a whole life prison sentence for the four murders.

Scope of the case

11. The complainant contacted the Commissioner on 22 February 2017 to complain about the way his request for information had been handled. He complained of delay and said he wished to challenge the application of the FOIA exemptions to refuse the request; he felt that there was a strong public interest in disclosing the withheld information.
12. The complainant also pointed to the Data Protection (Processing of Sensitive Personal Data) Order 2000 ("the DP Order") as a possible source of authority that he believed could justify the disclosure to him of sensitive personal information in this case.
13. The Commissioner considered the delays and the application by GMP of the section 31 and 40 FOIA exemptions to the withheld information and application of the DP Order. She received and considered detailed representations from both the complainant and GMP. She has noted background information in the public domain including extensive contemporary media coverage of the events leading up to the re-arrest of Mr Cregan following the fatal shooting by him of PCs Bone and Hughes in September 2012.
14. In addition, the Commissioner obtained from GMP a copy of the withheld information which her staff have reviewed.

Reasons for decision

15. Section 31(1) FOIA provides that –

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,*
- (b) the apprehension or prosecution of offenders,*

....

16. Section 31 FOIA is a prejudice based exemption and is qualified. It is therefore subject to the public interest test. This means that, not only does the information have to prejudice one of the purposes listed but, before the information can be withheld, the public interest in maintaining the exemption must outweigh the public interest in its disclosure.
17. In order for the exemption to be engaged, the following criteria must be met:
 - the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie whether disclosure 'would be likely' to result in prejudice or 'would' result in prejudice.
18. The relevant applicable interests cited in this exemption are the prevention or detection of crime and the apprehension or prosecution of offenders.
19. The complainant said that disclosing the withheld information would not prejudice the prevention or detection of crime. He said that the public knew that GMP had used "cracker"-type expert advice in this case which had been obtained from Dr West and his colleagues. He added that it was common knowledge that the police sought the help of profilers to help them catch dangerous suspects. He added that his point here was not when the police used a "cracker", or even if they used a "cracker", but what they then did with the advice from the cracker - something which the public had paid for.

20. The complainant added that he understood from multiple sources, which he declined to name to the Commissioner, that Dr West's advice had been ignored and two officers had subsequently been murdered. He said that multiple sources had named a senior GMP officer as having been specifically warned about certain actions that should and should not be taken. He said he understood that a view surrounding a personal appeal to Mr Cregan had been included in the advice - and added that it was a matter of public record that such an appeal had later taken place. The Commissioner regarded the information from sources the complainant declined to name as 'hearsay' evidence which she noted but to which she attached little weight in reaching her decision as she was not herself able to examine it and test it for reliability and validity.
21. GMP explained, as regards evidence of harm, that the prevention and detection of crime was the foundation upon which policing was built. GMP had a clear responsibility to prevent crime and arrest those responsible for committing crime or those that planned to commit crime. The requested information contained operational details of tactics used by GMP in the prevention and detection of crime, and the apprehension and prosecution of offenders. GMP said that disclosure of the information would assist those intent on committing crimes to anticipate police actions and plan to evade detection or capture; this would cause direct and immediate harm to the effective delivery of operational law enforcement by GMP.
22. GMP said that the information collated in response to the request included sensitive personal data about individual suspects, intelligence and tactical information, that had been incorporated into the GMP strategy, operational planning and procedures to be used in the campaign to end a dangerous situation where public safety had been paramount and two young officers had lost their lives.
23. In addition to the generic policing issues and the harm that disclosure would cause to general police operations, GMP referred to some specific issues arising from the situation that followed Mr Cregan's failure to answer bail and which related to Mr Cregan's own criminal record. GMP said that Mr Cregan was already known to them as potentially dangerous in certain circumstances. In addition he had attracted a following in some circles, including among known offenders some of whom were already in custody for violent matters. A contemporary media report referred to these as 'Dale Cregan's Fenian army'. GMP were concerned that some vulnerable persons and those with callous attitudes and an abnormal interest in events or behaviours causing harm, could be influenced to imitate some of Mr Cregan's actions and reported attitudes. GMP said that disclosure of the withheld information was very likely to influence some vulnerable persons adversely and encourage risk taking by them. GMP were satisfied that this would

prejudice the prevention and detection of crime and the apprehension and prosecution of offenders.

24. The Commissioner considered the applicability of the section 31 FOIA exemption. With regard to the first criterion of the three limb prejudice test described above, the Commissioner accepted that potential prejudice to law enforcement activity relates to the applicable interests which the section 31(1)(a) and 31(1)(b) FOIA exemptions are designed to protect.
25. With regard to harm being caused by disclosure, having considered the contents of the withheld information the Commissioner saw from GMP's evidence that its disclosure would have the capacity to harm law enforcement by alerting members of the public to likely police actions and responses and enabling and encouraging others with criminal intent to adapt their behaviour accordingly.
26. The Commissioner also noted the potential for disclosure to stimulate 'copycat' actions among those who found attractive the practice of callous and abnormal attitudes and behaviours. GMP demonstrated to the Commissioner that contemporary media reports pointed to the existence at that time of a body of those who admired certain aspects of Mr Cregan's actions. This indicated to the Commissioner that the police concern was not remote or fanciful.
27. GMP provided the Commissioner with evidence that Dr West's advice had been given specifically to inform GMP planning of its operations; no further processing of it had been intended. She has seen that his evidence to the police has not been released into the public domain and that its disclosure could hinder future police operations and investigations. The Commissioner saw nothing in the evidence from the complainant to allay the concerns of GMP. Given the potential consequences of disclosure, the Commissioner was satisfied that, on this occasion, the resultant prejudice which GMP considered could occur was correctly regarded as real and of substance.
28. As regards the third criterion, the likelihood of prejudice arising, the main thrust of the complainant's evidence appeared to be to not dispute that some prejudice would arise from disclosure but that the dangers of disclosure were overridden by a stronger public interest dynamic. GMP for its part was deeply concerned about the likely impact of disclosure on future policing operations. GMP was also concerned at what it saw as a very significant risk of 'copycat' offending behaviours being stimulated by disclosure. In sum, GMP told the Commissioner that the risk of serious harm arising from disclosure was "extreme". Accordingly, in the light of the police comments and supporting evidence, the Commissioner

was satisfied that the prejudice identified 'would', rather than 'would be likely to', arise from disclosure.

29. The Commissioner was therefore satisfied that the section 31(1) FOIA exemption was engaged.

Public interest test

30. Section 31 FOIA is a qualified exemption and therefore the Commissioner must consider whether or not, in all the circumstances of the case, the public interest in maintaining the exemptions contained at sections 31(1)(a) and (b) FOIA outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

31. In his representations, the complainant said he understood from multiple sources, whose identity he has felt unable to share with the Commissioner, and to which she has therefore attached little weight in her analysis, that Dr West had given advice about certain actions that should and should not have been taken. The advice had then been ignored and two officers were subsequently murdered. The complainant said he understood that a view surrounding the making of a personal appeal to Mr Cregan to surrender to the police had been included in the advice given to GMP, something GMP has neither confirmed nor denied, but added that an appeal had later taken place.
32. The complainant said that there was a compelling public interest in disclosure of the withheld information as his [unnamed] sources had confirmed to him that Dr West's advice had not been heeded. He believed that GMP should disclose its specific response to Dr West's advice and the detail of it. This might include a psychological profile, the actual advice Dr West gave GMP about Mr Cregan and what he might do if he was pushed, or if he believed his family were being harassed.
33. For its part, GMP accepted that disclosure would provide the public with insight into the techniques used by the force and would give the public a better understanding of the capabilities and effectiveness of the police with regards to this kind of operation. This enhanced knowledge would provide greater transparency about the way GMP carries out its day-to-day delivery of law enforcement.

Public interest arguments in favour of maintaining the exemption

34. In its representations, GMP said that it had sought advice and guidance from a clinical forensic psychiatrist, and that the advice given had formed the basis of important intelligence used for policing purposes in

its law enforcement activity. That information had been used, during the period when Mr Cregan had been failing to answer bail, in determining: a risk assessment and campaign strategy, possible negotiation tactics, operational tactics and an arrest strategy.

35. GMP said that even placing the main points of the advice provided by Dr West into the public domain would lessen the effectiveness of those tactics in future investigations, thereby providing an advantage to criminal elements and hindering the force in its law enforcement efforts to prevent and investigate crime; there would therefore be an increased risk to the public.
36. GMP added that, in addition, expert advice had been given at critical points in a policing operation some of which would be used to inform the police response should similar situations arise in the future. Its disclosure would give the public operationally sensitive information that had been used to inform police operations. That information could be misused by criminals to formulate a counterstrategy and response to likely police actions. That would prejudice law enforcement by allowing anyone with intent to make plans to cause serious harm to plan ways of doing so without detection or to avoid subsequent arrest. This would ultimately render police techniques and tactics ineffective for their intended purposes and endanger the public. It was almost inevitable that, if disclosed, the withheld information would be used by someone wanting to cause harm without detection or seeking to evade arrest.
37. GMP added that disclosing information relevant to a psychologist for policing purposes would educate individuals or groups of ill intent with knowledge of specific information sought by professionals that was of value for crime prevention. Those planning offences would be better equipped to deceive the police and avoid detection during psychoanalysis. The result would be to impede and obscure police decision making. An individual referred to a forensic psychologist, forearmed with the knowledge of the kinds of information being sought, would be highly likely to withhold such information to evade detection or prosecution. GMP added that disclosure would concern communities owing to the inevitability that information previously used to support their safety and wellbeing, would now be available to anyone with ill intent.
38. GMP was also very concerned that a vulnerable person who mistakenly admired the actions, reputation and public profile of Mr Cregan, could use excerpts from a psychological assessment to adopt or mimic a perpetrator's image. This would ultimately encourage similar unlawful behaviours and was inherently contrary to the functions of a law enforcement public authority. GMP said that although this point referred especially to risks associated with the disclosure of sensitive personal

data it demonstrated how information, previously utilized to assist a police investigation, would be used by anyone seeking to cultivate or copy aspects of an extremely dangerous persona. The risk of serious harm was "extreme".

39. GMP also raised a further confidential public interest factor. However, given the nature of that additional factor it cannot be referenced in the body of this notice but is included in a confidential annex.
40. GMP concluded that the vast majority of the withheld information related to individuals' sensitive personal data collated to assist its operations. The respective data subjects had a reasonable expectation, when engaging with the force to assist an investigation, that their confidentiality would be protected. Breaching confidentiality would deter people from helping the police and damage GMP's longer term ability to enforce the law.

Balance of the public interest test

41. The Commissioner considers that it is important for the general public to be able to have confidence in the police service which is responsible for enforcing the law. Accordingly, there is a general public interest in disclosing information that promotes accountability and transparency in order to maintain that confidence and trust.
42. The Commissioner accepted the complainant's view that the subject matter of this case would be of interest to the public. The public interest is heightened by the need to make clear the circumstances surrounding the tragic murder of two young officers. She notes that GMP has already disclosed some information in its efforts to satisfy the public interest. This includes information about the emergency telephone call which lured the murdered officers to their attacker. She further noted the additional factor referred to in the confidential annex to this notice.
43. The Commissioner noted hearsay evidence provided by the complainant. However, as he did not disclose his sources, she did not attach significant weight to it in her analysis. This is because she has not been able to examine and assess for herself the reliability and validity of his evidence.
44. The Commissioner accepted the GMP evidence of a strongly increased likelihood that further lawlessness would be a consequence of disclosure. She saw in this, a further powerful public interest argument in favour of maintaining the law enforcement exemption. She considers that, while there is a strong public interest in providing assurance that GMP takes its law enforcement duties seriously, it is imperative to ensure that public safety is not compromised by inappropriate disclosures.

45. The Commissioner noted evidence from GMP that the withheld information had been given to it in the reasonable expectation of confidence. She saw from her own inspection of the withheld information that it had been intended to assist the GMP response to an emergency. She saw within it no evidence that further disclosure had been contemplated or intended.
46. The Commissioner accepted GMP's evidence that disclosure of the withheld information would enable offenders to estimate and anticipate aspects of the likely police response to an emergency and adjust their behaviour accordingly. The law enforcement exemption was therefore appropriately engaged at the level of the higher threshold that harm 'would' occur rather than the lower threshold of 'would be likely' to occur. She saw in this an additional and weighty factor favouring maintaining the exemption.
47. The Commissioner therefore concluded that, in all of the circumstances of this case, the public interest in maintaining the exemption at sections 31(1)(a) and (b) FOIA outweighed the public interest in disclosing the withheld information.

Section 40 – personal information

48. GMP had additionally relied on the section 40(2) FOIA exemption. As the Commissioner has concluded that all of the relevant information had been withheld correctly relying on the section 31 FOIA exemption, she did not consider the application of the personal information exemption.

Special purposes of journalism

49. In his representations to the Commissioner, the complainant pointed to the Data Protection (Processing of Sensitive Personal Data) Order 2000 (the "DP Order") as an authority for the disclosure to him of sensitive personal data. This DP Order provides that in some circumstances, sensitive personal data may be disclosed for the special purpose of journalism. The complainant argued that, because he was a journalist, the sensitive personal data in this case should be disclosed to him.
50. The Commissioner did not consider possible application of the DP Order as she has already found that the sensitive personal data contained within the withheld information had been correctly exempted under the section 31(1) FOIA exemption. She reserved her position as to whether the Order might be relevant to any future disclosure of sensitive personal data under FOIA.

Delay

Section 10 – time for compliance

51. Section 1(1) FOIA states that any person who asks for information is entitled to be informed whether or not the information is held and, if the information is held, to have that information communicated to them unless it is otherwise exempt from disclosure.
52. Section 10(1) FOIA provides that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt. GMP did not respond to the complainant within the statutory timeframe in respect of this request and so breached sections 1(1) and 10(1) FOIA.

Other matters

53. The Commissioner was concerned at the extent to which GMP delayed progression of this matter. There were unreasonable delays by the force in providing the complainant with a refusal notice and then in conducting its internal review of that notice once issued. GMP were responsible for further significant delays during the course of her investigation.
54. Section 51(1) FOIA empowers the Commissioner to issue an Information Notice (IN) to a public authority, requiring it to furnish her office with specified information for the purposes of an investigation. She requested a copy of the withheld information from GMP which was not forthcoming voluntarily. Accordingly, on 23 August 2017, following an extensive delay, she issued an IN giving formal notice to GMP and requiring her office to be furnished with a copy of the information being withheld by GMP within 30 days. This was eventually delivered to her office by GMP on 26 September 2017. Only then was the Commissioner able to review the withheld information.

Right of appeal -

55. 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@hmcts.gsi.gov.uk

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

56. 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.
57. 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

Gerrard Tracey
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