

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 October 2017

**Public Authority:** Chief Constable for British Transport Police  
**Address:** Force Headquarters  
25 Camden Road  
London  
NW1 9LN

#### Decision (including any steps ordered)

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1. The complainant has requested a copy of a report about allegations that during the 1970s a serial killer was responsible for the deaths of several people on the London Underground. British Transport Police (BTP) refused the request on the grounds that the information it held was exempt from disclosure under sections 30(1) and 30(2) (investigations and proceedings), and section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that BTP was entitled to rely on section 30(1)(a) to refuse the request.
3. The Commissioner requires no steps.

#### Background

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4. In 2015, a former detective publicised allegations that in 1984 a convicted murderer confessed to the police that over many years he had murdered 18 people on the London Underground by pushing them onto the tracks. The detective alleged that the police did not take these claims forward for fear of the public reaction, and that the individual was never prosecuted for the alleged murders, all of which were recorded as suicides.
5. BTP commenced a review to look into the claims, which were subsequently published in a book, with a view to establishing their veracity.

## Request and response

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6. On 25 January 2017, the complainant wrote to BTP and requested information in the following terms:

*"I am making a request under the Freedom of Information Act for a copy of the report and/or draft reports on an investigation of allegations of several murders on the London Underground by the late [name redacted], known as the London Underground Serial Killer.*

*My understanding is that the report has been or is being prepared by BTP's Detective Superintendent [name redacted], and that the Met commissioner, Sir Bernard Hogan-Howe, asked BTP to investigate and provide him with a report."*

7. BTP responded on 8 February 2017. It stated that the information it held was exempt from disclosure under sections 30(1)(a),(b),(c) and section 30(2)(iii) of the FOIA. It also said that the exemption at section 40(2) of the FOIA applied.
8. Following an internal review, BTP wrote to the complainant. It explained that the report was not yet completed and was in fact only in the early stages of being drafted, and that new information recently brought to light was still being assessed. It upheld its application of section 30(1) to withhold the information, although it offered no comment on section 30(2). It also upheld its application of section 40(2).

## Scope of the case

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9. The complainant contacted the Commissioner on 29 March 2017 to complain about the way his request for information had been handled. He disputed BTP's application of both exemptions.
10. In making her decision, the Commissioner must restrict her consideration to the information that existed at the time the request was received. The withheld information under consideration in this case therefore comprises a draft, incomplete report of the review of the allegations.
11. The Commissioner has firstly considered BTP's application of section 30 of the FOIA in this decision notice, as BTP has exempted the draft report in its entirety under this exemption. In view of her finding, it has not been necessary to go on to consider the application of section 40.

## Reasons for decision

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### Section 30 – investigations and proceedings conducted by public authorities

12. Section 30(1) of the FOIA states 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,*

*(b) 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*

*(c) any criminal proceedings which the authority has power to conduct."*

13. The Commissioner considers that the phrase "*at any time*" means that information can be 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 held and used for this purpose.

14. Section 30 of the FOIA is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. In order for the exemption to be applicable, information must be held for a specific or particular investigation and not for investigations in general. The Commissioner is satisfied that in this case the withheld information relates to a specific investigation (that into claims made about a London Underground serial killer).

15. Section 30(1)(a) may only be claimed by a public authority that has a duty to investigate offences. The public authority in this case is BTP. As a police force, it clearly has a duty to conduct criminal investigations. The Commissioner is therefore satisfied that it has a duty to carry out investigations of the sort described in section 30(1)(a) and that the exemption is engaged.

16. Section 30(1)(b) also applies to investigations but the public authority only needs to have the power to conduct those investigations rather than a duty. Importantly, however, the public authority must also have

the power to institute and conduct any criminal proceedings that result from its investigation. The exemption will typically be available to regulators that are prosecuting authorities, having both the power to investigate and, where appropriate, institute criminal proceedings.

17. In this case, it is the Commissioner's view that such proceedings would be conducted by the Crown Prosecution Service rather than by BTP. BTP's website states that the Crown Prosecution Service is a partner organisation "...responsible for prosecuting criminal cases investigated by the police in England and Wales"<sup>1</sup>. Therefore, the Commissioner does not accept BTP's submission that the information in question is exempt from disclosure on the basis of section 30(1)(b) and has not considered its application of this exemption further.
18. Similarly, for section 30(1)(c) to be engaged, the public authority must have the power to institute and conduct criminal proceedings. For the reasons set out above, the Commissioner does not agree that section 30(1)(c) is engaged, and has not considered its application further.

### **Public interest test**

19. Section 30(1)(a) is a qualified exemption. Therefore, the Commissioner must consider the public interest test set out at section 2(2)(b) of the FOIA and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

#### *Public interest arguments in favour of disclosing the information*

20. The complainant believes that transparency regarding the allegations against the named individual is very important, as he believes the allegations call into question the extent to which the police might have covered up evidence that a serial killer was at work, so as not to alarm the public. He believes the allegations concern matters of enormous public interest given the questions that it raises over public safety.
21. Regarding the application of section 30, the complainant commented:

*"I note that BTP claims the report has not been completed, and yet has provided no estimate as to when it might be completed. This is an unacceptable position given that BTP could for ever claim that the*

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[http://www.btp.police.uk/about\\_us/your\\_right\\_to\\_information/publication\\_scheme/partner\\_organisations.aspx](http://www.btp.police.uk/about_us/your_right_to_information/publication_scheme/partner_organisations.aspx)

*report has not been completed as an artificial device to avoid disclosure."*

22. BTP explained that it accepted that historical cases concerning serial killers attract significant media interest and that there is a public appetite for information about such matters. It took into account that the force would appear more transparent in its investigation of this case if it was to publish the draft report, showing the work that had been undertaken so far.
23. It also considered that, if the draft report was publicly available, it could potentially attract further witnesses who had not come forward at the time of the alleged murders to now do so, and this could be advantageous to its investigation.

*Public interest arguments in favour of maintaining the exemption*

24. By way of background, BTP explained that at the time the request was received the withheld information comprised a partially drafted, incomplete report on the matter. BTP explained that the information relates to its ongoing consideration of the allegations that it has recently been made aware of regarding the individual named in the request.
25. BTP explained that it has a duty to investigate historic offences in the same manner as present day offences and said it would not be appropriate to disclose to the world at large a copy of an incomplete report into what was a live investigation. Disclosure of information about a live investigation could prejudice the investigation of that case and any criminal proceedings that were subsequently brought.
26. It could also impact on other cases if the public believed that information about live cases may be disclosed under FOIA. The public has an expectation that any information they provide to the police with regard to criminal investigations will be treated confidentially and will not be more widely disclosed for purposes not directly connected with those investigations. Members of the public may not wish to come forward in the future if the force failed in its duty of confidence towards those who assist with its enquiries.

*Balance of the public interest*

27. The Commissioner has considered the complainant's argument that disclosure would serve the public interest in transparency and accountability regarding BTP's investigation of the new allegations. However, she notes BTP's explanation that, at the time it was requested, the draft report was in its very early stages and that such information as it contained was very limited in its scope. She therefore considers that disclosure of limited information, which did not set out

the full scope of the allegations or BTP's consideration of them, would not satisfy the public interest in this regard.

28. With regard to the complainant's representations that BTP provided no estimate as to when the report might be completed and his view that this was a tactic to allow it to *"for ever claim that the report has not been completed as an artificial device to avoid disclosure"*, the Commissioner notes that BTP's arguments flow from the fact that the draft report is a reflection of matters that are currently very much live. Should the matter subsequently be closed without the report being finalised, it could again be requested under the FOIA and potentially disclosed if the public interest in doing so was stronger than that in maintaining the exemption at that time.
29. With regard to BTP's arguments that disclosure may encourage new witnesses to come forward, the Commissioner considers this a possibility. However, she notes that there is already a large amount of information in the public arena about the new allegations. The detective's claims were featured in a book, and have been widely covered in the media. The Commissioner considers that there is already significant information in the public domain capable of prompting anyone with new information to come forward, and she therefore places limited weight on this argument.
30. However, having assessed the arguments BTP put forward in favour of maintaining the exemption, the Commissioner considers that they carry significant weight.
31. The Commissioner considers that there will always be a strong public interest in maintaining the section 30 exemption where an investigation is ongoing, as in the present case. She accepts that whilst investigations are ongoing, public authorities require a safe space in which to operate. The Commissioner particularly notes BTP's explanation that it is actively reviewing the information that has recently come to light, and that, as with any investigation, there is the possibility that it may result in charges being brought against individuals, including police officers, should the evidence show that they acted improperly in concealing information.
32. The Commissioner acknowledges that although the deaths occurred many years ago, and the alleged perpetrator is himself dead, information about the matter has recently appeared in the public domain, and there remains widespread public interest in this case. However, it is clear that BTP's analysis of this new information, which is what has been requested here, has not previously been released into the public domain.

33. Indeed, as it relates to a live and ongoing review of the true extent of the named individual's offending, the Commissioner considers that its disclosure would necessarily have a negative impact on those investigations. It could allow potential offenders to evade justice, deter further contact with possible witnesses (in these cases and others) and it could, ultimately, undermine the right to a fair trial of any individual prosecuted in connection with the investigation.
34. The Commissioner also recognises the detriment that could be caused to the police service because of the inherent danger of restricting the flow of information to the police in respect of future investigations, including the ongoing investigation of this case, if information from a live investigation were disclosed.
35. Having given due consideration to the arguments put forward, on this occasion the Commissioner accepts that the public interest favours maintaining the exemption at section 30(1)(a).
36. Because section 30(1)(a) is engaged in respect of the withheld information in its entirety, it has not been necessary to go on to consider BTP's application of section 30(2)(iii) of the FOIA.



## Right of appeal

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37. 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)

38. 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.
39. 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** .....

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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