

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 February 2018

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information relating to the death of Sandra Rivett and the subsequent disappearance of Lord Lucan from the Metropolitan Police Service (the "MPS"). The MPS confirmed that it holds information but found it to be exempt from disclosure under sections 30(1) (investigations and proceedings) and 40(2) (personal information) of the FOIA. The Commissioner's decision is that the exemption at section 30(1) is engaged and that the public interest favours maintaining the exemption. No steps are required.

Background

2. Lord Lucan has been presumed dead under the terms of the Presumption of Death Act 2013¹.
3. The complainant has made previous requests to the MPS for the same information and the Commissioner has issued two related decision notices^{2,3}. In both cases the Commissioner found in favour of the MPS.

¹ <http://www.legislation.gov.uk/ukpga/2013/13/notes/division/2>

4. Lady Lucan died last year⁴.

Request and response

5. On 23 April 2017 the complainant wrote to the MPS and requested information in the following terms:

"My request is identical to ones previously submitted in 2014 and 2016.

I am making the new request in the hope that there has been a change in circumstances which would now facilitate disclosure.

Can you please supply copies of all documents, transcripts and photographs held by the Metropolitan Police which in any way relates to the force's investigation into the death of Sandra Rivett who died on 7 November 1974 and or the subsequent disappearance of Lord Lucan, the missing peer who is now presumed dead and who has been widely linked to Ms Rivett's death.

Please note that I am only interested in information which was generated between period 7 November 1974 and 31 December 1984.

I note that section 30(1) of the Freedom of Information Act does not apply to historical information and I note the changes introduced by the Constitutional Reform and Governance Act 2010.

The documentation held by the Metropolitan police will include but will not be limited to crime scene photographs, artist impressions, witness statements, investigating officers note books, internal communications, and maps as well as documentation and or material relating to the hunt for and possible sightings of Lord Lucan. Lord Lucan has been pronounced dead so I do not anticipate any data protection implications as far as he is concerned. Please

² https://ico.org.uk/media/action-weve-taken/decision-notices/2014/1040772/fs_50548394.pdf

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624529/fs_50626924.pdf

⁴ <http://www.bbc.co.uk/news/uk-england-london-42636146>

feel free to redact the names and addresses of any witnesses and police officers who are still alive but please do not exclude details of people who are now deceased.

I would remind you that in 2016 the High Court granted a death certificate in relation to Lord Lucan.

I think the granting of the certificate means there are no data protection issues as far as Lord Lucan is concerned”.

6. Having delayed a response in order to consider the public interest in disclosure of the requested information, on 8 June 2017 the MPS responded. It refused to provide the requested information citing sections 40(2) and 30(1) of the FOIA.
7. Following an internal review the MPS wrote to the complainant on 14 August 2017. It maintained its position.

Scope of the case

8. The complainant wrote to the Commissioner on 15 August 2017 to complain about the way his request for information had been handled. His grounds of complaint were as follows:

“... You will be aware that I have previously complained about the Met’s handling of previous requests on the same issue.

I am hoping that the passage of yet more time will have strengthened the case in favour of disclosure.

I have outlined the reasons why I think the documents should be disclosed in my request for an internal review ...

I think the stumbling block last time around was the Commissioner’s acceptance that the police were still pursuing any active lines of enquiry.

I refer you to a Guardian newspaper report of 3 February 2016 about the high Court’s Decision to grant a death certificate into the death of Lord Lucan.

The newspaper report contained the following: “The hearing was told that police had confirmed there were no live lines of inquiry into the Rivett’s murder although the case had not been closed”.”

9. When asking for an internal review the complainant included the additional points:

"I note that I am only seeking historic information which relates to the period 7 November 1974 and 31 December 1974. I am not seeking information relating to any more recent enquiries.

While I accept that the case into the murder of Sandra Rivett and the disappearance of Lord Lucan remains open I do not believe that the police are pursuing any actual live lines of enquiry.

...

I understand that the there [sic] continue to be no lines of live enquiry and that that has been the situation for a considerable degree of time.

Given the lack of any new actual evidence it is unclear why the MPS continue to keep the case open.

It is generally accepted that Lord Lucan was and is the only prime suspect in the case of Sandra Rivett.

He is now widely and officially presumed to be dead following his disappearance in 1974.

Indeed the peer was declared dead in 1990 and the aforementioned death certificate was issued in 2016.

The failure to disclose information only fuels conspiracy theories that Lord Lucan was able to escape justice with the help of the authorities.

While I accept that its [sic] possible that a new line of inquiry may open up I reiterate that I am only seeking historic information covering a ten year period".

10. Both when requesting an internal review and raising his complaint, the complainant made no reference to the MPS's citing of section 40. The Commissioner therefore advised him that she would not further consider the application of section 40 unless she heard to the contrary; she did not. The Commissioner will consider the citing of section 30(1) below.

Reasons for decision

Section 30 – investigations and proceedings

11. The Commissioner found this class based exemption to be engaged in the previous decision notices mentioned above and, because the information request in this case is the same, her position has not changed. She will not therefore revisit the previous arguments in

engaging the exemption and instead will cover only the factors which have changed since then.

12. In support of its continuing position to withhold the requested information the MPS explained to the Commissioner:

"The information being requested by [name removed] relates to the murder of Sandra Rivett and attempted murder of Lady Lucan in 1974 which remains an unsolved murder investigation within the MPS Homicide and Serious Crime Directorate who have confirmed that although at present we have no current lines of enquiry the case remains open and under review. It would therefore not be appropriate to release any information in connection with the investigation.

As with all unsolved homicide cases the investigations are not closed and remain open and under review as the possibility remains that further information may come to light and or/additional lines of enquiry may become available at any point therefore it is not uncommon for investigations to span a number of years ...

[The complainant] is requesting the release of information concerning the investigation, from disclosure of all documents, witness statements to the investigating officer's notes etc. However, any release of information that is not managed by the MPS could potentially impact the investigation. For example, if the MPS released the information being requested under the Act it could alert any potential suspects as it may be the case that Lord Lucan is not the only suspect, therefore it could allow potential offenders to evade justice. The release of information could lead to witnesses deter further contact [sic] and ultimately undermine the right to a fair trial".

13. The MPS included several examples of cases which were either solved many years later, or where recent evidence has come to light, in support of its position. These were readily found online and some are listed below:

Conviction of a historic child murder almost 50 years later:
<http://www.independent.co.uk/news/uk/crime/child-murder-conviction-50-years-later-david-dearlove-paul-booth-toddler-killing-1968-a8086801.html>

Conviction of murder 34 years later:
<http://www.bbc.co.uk/news/uk-england-london-36824662>

Convicted of triple murders 28 years later:

<http://www.bbc.co.uk/news/uk-england-london-12019171>

A man was arrested in January 2016 for the rape and murder of a girl in 1982, over 30 years ago:

<http://www.bbc.co.uk/news/uk-england-sussex-36258760>

Witnesses came forward involving a death in 1976, 40 years ago.

<http://www.itv.com/news/wales/2016-01-20/police-to-meet-witness-40-years-after-death-of-welsh-teenager/>

14. By way of an example, in respect of the first case listed above, the MPS argued:

"I believe the investigation outcome whilst different from the Lord Lucan's case in itself, strengthens MPS stance. This case clearly demonstrates if information regarding a historic murder investigation had been disclosed publicly as to what [name removed] saw as a three-year-old, or used by journalists, would have very likely prejudiced his subsequent high value as the main witness in the murder trial. Old investigations may well still contain information that could have current impactive consequences for the course of justice, should that information become known to the wrong parties".

15. The MPS has also advised:

"The MPS notes [the complainant]'s comments regarding Lord Lucan being granted a death certificate. In February 2016 George Bingham (son of Lord Lucan) applied under the Presumption of Death Act, which came into effect in 2014 to enable George Bingham to apply to have his father declared dead in order for him to inherit the family title. A death certificate was issued under the 2014 Presumption of Death Act allowing Lord Bingham to inherit the title as the 8th Earl. Although a death certificate has been issued for Lord Lucan this changes nothing as far as the police investigation is concerned as Lord Lucan is still wanted for murder under criminal law...

The fact that Lord Lucan was declared presumed dead (for title and financial reasons) does not mean the murder case is closed. Although there has not been any proof of life there has neither been any indication of evidential/tangible proof of Lord Lucan's death. Lord Lucan would be now in his early 80s and there is statistically a very reasonable chance that he would still be alive, for example war criminals from World War 2 were still being brought to justice in their 80s and 90s which is 60years plus after the crimes were committed.

Lord Lucan is still very possibly alive and remains an outstanding murder suspect. It has to be stressed that in order for Lord Lucan to get away as he did, it is very possible that he would have received some help from other accomplices who may also still be alive and have information...

Whilst I appreciate that there are differences between the investigations the overriding principle is that there is a public interest in continuing to protect the integrity of investigations which remain unsolved as it is not known when or how information may come to light to help progress or solve a case”.

16. Section 30 is a qualified exemption so the Commissioner has also considered the balance of the public interests. She has focussed on whether the public interest balance has changed since the previous decision notices.
17. The arguments previously cited have all again been taken into account and remain valid so have not been repeated here. Whilst it is noted that Lady Lucan has since died, this occurred after this request was made and is therefore not a matter which can be taken into account as the Commissioner must consider the circumstances when a request is made.
18. The only additional issue which the Commissioner considers to differ from the two previous decision notices is the further passage of time and she will consider this point below.

The further passage of time

19. The Commissioner's previous decision notices were issued in September 2014 and June 2016, the latter therefore preceding this request by just over a year. The Commissioner initially notes that the investigation still remains 'live' which the MPS has confirmed above, albeit there may not be any current lines of enquiry. Furthermore, it remains under active review.
20. To accompany its submission the MPS gave the Commissioner examples of cases which had either been solved or further lines of enquiry rekindled many years later, as shown above. This clearly evidences that information could still come to light in respect of this high profile investigation.
21. As argued in the most recent decision notice, and restated by the MPS above, Lord Lucan may still be alive and he therefore remains an outstanding murder suspect. The MPS has advised that it is very possible that Lord Lucan received some help from other accomplices in

order for him to get away as he did at the time, and this party / parties could also still be alive and may have information.

22. Taking the circumstances into account, the Commissioner does not find that the further passage of time in this case currently makes any difference to her previous conclusions. The murder investigation remains 'live' and under active review.

Conclusion

23. Whilst the Commissioner notes the complainant's view that the MPS will be unlikely to pursue any further lines of enquiry in respect of Lord Lucan, she notes that the MPS has confirmed that the investigation remains open, and she further notes that it is a high profile case which still generates significant media coverage. It is possible that information may yet come to light which would result in further enquiries being necessary.
24. The Commissioner accepts that the arguments put forward by the MPS, as well as any covered in the previous decision notices, remain relevant and she considers that they still all weigh heavily in favour of maintaining the exemption in this case. The changes of circumstances since the most recent decision notice have not persuaded the Commissioner to change her view and she finds that the public interest still favours maintaining the exemption. She therefore concludes that the passage of time does not change her previous findings and the MPS was entitled to withhold the requested information.

Right of appeal

25. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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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