

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2022

Public Authority: Chief Constable of Merseyside Police
Address: Police Headquarters
15 Cazneau St
Liverpool
L3 3AN

Decision (including any steps ordered)

1. The complainant has requested, from Merseyside Police, information connected to a murder investigation. Merseyside Police confirmed holding the information but refused to provide it, citing sections 30(1) (Investigations and proceedings) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that section 30 is properly engaged and the public interest favours maintaining the exemption. No steps are required.

Request and response

3. On 21 April 2022, the complainant wrote to Merseyside Police and made the following clarified request:

"Please find attached the evidence given by [name A redacted] at the trial of [name B redacted] & others the trial number etc are in the attached document.

[Name A redacted] is a DNA analysis [sic] who works for Cellmark & at the murder trial of [name B redacted] & others [name A redacted] & Doctor [name C redacted] both gave evidence for the prosecution.

As they both gathered DNA evidence of the [type redacted] firearm found at the property of [name D redacted], on the [date redacted]

I have both the evidence files given by Dr [name C redacted] & the evidence given by [name A redacted], at the trial of [name B redacted] & others.

At the Sefton coroners PIRH held via Microsoft teams video link on the [date redacted] held by coroner [name E redacted] [name F redacted] father of the deceased [name G redacted] was represented by Farley's law firm.

Merseyside police were represented by [name H redacted], some submissions were disclosed by Merseyside police, which included some of the forensic made Dr [name C redacted], which was DNA analysis of the weapon found at [address redacted] on the [date redacted]. what Merseyside police did not disclose which I am requesting is all the forensic reports from [name A redacted] to Merseyside police.

During the trial of [name B redacted] & others QC [name I redacted] refers to reports [name A redacted] & Dr [name C redacted] answered from during their evidence

I would Like access to all the undisclosed forensic reports of [name A redacted],
I would like access to the missing forensic reports from Dr [name C redacted]
I would like access to the reports from both [name A redacted] & DR [name C redacted] in preparation of the trial [reference redacted]".

4. On 19 June 2022, Merseyside Police responded. It refused to provide the requested information, citing sections 30(1)(a) and 40(2) of FOIA.
5. The complainant requested an internal review on 21 June 2022. When doing so he included the following points:

"Two Forensic scientists examined different parts of the same firearm, I already have the forensic reports relating to this firearm in my possession from [name C redacted]".

And:

"All I am requesting the forensic repots [sic] from [name A redacted] who examined the exact same firearm I have been partially privy to".

6. Merseyside Police provided an internal review on 27 July 2022 in which it maintained its original position.
7. The Commissioner has viewed the withheld information in this case.

Background

8. Merseyside Police has explained:

“In respect of the production of evidence from forensic scientists, they provide what is known as “abbreviated statements” to the investigation as it progresses and at varying stages. These statements may only focus on one particular question or issue in the case. When it comes to trial, the forensic scientist will then provide an overarching full statement which will cover all abbreviated statements and be used as the chief evidence in the case. Whether or not the previous abbreviated statements are used as evidence or go on the unused schedules will be assessed on a case-by-case basis however either way they will be documented and provided to CPS [Crown Prosecution Service]”.

Scope of investigation

9. When asking for an internal review, the complainant said he already had copies of any reports written by party C. He therefore only referred to any reports written by party A, so this is all the Commissioner will consider.
10. However, in case it is of assistance, Merseyside Police has confirmed that it believes all of party C’s documents were passed to the CPS as part of the prosecution case; it is unaware of any ‘missing report’.

Reasons for decision

Section 30 – investigations and proceedings

11. Section 30(1)(a)(i) 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...".

12. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1)(a) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
13. 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?

14. The first step is to address whether the requested information falls within the class specified in section 30(1)(a)(i) of FOIA.
15. The Commissioner has issued guidance on section 30 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.
16. 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 says¹:

"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...".

17. Merseyside Police has explained:

"The forensics report will serve as evidence in respect of proving the events of the murder. All of this information forms part of the criminal case. Therefore, as all of the material requested forms part of an investigation, and that the information is only held in order to

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

determine whether a person should be charged for an offence or whether a person is guilty of an offence, Section 30 is engaged”.

18. The request clearly relates to a specific criminal investigation and the Commissioner is therefore satisfied that the exemption is engaged.

The public interest test

19. 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.
20. 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.
21. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is 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.

Public interest arguments in favour of disclosure

22. The complainant believes that information held within the forensic reports will show, with other information he has gathered: “a failure by Merseyside police to investigate a matter properly” which he thinks was a contributory factor to a murder. In his opinion this would demonstrate that: “... a crime has been committed by officers of Merseyside police” and that this “... should be fully investigated, not covered up”.
23. He added: “I believe the forensic reports are being held back because it will show in the time line MP [Merseyside Police] could of [sic] & should have acted with the information they were given by the reports from [name redacted] & arrested [name redacted] when the evidence was available”.
24. Merseyside Police has recognised that:

“There is public interest in ensuring that any investigation is undertaken professionally and rigorously and release of the requested information could promote public trust in providing transparency, openness, and accountability into how investigations take place”.

Public interest in favour of maintaining the exemption

25. Merseyside Police has argued:

“Members of the public generally would expect that with all statements or evidence provided to police as part of an investigation, then that evidence would be treated with a degree of confidentiality and not placed in the public domain unless as part of a trial process ...

Where the nature of the crime is serious such as a death, then there is a real danger that disclosing statements and reports, or even the information contained in the documents, which is the legal obligation under freedom of information provisions, may lead to misguided members of the public via social media platforms to challenge the investigation, trial process or the witnesses themselves. It does not assist the criminal justice process to have such misguided social media debates about such serious matters.

Whilst professional witnesses will continue to provide evidence to investigations, members of the public who realise that witness information may be disclosed outside of a trial process, may well take a view that they will not want to get involved in assisting in investigations if they or their families are likely to be subject of unwanted attention and comment from people on social media platforms or in other ways. The result is that potentially, disclosure may affect current or future investigations and negatively impact any potential prosecution or review and hinder the administration of justice”.

Balance of the public interest

26. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in Merseyside 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.
27. 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.
28. 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.

29. Significantly, the Commissioner notes that the complainant advised him that he has complained to the Independent Office for Police Conduct (IOPC) regarding the concerns he has. The IOPC is the body which is responsible for investigating "the most serious and sensitive incidents and allegations involving the police"². The Commissioner considers this to be the appropriate avenue for the complainant to pursue his concerns rather than trying to access this type information via FOIA, which involves the publication of information to the world at large, rather than being a private disclosure to an individual.
30. Furthermore, Merseyside Police has explained:

"As there has been a trial the scientist's full evidence, has been tested by counsel, forms part of the Court transcript, which is therefore available by means other than under Freedom of Information Act, processes".
31. Taking all the above into account and having given due consideration to the arguments put forward by both parties, 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.
32. The Commissioner is therefore satisfied that Merseyside Police was entitled to rely on section 30(1)(a) of FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
33. 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.

² <https://www.policeconduct.gov.uk/>

Right of appeal

34. 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

35. 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.
36. 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

Carolyn Howes
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