

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 June 2018

Public Authority: Chief Constable of Thames Valley Police
Address: Police Headquarters
Kidlington
Oxfordshire
OX5 2NX

Decision (including any steps ordered)

1. The complainant has requested information relating to an apparent late night high speed pursuit by Thames Valley Police.
2. Thames Valley Police would neither confirm nor deny holding information by virtue of section 30(3) (Investigations and proceedings) and section 40(5) (Personal Information) of the FOIA.
3. The Commissioner's decision is that Thames Valley Police was entitled to rely on section 30(3) of the FOIA to neither confirm nor deny holding the information.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

5. On 25 February 2014 the complainant wrote to Thames Valley Police (TVP) and requested information in the following terms:

"I understand you cannot disclose the details of live investigations for rather obvious reasons. However in the early hours of last night (around 1 or 2am) I was overtaken by what appeared to be a high speed pursuit on the London bound carriage way of the M4 in the vicinity of junction 8. Given the number of high speed pursuits is relatively small, I was wondering if you are able to confirm whether the vehicle being pursued [sic] by officers was eventually stopped, and whether any arrests were made."

6. TVP responded on 26 February 2014. It stated it could neither confirm nor deny (NCND) that relevant information was held in accordance with sections 30(3) and 40(5) of the FOIA.
7. On 9 February 2018 the complainant resubmitted the request he originally made on 25 February 2014 (as stated above) on the following specific grounds;
 - "a) In all likelihood, any court proceedings would have taken place by now so they would not be prejudiced by the release of the information*
 - b) Any personal information exempt under section 40 of the FOI can easily be redacted from your response*
 - c) Thames Valley Police regularly publish details of similar incidents on twitter at <https://twitter.com/tvprp> without apparently breaching the Data Protection Act or prejudicing any court proceedings"*
8. TVP responded 16 February 2018. It stated it could neither confirm nor deny (NCND) that it held the requested information by virtue of sections 30(3) and 40(5)(a)(b) of the FOIA.
9. On 16 February 2018 the complainant requested an internal review.
10. Following an internal review TVP wrote to the complainant on 15 March 2018 and stated it was upholding its original decision.

Scope of the case

11. The complainant contacted the Commissioner on 15 March 2018 to complain about the way his request for information had been handled. In particular, he was dissatisfied with the decision made by TVP to neither confirm nor deny whether it held the requested information. He stated that TVP holds information about all incidents involving its officers, including police pursuits, and it was not believable to suggest otherwise. This has since been confirmed in a response to a subsequent FOIA request he made to TVP.
12. The scope of the Commissioner's investigation will be to determine whether TVP has correctly applied section 30(3) or section 40(5) of the FOIA to issue a NCND response.
13. Nothing within this decision notice should be taken as implying that TVP does or does not hold the requested information, or that the incident described in the complainant's request actually took place.

Reasons for decision

Section 1(1)(a) of the FOIA – confirming or denying that information is held

14. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. However, there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the FOIA allows a public authority to respond by refusing to confirm or deny whether it holds the requested information.
15. The decision to use a NCND response will not be affected by whether a public authority does or does not hold the requested information. The starting point, and main focus in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
16. A public authority may issue a NCND response consistently, over a series of separate requests, regardless of whether it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
17. It is sufficient to demonstrate that either a hypothetical confirmation, or a denial, would engage the exemption. In other words, it is not necessary to show that both confirming and denying information is held would engage the exemption from complying with section 1(1)(a) of the FOIA.

Section 30(3) of the FOIA – Investigations and proceedings conducted by public authorities

18. In its submission to the Commissioner TVP, speaking hypothetically, said that if it held the information described in the request, it would be exempt from disclosure by virtue of sections 30(1)(a)(i) and 1(b) of the FOIA.
19. Sections 30(1)(a) and (b) of the FOIA state:

"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..."

20. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1) if it relates to a specific ongoing, closed or abandoned investigation.
21. Section 30(1)(a)(i) of the FOIA provides an exemption for information which has at any time been held for the purposes of an investigation with a view to ascertaining whether a person should be charged with an offence. Section 30(1)(b) provides for an exemption for information relating to any investigation which may lead to a decision by the public authority to institute criminal proceedings which it has power to conduct.
22. Section 30(3) of the FOIA provides an exclusion from the duty to confirm or deny whether information is held in relation to any information which, if it was held, would fall within Section 30(1)(a)(i) and/or 30(1)(b) of the FOIA.
23. Consideration of section 30(3) of the FOIA involves two stages; first, the information described in the request must fall within the class described in section 30(1)(a)(i) and/or 30(1)(b). Secondly, the exemption is qualified by the public interest. This means that if the public interest in maintaining the exemption does not outweigh the public interest in confirming or denying whether information is held, then confirmation or denial must be provided.
24. TVP stated that it has a clearly defined law enforcement role and it is widely acknowledged that this may involve the pursuit of suspects as part of its policing duties and activities. If the incident described by the complainant had taken place, it would have been highly likely to have resulted in a police investigation and, possibly, criminal charges against an individual or individuals. TVP said it would only put this type of information into the public domain if it met a specific threshold. The fact that a member of the public might witness the police undertaking its policing role does not mean that information about it is in the public domain or that TVP is required to engage with the person about what he had reported seeing.

Is the exemption engaged?

25. As a police force, TVP clearly has a duty to investigate offences and allegations of offences. Information held for the purposes of a police investigation will generally fall within the description at section 30(1)(a)(i) of the FOIA. TVP has said that, if held, the information about any police pursuit would result in a criminal investigation under the Criminal Prosecution and Investigation Act 1996 (CPIA).

26. The Commissioner therefore accepts that the information described in the request, if held, would be held by TVP for the purposes of an investigation and so would be within the class described in section 30(1)(a)(i).
27. The Commissioner is therefore satisfied that the exemption provided by section 30(3) of the FOIA is engaged.

Public interest test

28. However, section 30(3) is subject to the public interest test. Although the exemption may be automatically engaged where the information described in a request would be exempt under section 30(1)(a)(i), it may only be maintained in the public interest if confirmation or denial would interfere with the effective conduct of the investigations or proceedings.
29. In reaching a conclusion on the balance of the public interest, the Commissioner has considered what public interest there is in TVP confirming or denying whether it holds the requested information. The Commissioner also considered whether confirmation or denial would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.

Public interest arguments in favour of disclosure

30. TVP recognised that confirming or denying that the requested information exists would reassure the public that it only conducts high speed pursuits in legitimate and appropriate situations. It would also lead to the public being better informed by improving their knowledge and understanding of how the TVP undertakes investigations. However, it added that just because something was of interest to one member of the public did not mean that it would be of interest to the wider public and therefore in the public interest.
31. The complainant pointed out that the information he had requested did not include the identity of any of the people involved and confirming that the vehicle being pursued was or was not eventually stopped could not, in itself, breach anyone's data protection rights. Whether anyone was arrested would also not, in itself, breach any data rights.
32. The complainant also stated that TVP already publishes anonymised information about police stops, pursuits and arrests on its Twitter account.
33. The complainant has pointed out that in response to a subsequent request he made to TVP, it confirmed it would record the fact that a police pursuit had taken place in its area.

Public interest in favour of withholding the information

34. TVP has argued that, by its very nature, information relating to a specific investigation is sensitive in nature. This fact is recognised by section 30 of the FOIA. From a public interest perspective disclosing information of the type requested by the complainant, if held, may be harmful to TVP's responsibilities to manage investigations effectively. It added that TVP would never disclose information under the FOIA which could identify investigative activity and therefore undermine its past, present and future investigations. To do so would hinder its ability to perform its policing function.
35. TVP has stated that while the complainant believes that an incident may have taken place, information about any such incident, if it occurred, has never been placed in the public domain by TVP.

Balance of the public interest arguments

36. TVP recognises that it has to balance the public interest in maintaining public confidence in the way it conducts its policing duties with the public interest in conducting present and future investigations effectively. Having considered the factors for and against confirming or denying, TVP has concluded that the balance of the public interest rests firmly in favour of neither confirming nor denying the position.
37. The Commissioner considers that there is a public interest in transparency and accountability regarding the way in which TVP conducts high speed pursuits.
38. The Commissioner also recognises there is a legitimate public interest in transparency regarding the manner in which TVP undertakes any investigation.
39. However, she recognises that a confirmation or denial in relation to any ongoing investigation might be harmful to its responsibility to manage its investigations effectively. She also considers that disclosure of information that could identify TVP's investigative activity, undermine its past, present and future investigations and thereby hinder its ability to conduct its policing functions, would not be in the public interest.
40. The Commissioner accepts that a public authority may issue a NCND response consistently, over a series of separate requests, regardless of whether it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
41. This does not mean that public authorities should use a neither confirm nor deny response in a blanket fashion. They should base their decision

on the circumstances of the particular case with regard to the nature of the information requested and with appropriate consideration given to the public interest test.

42. The Commissioner notes that the information provided in response to the subsequent request made by the complainant does not necessarily confirm that the specific information requested in this case would be held by the TVP.
43. Having given due consideration to the arguments put forward by both parties, on this occasion the Commissioner accepts that the public interest favours maintaining the exemption at section 30(3) of the FOIA and that TVP was not obliged to confirm or deny whether it held the information described in the request.
44. As the Commissioner is satisfied that section 30(3) of the FOIA is engaged in this case she has not gone onto section 40(5).

Right of appeal

45. 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

46. 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.
47. 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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