

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 July 2017

**Public Authority:** The National Archives  
**Address:** Kew  
Richmond  
Surrey  
TW9 4DU

#### Decision (including any steps ordered)

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1. The complainant has requested nine Metropolitan Police files relating to the 'Nude Murders'. TNA refused to disclose the requested information under section 31(a)-(c), 38 and 40(2) FOIA.
2. The Commissioner's decision is that TNA has correctly applied section 31(1)(a)-(c) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. The complainant made a request on 25 April 2016 for access to all the available Metropolitan Police files relating to the 'Nude Murders': MEPO 2/9895 to MEPO 2/10318 (421 files).
5. TNA responded on 26 April 2016, informing the complainant that within the range specified, there are 42 records that it knows directly relate to the 'Nude Murders', because each of these records contains this phrase within the title. It provided a spreadsheet detailing these records and confirmed that it would be happy to review them, suggesting that the most efficient way to do this would be to split the files into seven batches of six. It provided advice and assistance on how to identify whether any of the remaining 379 files specified in the original request

contain information relevant to this enquiry. The request was placed on hold pending confirmation of how the complainant wished to proceed.

6. On 11 May 2016 the complainant requested information of the following description:  
  
"Having looked at the 42 file references I have condensed my Request for release of information for you to Review down to 9 files: MEPO 2/9895. MEPO 2/10292. MEPO 2/1097. MEPO 2/10299. MEPO 2/10301. MEPO 2/10303. MEPO 2/10306. MEPO 2/10309. MEPO 2/10317."
7. TNA then asked whether the complainant would agree to the request being dealt with in two batches, five files and four files respectively and on 18 May 2016, the complainant agreed to this. TNA therefore progressed the request for the first five files and agreed to progress the request for the other four files once the first batch was complete.
8. For the first four files within the first batch (MEPO 2/9895. MEPO 2/10292. MEPO 2/10299 MEPO 2/1097.), the public interest test extension was applied on 22 June 2016, 21 July 2016 and 17 August 2016. A full response, in relation to these four files, was provided on 16 September 2016. For all four files the exemptions at section 31, 38 and 40(2) were applied.
9. The complainant made a request for an internal review on 16 September 2016. The outcome of the review was provided on 13 October 2016. TNA upheld its original response.
10. For file MEPO 2/10301(the fifth file in the first batch) the public interest test extension was applied on 29 June 16. The full response was provided on 08 July 2016, the exemptions at section 31, 38 and 40(2) were applied.
11. The complainant made a request for an internal review on 18 July 2016. The outcome of the review was provided on 02 August 2016. TNA upheld its original response.
12. Work began on the second batch of files (MEPO 2/10303. MEPO 2/10306. MEPO 2/10309. MEPO 2/10317) on 14 October 2016. TNA again required an extension of time to consider the public interest test. On 09 December 2016 it provided a full response, the exemptions at section 31, 38 and 40(2) were applied.
13. The complainant made a request for an internal review on 09 December 2016. The outcome of the review was provided on 03

January 2017. TNA upheld the application of section 31(1)(a)-(c), 38 and 40(2) FOIA.

## Scope of the case

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14. The complainant contacted the Commissioner on 13 October 2016 to complain about the way his request for information had been handled.
15. The Commissioner has considered whether TNA was correct to withhold the requested information under section 31(1)(a)-(c), 38 and 40(2) FOIA.

## Reasons for decision

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16. TNA has argued that the withheld information is exempt on the basis of section 31(1) (a)-(c) which provides that information is exempt if its disclosure would or would be likely to prejudice:
  - (a) the prevention or detection of crime,
  - (b) the apprehension or prosecution of offenders,
  - (c) the administration of justice,
17. As with any prejudice based exemption, a public authority may choose to argue for the application of regulation 31(1)(a)-(c) on one of two possible limbs – the first requires that prejudice ‘would’ occur, the second that prejudice ‘would be likely’ to occur.
18. TNA has stated that they believe the likelihood of prejudice arising through disclosure is one that is likely to occur, rather than one that would occur. While this limb places a weaker evidential burden on TNA to discharge, it still requires TNA to be able to demonstrate that there is a real and significant risk of the prejudice occurring.
19. The complainant has made an application to inspect TNA files in relation to a police murder investigation. TNA considers that section 31(1)(a)-(c) applies to all of the nine files in their entirety.
20. TNA acknowledged that for this exemption to be engaged it is necessary to prove that disclosure would be likely to involve a level of harm. The harm/prejudice test for this exemption involves the consideration that release could put at risk law-enforcement matters,

including preventing or detecting crime, arresting or prosecuting offenders and the proper administration of justice.

21. It said that each of the nine files relate to unsolved murders of women who were known, or suspected, of making a living as sex workers in West London in the 1950s and 1960s.
22. It went on that when considering the prejudice test for this exemption to be engaged, it consulted closely with the Metropolitan Police Service (the transferring department) to determine the risk of releasing this information, which is directly relevant to the investigations of a series of murders as yet unsolved, and of which a hypothetical suspect(s) would still be assumed to be alive. As there remains a possibility that these murders could still be investigated and that a suspect could be identified, charged, brought to trial and convicted, the disclosure of any information within the file could prejudice any future investigation or prosecution that may take place. It is for this reason that section 31(1)(a–c) is engaged for each of the files as a whole.
23. It went further to explain that subsection (a) has been engaged as the crimes that each of these files relate to are of such a serious nature that they would merit further investigation should new evidence or a confession arise. The release of any information within these files would therefore be likely to prejudice the detection of a suspect(s) and thereby resolution of an unsolved crime should a future investigation take place. As a result of this, subsections (b) and (c) have also been engaged as this would prejudice the prosecution of any offenders and, thereby, the administration of justice.
24. The Metropolitan Police Service reiterated to TNA that there is no age limit on the prosecution of persons suspected of murder, and therefore the intent to identify and charge a suspect and bring justice to a case is just as relevant now as it was at the time of the crime. Furthermore, in the instances of these cases the murders have the characteristics of serial murders, the victims were all female, vulnerable and engaged in an activity which regularly exposed them to violence and mistreatment. The murder of several women apparently by the same perpetrator, would have been and would continue to be the source of considerable public concern. There is an expectation amongst the public that the police will continue with the investigation into these murders should opportunities arise and as long as there is a possibility that the suspect(s) is still alive, regardless of how long ago they were committed.
25. It said that in recent years there have been many cold cases re-investigated by the police. In as recently as the last few months, The

National Archives has provided case papers to police services in order to assist with enquiries into historical cases of murder from the late 1940s. In considering this exemption it therefore had to acknowledge that there does remain a possibility, however remote, that this case could be investigated at some point in the future. A number of these files do contain evidence collected years after the date of the offence. It provided the Commissioner with an example of this from one of the nine files. It argued that this affirms the possibility that evidence can emerge years after an initial murder investigation, and that the police may open up investigations when this happens.

26. It said that given that new evidence can throw light onto any aspect of the original investigation, it is not possible to identify particular information that might be released into the public domain without the risk of compromising any future police actions. Information that appears innocuous may have significance to an experienced investigator that is not immediately obvious to the lay reader; or may assume a new significance in the light of newly discovered evidence or developments in forensic or investigative techniques. The evolution of new scientific techniques, especially the technology of DNA, means that cases hitherto considered unsolvable, are being examined afresh. Increasingly police services throughout the country are setting up 'cold case' teams to review their case files on unsolved murders; in some instances these unsolved murders date back to the 1940s. The premature release of these records into the public domain might, therefore, be detrimental to any future investigation and subsequent prosecution.
27. It said that the importance of applying this exemption to the file as a whole in circumstances such as this was addressed in the following decision notice, FS50079972<sup>1</sup>:

"It is impossible to distinguish information that could be critical to any future investigation and prosecution from information that might not be....All the material that comprises this case file may potentially have some future significance."
28. TNA said that with the Information Commissioners guidance in mind it is impossible to distinguish which information, however trivial it may

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2007/397908/DECISION\\_NOTICE\\_FS50079972.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2007/397908/DECISION_NOTICE_FS50079972.pdf)

appear in isolation, could in fact be critical. As a result of this, it is necessary for this exemption to apply to each of these files as a whole.

29. The Commissioner acknowledges that TNA has confirmed that this case could potentially still be reopened. It has been advised by the Metropolitan Police that, should the case be reopened, releasing any information from the police investigation file now would risk prejudicing any prosecution following from such a reopening. While it is perhaps a remote possibility that these cases will be reopened, and that a prosecution would follow, the potential prejudice to such a prosecution from prior disclosure of the information would be significant. The Commissioner has therefore weighed up the likelihood of a prosecution arising, on the one hand, against the severity of the prejudice should it do so on the other. She has decided that TNA has demonstrated that the release of information from the files in this case would be likely to compromise the prevention or detection of crime, the apprehension or prosecution of offenders, and the administration of justice and therefore section 31(1)(a)-(c) is engaged.
30. As section 31 is a qualified exemption, the Commissioner has gone on to consider the public interest test.

## **Public interest test**

### **Arguments in favour of disclosing the information**

31. TNA acknowledged that disclosure of the information contained within these records would demonstrate how the police go about investigating serious crime, in this instance the murder of several young women in West London during the mid-1960s, attributed to one serial killer.
32. It went on that the police service is accountable to the public it serves and it is in the common interest that information that demonstrates how it performs across the range of its duties is made available. However, it said that this comes with the following caveats; such disclosures of information must not impede the police from discharging their lawful duties to detect and prevent crime, and identify, apprehend and bring offenders to justice; nor should disclosure infringe the rights of individuals.
33. It argued that the murder of several women apparently by the same perpetrator would have been the source of considerable public anxiety. Disclosure of information which indicates the efforts of the

authorities to identify the individual(s) responsible, even if the case ultimately remains unsolved, could act to reassure the public and engender a sense confidence in the police, which would be in the public interest.

### **Arguments in favour of maintaining the exemption**

34. TNA argued that there does remain a possibility that these cases could be re-opened for further investigation at some point in the future. The premature release of these records into the public domain may be detrimental to any future investigation and subsequent prosecution. To release significant information which potentially jeopardises a prosecution for murder would not be in the public interest.

### **Balance of the public interest**

35. The Commissioner considers that there is a strong public interest in the Metropolitan Police Service operating openly and being accountable in its effectiveness in discharging their lawful duties to detect and prevent crime and identify, apprehend and bring offenders to justice.
36. However the Commissioner does consider that there is a strong public interest in not disclosing information which would be likely to impede the Metropolitan Police Services' ability to carry out its lawful duties effectively. Therefore disclosing information which would be likely to frustrate the ability to carry out these lawful duties, should any or all of these cases be reopened for any reason, this would not be in the public interest.
37. On balance, the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption. Section 31(1)(a)-(c) FOIA was correctly applied in this case to the withheld information. The Commissioner has not therefore gone on to consider the application of any of the other exemptions any further.

## Right of appeal

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38. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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 .....

**Gemma Garvey**  
**Senior Case Officer**

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