

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2013

Public Authority: Chief Constable of Thames Valley Police

Address: Thames Valley Police Headquarters

Oxford Road

Kidlington

Oxfordshire

OX5 2NX

Decision (including any steps ordered)

1. The complainant requested information about police attendance at incidents relating to a local care home. Thames Valley Police refused to confirm or deny whether information was held, citing section 30(3) of FOIA. The Commissioner found that the exemption was engaged and that the public interest in maintaining the exclusion of the duty to confirm or deny outweighed the public interest in disclosing whether Thames Valley Police holds the information. The Commissioner therefore found that Thames Valley Police had acted correctly in refusing to confirm or deny whether it held the information.

Background

2. The complainant represents a local action group which has concerns about the impact that Apple Hill Nursing Home is having on the local area. The group believes that the home was granted planning permission on the grounds that it provide residential care for elderly people, but that in reality it is operating as a care facility for people of all ages with a wide range of health issues. The group believes that residents of the care home have been responsible for a number of incidents of anti-social behaviour in the locality.

Request and response

3. On 1 November 2012 the complainant made the following request for information under the FOIA.

"I would be most grateful if you could provide me with full details of every incident the Police have attended/been contacted in relation to Apple Hill (care Home with Nursing), Henley Road, Hurley, Maidenhead, Berkshire, SL6 5LH for the period 26 August 2009 to today (30 October 2012).

For each incident, please provide:

- *the date the incident took place*
- *the nature of the incident*
- *the location of the incident*
- *the age of the patient (if applicable)*
- *the outcome."*

4. Thames Valley Police responded on 22 November 2012. It refused to confirm or deny whether it held the requested information, citing the exemptions at section 40(5) and section 30(3).
5. Following an internal review, Thames Valley Police wrote to the complainant on 18 December 2012. It upheld its decision to neither confirm nor deny ('NCND') whether it held the information.

Scope of the case

6. The complainant contacted the Commissioner on 18 December 2012 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether Thames Valley Police acted correctly in refusing to confirm or deny whether it held the requested information.

Reasons for decision

Section 30 – investigations

8. Section 30 is a class-based exemption. Therefore, in order for it to be engaged there is no need for a public authority to demonstrate any level of prejudice should the requested information be disclosed. (So, in this

case there is no need for Thames Valley Police to demonstrate why confirming whether or not the requested information is held would result in any level of prejudice.) Rather, the public authority simply has to demonstrate that the requested information is held (or would be held) for the purposes specified in the relevant part of the exemption which has been cited.

9. Section 30(3) of the exemption states that:

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)."

10. Subsection 30(1) provides an exemption for information which has at any time been held by a public authority for the purposes of:

- investigations into whether a person should be charged with an offence or whether a person charged with an offence is guilty of it;
- investigations which may lead the authority to initiate criminal proceedings which it has the power to conduct;
- criminal proceedings which the public authority has the power to conduct.

11. The Commissioner is satisfied that if Thames Valley Police held information falling within the scope of the request, such information would have been held for one of the purposes set out in section 30(1). This is because the request seeks information about any incidents that Thames Valley Police were contacted about or attended involving Apple Hill Care Home. If Thames Valley Police had received complaints about any individuals connected with the home or been called to attend incidents at or in connection with the home, then the Commissioner accepts that it would have held this information for the purposes of one or more of the activities listed in section 30(1).

12. The Commissioner is therefore satisfied that the requested information – if held – would be exempt from disclosure on the basis of section 30(1). It follows that Thames Valley Police is therefore entitled to rely on section 30(3) to refuse to confirm or deny whether it holds information falling within the scope of the request.

13. In reaching this conclusion, the Commissioner recognises that the request is quite broad in scope; it merely asks for details of 'incidents' relating to Apple Hill Nursing Home, which Thames Valley Police were contacted about or attended. Assuming for a moment that Thames Valley Police had received complaints involving the care home, its

response to being contacted about and/or attending an incident might not have involved detailed or lengthy investigations. Rather, it might simply have conducted brief enquiries in order to establish that no formal investigation was necessary.

14. Nevertheless, the Commissioner notes that the wording of section 30 is also broad. It encompasses information held at any time in order to ascertain whether a person should be charged with an offence. The Commissioner is therefore satisfied that even if Thames Valley Police received a complaint about incidents at the home, and after a brief examination of the facts decided not to undertake any detailed investigation, any information generated by such initial considerations would fall within the scope of the exemption.

Public interest test

15. Section 30 is a qualified exemption. The Commissioner must, therefore, consider the public interest test at section 2 of the FOIA: whether in all the circumstances of the case the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information.

Public interest arguments in favour of maintaining the exemption

16. It would be rare for any police force to confirm whether or not it held information relating to a specific investigation, or an investigation into a particular body, as this would identify any police involvement regarding the body in question. In turn, this could prejudice law enforcement or potentially damage the criminal justice system. This is because complying with such requests would enable individuals to become aware of what the police are or have been investigating (or indeed not investigating) and this could enable individuals engaged in criminal activity to take action to minimise the risk of being detected.
17. Furthermore, Thames Valley Police argued that confirmation as to whether or not it held the requested information could make people less likely to contact the police for fear that such a fact could be disclosed. This could potentially put individuals at risk as undetected crimes could increase which in turn would have a detrimental impact on the level of service that the police could provide to the community which it serves.
18. Thames Valley Police also expressed concerns that confirmation or denial could lead to the care home's residents being perceived in a negative or prejudicial way, resulting in unwarranted attention or interference with them. It felt that this could compromise future policing activities and investigations as well as jeopardise the safety of all local residents.

Public interest arguments in favour of confirming whether or not information is held

19. Thames Valley Police acknowledged that confirming whether or not it held information falling within the scope of this request would allow for better public awareness of its activities and its resources, which in itself would lead to better public debate and participation and might increase local confidence in its approach to crime prevention.

Balance of the public interest arguments

20. The Commissioner believes that there is clear interest in the public being reassured that information which it provides to the police which may point towards the existence of criminal activity is taken seriously and that the police investigate any such matters effectively and expeditiously.
21. However, the Commissioner would suggest that the extent to which confirmation by the police as to whether or not it holds information falling within the scope of the request is likely to only be of limited value in serving this public interest. Nevertheless, the Commissioner accepts that confirmation as to whether or not the police hold any information falling within scope of the request could also inform the public as to the true impact of Apple Hill Nursing Home on the local community. As such, the Commissioner acknowledges that such information may be of legitimate interest to local residents.
22. In cases involving the application of section 30(3), the Commissioner believes that the wording of the request is key to determining whether the balance of the public interest favours maintaining the exemption. This is because the more specific a request, the more likely it is that confirmation as to whether or not information is held would result in the prejudicial effects described by the police above, and thus the more likely that the public interest favours maintaining the exemption.
23. In this case the request does not focus on a specific incident or particular investigation which may or may not be underway. Rather, it simply asks whether Thames Valley Police attended or was contacted about any incidents involving Apple Hill Nursing Home over a three-year period.
24. On the face of it this is quite a broad request and it could be argued that confirmation as to whether or not information is held may not reveal, to the wider public, the nature of any specific investigation that Thames Valley Police could be undertaking. For example, if Thames Valley Police did hold information falling within the scope of the request and confirmed this fact in response to the request, the public would not

know, simply from this confirmation, whom the incident related to, when it occurred and the outcome.

25. However, despite the relatively broad nature of the request, in the Commissioner's view confirmation as to whether or not information is held would still be likely to represent a significant risk to the police's ability to prevent or detect crime and apprehend or prosecute offenders.
26. If Thames Valley Police did not in fact hold information falling with the scope of the request and it confirmed this fact, then anyone who had been, or was, involved in criminal activity during the three-year period covered by the request could deduce that they were not the subject of a complaint to the police and thus in all likelihood their activities were not the subject of a police investigation. This could, in effect, alert any such individuals to the fact that, to date, their criminal activities had gone undetected by Thames Valley Police.
27. In contrast, if Thames Valley Police confirmed that it did hold information falling within the scope of the request, then anyone who had been, or was, involved in criminal activity during the three-year period covered by the request could then be alerted to the possibility that Thames Valley Police was in fact aware of their activities. Such a situation could obviously undermine any investigatory activity that Thames Valley Police might be undertaking, as such individuals could take action in an attempt to undermine any ongoing police investigation.
28. The Commissioner recognises that there is of course a third possibility, namely that Thames Valley Police does not hold any information falling within the scope of the request and furthermore that nobody connected with Apple Hill Nursing Home has been involved in any sort of criminal activity over the time period covered by the request. Therefore, confirmation that no information was held would not have the prejudicial effect described in the first hypothetical scenario.
29. However, when considering the balance of the public interest in relation to the application of an NCND exemption, significant weight has to be given to the need to protect a public authority's ability to adopt a consistent approach when responding to similar requests in the future. That is to say, if Thames Valley Police routinely confirmed that it was not conducting investigations into particular organisations – because this was in fact the case – and when it actually was investigating a particular organisation it adopted an NCND approach, then its decision to do so could be reasonably assumed to be taken as an indication that it was in fact conducting an investigation into the organisation cited in the request. This would of course undermine the rationale for adopting the NCND response in the first place.

30. Therefore, in light of the limited extent to which complying with the duty contained at section 1(1)(a) of the FOIA in respect of this request would serve the public interest, the Commissioner is satisfied that the public interest favours maintaining the exemption contained at section 30(3). Thames Valley Police is therefore not obliged to confirm or deny whether it holds information in respect of the request.
31. In light of his findings in respect of section 30(3), the Commissioner has not gone on to formally consider the police's reliance on section 40(5).

Right of appeal

32. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. 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.
34. 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

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