

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 February 2011

Public Authority: Norfolk Constabulary
Address: Jubilee House
Falconers Chase
Wymondham
Norfolk
NR18 0WW

Summary

The complainant requested Norfolk Constabulary to disclose a copy of the report or similar document it compiled, for submission to the Crown Prosecution Service, about a fraud case. Norfolk Constabulary confirmed it holds the requested information but refused to disclose it on the basis that it was exempt from disclosure by virtue of sections 30(1) and (2) (investigations and proceedings) and 40(2) (personal information).

The Commissioner has investigated and concluded that the information was correctly withheld in accordance with section 30. He requires no steps to be taken by the public authority.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The requested information relates to an enquiry into allegations of financial irregularities at Cawston Park Hospital, a private psychiatric hospital in Cawston. Two people stood trial in 2009, accused of defrauding the NHS of £2 million. The trial collapsed after seven weeks,

and before the prosecution completed its case, after the Judge intervened.

The Request

3. The complainant wrote to Norfolk Constabulary on 24 March 2010:

"I am writing to request the following information under the Freedom of Information Act: A copy of the 400 page case report or similar document compiled by Norfolk police for submission to the CPS [Crown Prosecution Service] as part of Operation Meridian."

4. Norfolk Constabulary responded on 8 April 2010. In its reply, the Constabulary confirmed that it holds the requested information, acknowledging that the investigation and court proceedings relevant to this case have been reported extensively in the media.
5. It described the requested summary as containing "*a wide range of information*" including the business set-up, personal history of owners, directors, employees and individuals who had contact with the hospital, and a summary of witness statements and interview records.
6. It refused to disclose the requested information, citing the exemptions in sections 40(2) (personal information), 30(1) and (2) (investigations and proceedings) and 31(3) (neither confirm nor deny – law enforcement).
7. The complainant requested an internal review on 20 April 2010. Norfolk Constabulary upheld its decision in its internal review response of 19 May 2010.

The Investigation

Scope of the case

8. On 6 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

"If the prosecution had been allowed by the judge to finish presenting all the 'evidence'then all the 'witnesses', and what they said, would have become 'public knowledge'. So why the need to protect them now?"

Clearly the document sent to the CPS by Norfolk Constabulary would convey exactly why the Police thought the defendants were guilty.... Their refusal to do so, on the grounds of protecting witnesses, as I have already argued, seems inappropriate... to say the least.

Surely there remains a need to understand how the State, at huge public expense, can justify severely damaging the professional reputations of two honest workers, as well as putting them and their families through what seems ... given the criminal court outcome, and particularly the Judge's comments ... to have been completely unnecessary trauma and turmoil over a protracted period of almost three years.

.. does the 'Private' interest of the wrongly accused defendants not outweigh any 'protection' issues of the witnesses?"

9. As the complainant made no reference in his correspondence to Norfolk Constabulary's citing of section 31(3) (that it neither confirms nor denies that it holds any other information relevant to your request), when the Commissioner wrote to him to tell him that his investigation was commencing, he advised him that the focus of his investigation would be with respect to Norfolk Constabulary's citing of the exemptions in sections 30 and 40 of the Act.

Chronology

10. The Commissioner wrote to the Norfolk Constabulary on 4 October 2010 asking it for further explanation of its reasons for citing section 30 and 40 in relation to the request, including its reasons for concluding that the public interest in maintaining the exemptions outweighs the public interest in disclosure of the information requested.
11. Norfolk Constabulary responded on 21 October 2010.

Analysis

Exemptions

Section 30

12. Section 30(1) provides an exemption in cases where the information is held for the purposes of certain investigations and proceedings. The full details of section 30(1) are outlined in the legal annex attached to this Notice. Section 30 is a class-based exemption. In order to demonstrate that it is engaged it is simply necessary to show that the information

being withheld has been held by the public authority for the purpose specified.

13. In order for the exemption in section 30(1) to be applicable the information must be held for a specific or particular investigation, not for investigations in general and it continues to be applicable even after an investigation has been completed.
14. In this case, Norfolk Constabulary is citing section 30(1)(a) in relation to all the withheld information. This provides that:

"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."

15. The phrase "at any time" means that information is exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing, if it is subsequently used for this purpose.
16. Section 30(1)(a) can be cited only by those public authorities with powers to conduct investigations of the kind specified in this subsection. In the case of section 30(1)(a)(i) the information in question must relate to an investigation which the public authority has a duty to investigate with a view to it being ascertained whether a person should be charged with an offence. Likewise, in the case of section 30(1)(a)(ii) the information in question must relate to an investigation which the public authority has a duty to investigate with a view to it being ascertained whether a person charged with an offence is guilty of it.
17. In this case, the Commissioner is satisfied that the investigation in question was a criminal investigation into an allegation of high-value fraud. As the public authority in this case is a police force, the Commissioner is satisfied that it has powers to conduct investigations of this kind.

The public interest test

18. Having established that the section 30 exemption is engaged, the Commissioner must go on to consider the public interest test as set out in section 2(2)(b) of the Act. This favours disclosure unless, *"in all the circumstances of the case, the public interest in maintaining the*

exemption outweighs the public interest in disclosure of the information".

Public interest arguments in favour of disclosing the requested information

19. In correspondence with the Commissioner, the complainant argued in favour of disclosing the requested information, saying:

"It is surely in the public interest to know that this arm of the State [Norfolk Constabulary] does not inappropriately use public funds to bring about a wholly inappropriate prosecution to the stage of CPS involvement".

20. The fact that the investigation and proceedings were conducted at public expense is recognised by Norfolk Constabulary as a public interest argument in favour of disclosure. Norfolk Constabulary described the case at issue as a large-scale enquiry, involving significant expenditure of public money. In this respect, disclosure of the requested information would provide transparency of the necessity and appropriateness for the spending of public money.
21. Norfolk Constabulary acknowledges the public interest argument relating to accountability with respect to the police's conduct of an investigation which was discontinued. It accepts that, as the case collapsed before all the details of the prosecution case, and none of the defence case, were heard in open court, the public has not been given a full understanding of the case or heard how the defendants intended to answer the charges. It recognises that disclosure of the requested information could assist the public understand the details of the case and how the police gathered and presented the evidence.

Public interest arguments in favour of maintaining the exemption

22. Norfolk Constabulary told the complainant that the police and other law enforcement bodies have consistently argued that information gathered in the course of an investigation should not be released because of the impact on future investigations. It argued that this is particularly the case where a significant amount of evidence relies on the statements of witnesses and thus the future cooperation of the public.
23. It told the complainant this argument was relevant in this case, since the evidence of witnesses, who will reasonably have an expectation that the police will treat their information in confidence, was not heard in open court *"and therefore the expectation of confidentiality prevails"*.
24. Norfolk Constabulary has also argued that the defendants were informed, and it was publicly reported, that there was no case to answer. It therefore considers that other individuals *"can reasonably*

expect confidentiality relating to their involvement". Similarly, Norfolk Constabulary told the complainant that some of the information may be detrimental to individuals.

25. In this respect, it explained that the court stated specifically that the defendants' good names remained intact. It argued not only that disclosure of the requested information "*would replay the case against them*" but also that it does not represent a full picture of either the defence or prosecution case.
26. A further argument against disclosure put forward by Norfolk Constabulary was that, while disclosure of information through the court process "*takes place in a controlled manner*", this is in contrast to disclosure as a result of a freedom of information request. In its view, this:

"makes the information available in an uncontrolled manner and subject to selective reporting and interpretation".

27. The Commissioner considers the argument that information could be misunderstood or misinterpreted to be an irrelevant consideration with respect to the public interest test. He therefore affords no weight to this argument.

Balance of the public interest arguments

28. In the case of *Digby-Cameron v ICO and Bedfordshire Police and Hertfordshire Police*, the Tribunal stated that in considering the public interest test, the starting point is to focus on the purpose of the relevant exemption. The Tribunal asserted that the general public interest served by section 30(1) is the effective investigation and prosecution of crime, which inherently requires, in particular:

- the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
- the maintenance of independence of the judicial and prosecution processes; and
- preservation of the criminal court as the sole forum for determining guilt.

29. With the above underpinning the consideration of section 30(1), where appropriate, the Commissioner will take account of the following factors when weighing up the public interest test in relation to the exemption:

- the stage or stages reached in any particular investigation or criminal proceedings;

- whether and to what extent the information has already been released into the public domain;
- the significance or sensitivity of the information; and
- the age of the information.

The stage of the investigation

30. In this case, the information requested is a summary of the evidence presented to the Crown Prosecution Service (CPS) following a police investigation.
31. The Commissioner acknowledges that the police investigation reached the trial stage and that the trial was halted by the judge. As a result of the trial collapsing, not all of the evidence was presented in court.

Information in the public domain

32. In the Commissioner's view, even where information has entered the public domain by virtue of having been disclosed or referred to in court, this does not necessarily mean that it remains in the public domain. Furthermore, where criminal proceedings are concerned, the Commissioner takes the view that, where documentary evidence is merely referred to (rather than actually disclosed) in open court, then the information contained within that documentary evidence will not automatically enter the public domain.
33. In this case, as the trial collapsed, it is not known how much of the requested information could have been considered to have entered the public domain nor the extent to which, at the time of the request, it would be considered to remain there. In the circumstances, the Commissioner attributes little weight to the factor of the requested information having already been released into the public domain.

Significance or sensitivity of the information

34. The Commissioner gives weight to the argument that disclosure of the requested information would be in the public interest to the extent that it would promote transparency and accountability. In this case, he considers the fact that a significant amount of public money was spent bringing the case to trial is of importance.
35. The Commissioner is mindful of the public interest in why the case collapsed before the trial was complete. However, having had sight of the withheld information he notes that it does not include any commentary on, or review of, the quality of the investigation.
36. He is also aware that the matter was referred to the Independent Police Complainant Commission (IPCC) for review.

37. In its internal review correspondence, Norfolk Constabulary responded to the complainant's questions as to what action the Constabulary was taking in this case. Norfolk Constabulary explained the process it was engaged in with the IPCC, the role of Police Authority scrutiny through the HR and Professional Standard Committee and how such mechanisms are designed to provide assurances on questions such as those he raised.

38. According to the IPCC's website:

"The IPCC's job is to make sure that complaints against the police are dealt with effectively. It sets standards for the way the police handle complaints and, when something has gone wrong, it helps the police learn lessons and improve the way it works".

39. The Commissioner notes that this is the recognised channel open to the public for the investigation of complaints, such as into the handling of the police investigation at issue in this case.

40. He therefore considers the public interest argument with respect to disclosure in this case is lessened as a result of the matter having been referred to the IPCC and subjected to its scrutiny.

Age of the information

41. The Commissioner understands that the passage of time may impact upon the strength of the public interest arguments. In this case, the trial collapsed in 2009, with the request for information being made in February 2010. The Commissioner therefore considers this factor to be of little relevance in considering the public interest.

Other factors

42. In this case, the Commissioner considers that there is clearly a public interest in financial transparency and accountability of Norfolk Constabulary with respect to the investigation. He therefore gives weight to the argument that disclosure would serve the public interest with respect to transparency and understanding the full picture of the investigation. However, he considers the weight attributed to this factor is reduced as a result of the investigation having been subject to scrutiny by the IPCC.

43. He also gives weight to the argument that disclosure could restrict the flow of information to Norfolk Constabulary in future as potential sources of information may be discouraged from coming forward if they anticipated that the information they provide could later be disclosed under the Act. The Commissioner considers that the restriction of the flow of information to the police would be counter to the public interest.

44. The complainant has questioned the appropriateness of protecting witnesses. He told the Commissioner:

"It has been argued by the Police that the witnesses gave evidence to them that they did not confirm when cross-examined in court. If that were to be true, then from a moral aspect alone, the rights of the defendants should outweigh the rights of individuals who gave 'false evidence'".

45. While he understands the complainant's reasons for wanting access to the withheld information, the Commissioner has taken into account the fact that the identity of the applicant and the purpose of the request is irrelevant to consideration of a freedom of information request and that what he must consider is whether or not it is appropriate for the information to be released to the general public.
46. Having carefully balanced the opposing public interest factors in this case, alongside the inherent public interest in principle recognised by the Tribunal, the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Other exemptions

47. As the Commissioner has concluded that Norfolk Constabulary withheld the information appropriately by virtue of section 30(1) of the Act, he does not propose to reach any conclusion in this Decision Notice regarding Norfolk Constabulary's application of the exemption in section 40.

The Decision

48. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

49. The Commissioner requires no steps to be taken.

Right of Appeal

50. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 1st day of February 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

“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,
- (a) 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
- (b) any criminal proceedings which the authority has power to conduct.”