

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2019

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
PO Box 3167
Stafford
ST16 9JZ

Decision (including any steps ordered)

1. The complainant has requested information relating to a deceased officer. Staffordshire Police withheld the information citing sections 30(1)(a) and (b) (Investigations and proceedings); 31(1)(1)(g) by virtue of 31(2) (Law enforcement) and 38(1) (Health and safety) of the FOIA to some of it. Staffordshire Police also confirmed that it did not hold the remainder of the requested information.
2. The Commissioner's decision is that Staffordshire Police has applied section 38(1)(a) of the FOIA appropriately to some of the information. She also considers that Staffordshire Police is correct to state that it does not hold the remainder of the requested information. However, the Commissioner considers that Staffordshire Police has breached section 10 (Time for compliance) and section 17 (Refusal of a request) of the FOIA.
3. The Commissioner does not require Staffordshire Police to take any steps as a result of this decision.

Background

4. Police officers were awarded commendations for their part in the apprehension and successful prosecution of four animal rights extremists for the sustained harassment of the owners and wider family of a guinea pig farm used by the medical research industry. The harassment took place over a number of years and included protests, criminal damage, threats of violence and in 2004, the removal of the body of a deceased family member, from her grave.

Request and response

5. On 23 May 2018, the complainant wrote to Staffordshire Police and requested information in the following terms:

"In January 2018, I made a FIO request in respect of commendations awarded to officers involved in the high profile investigation into the desecration of a grave by animal rights activists. That request was allocated your reference number of [reference number redacted]. In the course of that request process, it became apparent that the commendation awards had received additional press coverage in the Burton Mail following the inquest into the tragic suicide of an officer who had worked on the investigation.

The Burton Mail article indicated that Staffordshire Police had provided some form of press briefing, which included details of the officer's career, a posthumous commendation award, and references to an investigation that officer was under at the time of death. Following an Internal Review into the previous request I asked for details of the later press statement/request concerning the inquest into the officer's death. This material was not provided. I have contacted the Information Commissioner regarding this additional material and I have been advised to make a fresh FIO clearly outlining my request for this later information, please understand that this is not a duplicated request.

This case highlights an unusual situation where a police officer commits suicide whilst under investigation, and Staffordshire Police then award a posthumous Commendation to the officer, without any details of the original matter under investigation being revealed. I would like to request the following information.

1. Copies of any press statement or briefing given by Staffordshire Police to the Burton Mail or any other media body which relates to the any of the following (I appreciate that press statements may cover more than one of the sub sections) :-
 - a) The inquest into the circumstances of the officer's death.
 - b) The matter for which the officer was under investigation.
 - c) The Commendation awarded to the officer.

2. Details of the matter for which the deceased officer was under investigation, together with copies of the following:-
 - a) Any custody record relating to the matter.
 - b) Any incident log relating to the matter.
 - c) Any crime complaint raised in the course of the investigation, including how the crime complaint was finalised.
 - d) Any report(s) submitted to the CPS together with any advice

received which relates to the investigation.

e) Copies of any other reports relating to the officer's alleged conduct.

f) Any copy of the report which recommended the deceased officer receive a commendation and the full unredacted commendation citation posthumously awarded.

3. I understand that following the officer's death an independent investigation was carried out, please provide a copy of the report from that investigation.

The requested material will clearly include personal information of a number of individuals and some redaction will be necessary. Under the DPA the personal information relating to a deceased person is not covered by the Act and therefore should not be redacted under that exemption."

6. On 23 May 2018 Staffordshire Police asked the complainant for the name of the officer who was the subject of his request. The complainant responded on the same day, providing a newspaper article which identified the officer in question.
7. Staffordshire Police provided its response on 21 June 2018 withholding the information under sections 38(1) (Health and safety) and 40(2) (personal information) of the FOIA. The complainant requested an internal review on the same day, complaining that Staffordshire Police had taken until the last day to respond to his request; he also explained that he did not agree with the exemptions cited.
8. On 10 July 2018 Staffordshire Police asked for clarification regarding question 2(e): "Copies of any other reports relating to the officer's alleged conduct." It asked whether the question related to the officer's conduct with regard to any incident/conduct/performance/capabilities throughout the officer's career with it.
9. The complainant responded on the same day explaining that the information he sought concerned the matter leading to the officer's arrest and suspension just prior to her tragic suicide. He confirmed that this included the matter for which she was initially arrested and any other matters identified during the subsequent investigation.
10. Following an internal review Staffordshire Police wrote to the complainant on 19 July 2018. It explained that with regard to the point about not responding until the twentieth working day, in the week it had received his request it had also received 27 other requests. It also explained that this meant that when added to the requests it had to deal with already, there as a total of 63 requests in total to deal with.

11. Staffordshire Police also explained that some of the other requests were complex or needed further research; as and when information was received from information holders, who were also dealing with other matters relating to their job role, the information had to be analysed to ensure it answered the relevant request, or explanations considered as to why the information may not be available. Staffordshire Police also confirmed that its FOI team had conducted its own searches. Additionally, in relation to:

Question 1: it applied sections 38(1) and 40(2);

Question 2(a-c): it applied sections 38(1), 40(2) and 30(1)(a) and (b);

Question 2(d): it confirmed that it did not hold any information;

Question 2(e): it applied sections 30(1)(a) and (b) and 31(1)(g) by virtue of 31(2)(b);

Question 2(f): it did not hold any information.

Question 3: it applied sections 38(1), 40(2), 30(1)(a) and (b) and 31(1)(g) by virtue of 31(2)(b).

Scope of the case

12. The complainant contacted the Commissioner on 1 August 2018 to complain about the way his request for information had been handled. He explained that he did not agree with the application of the exemptions cited and explained that he did not want the names or personal details of any police officers. He also confirmed that he was not requesting any witness statements or covert human intelligence sources.
13. In addition, the complainant explained that it was clear to him that Staffordshire Police was strongly committed to withholding any information in relation to the deceased officer's arrest, investigation and posthumous commendation. He also asked the Commissioner to keep in mind that the senior investigating officer into the grave desecration investigation was currently the Deputy Chief Constable and was therefore well placed to influence FOIA decisions taken by Staffordshire Police.
14. The Commissioner notes the complainant's comments about the Deputy Chief Constable. She would like to emphasise that she can only determine whether Staffordshire Police dealt with the request for information appropriately under the FOIA.

15. During the Commissioner's investigation, she checked with the complainant whether he was requesting personal information. He confirmed that he was not and provided examples of the information he wanted: routine custody records, crime reports. He also explained to the Commissioner that section 40(2) could only apply to living individuals and therefore could not apply to the deceased officer.
16. Furthermore, in relation to question 2(f) "Any copy of the report which recommended the deceased officer receive a commendation and the full unredacted commendation citation posthumously awarded", Staffordshire Police confirmed that it had found the report in question and was withholding it under section 38(1)(a).
17. Additionally, during the Commissioner's investigation, in relation to part 3 of the request, Staffordshire Police disclosed a redacted executive summary of the report, withholding some information under sections 38(1) and 40(2).
18. The Commissioner will therefore consider the application of sections 38(1)(a), 30(1)(a) and (b), 31(1)(g) by virtue of section 31(2) and whether, in relation to 2(d), Staffordshire Police hold any recorded information.

Reasons for decision

19. The complainant is requesting information in relation to a deceased individual. As section 40 only applies to living individuals, the Commissioner will consider whether Staffordshire Police is entitled to rely on section 38 to withhold information about the identity of the deceased individual, who is clearly the subject of the present request.
20. Staffordshire Police applied section 38(1) to:
 - question 1(a)-(c)
 - questions 2(a)-(c)
 - question 2(f)
 - question 3
21. Staffordshire Police applied sections 30(1) and 31(1)(1)(g) and 2(b) to question 2(e). The Commissioner notes the complainant's clarification that the information he sought concerned the matter leading to the deceased officer's arrest and suspension just prior to that officer's suicide. He confirmed that this included the matter for which the deceased officer was initially arrested and any other matters identified during the subsequent investigation.

22. Given the complainant's clarification above, the Commissioner is satisfied that this part of the request clearly links to questions 1(a)-(c), to which Staffordshire Police cited section 38(1).
23. As explained above, the Commissioner will not be considering section 40(2) any further.
24. The Commissioner will also consider whether the police hold information in relation to question 2(d): "Copies of any other reports relating to the officer's alleged conduct."

Section 38 – Health and safety

25. The complainant is requesting information about a deceased individual. As section 40 only applies to living individuals, the Commissioner will consider whether Staffordshire Police is entitled to rely on section 38 to withhold information relating to the identity of the deceased individual and the effect of disclosure of the information.
26. Due to the sensitivity of the information, some parts of the Commissioner's section 38 analysis are contained in a confidential annex to this decision notice. This has been disclosed to the public authority only.
27. The Commissioner notes the complainant's comment about section 40(2). She also notes that Staffordshire Police has not applied this to the deceased officer. In her guidance on section 38¹ the Commissioner considers under what circumstances section 38 could be relied on. She considers that it could be applied to information about someone who has died (and is therefore not covered by the personal information exemption) where disclosure might endanger the mental health of surviving relatives.
28. The FOIA does not explain what it means by 'endanger'. The Commissioner's view is that 'endanger' equates to 'prejudice' and therefore section 38 is subject to the prejudice test. The Commissioner also considers that 'any individual' includes any specific individuals, any member of the public, or groups within society.
29. The Commissioner considers that in order for section 38 to be engaged, the following criteria must be met:

¹ <https://ico.org.uk/media/for-organisations/documents/1624339/health-and-safety-section-38-foia.pdf>

- the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the endangerment which the exemption is designed to protect. Furthermore, the resultant endangerment which is alleged must be real, actual or of substance; and
 - it is necessary to establish whether the level of likelihood of endangerment being relied upon by the public authority is met – ie disclosure 'would be likely' to result in endangerment or disclosure 'would' result in endangerment.
30. As section 38 is a qualified exemption it is subject to the public interest test.
31. The relevant applicable interests cited in this exemption are endangerment to physical or mental health or safety of any individual. The Commissioner accepts that the arguments made by Staffordshire Police set out below address the prejudice at section 38(1)(a) in relation to the physical or mental health of any individual.
32. When considering the second point, the Commissioner must be satisfied that the nature of the endangerment is "real, actual or of substance" and not trivial or insignificant. She must also be satisfied that some causal relationship exists between the potential disclosure and the stated endangerment.
33. Staffordshire Police provided the Commissioner with information regarding the nature of the endangerment which, due to its sensitive and personal nature, is considered in the confidential annex attached to this decision notice. It also explained that it had provided arguments regarding the application of exemptions in a related case – FS50733478.² The Commissioner notes that that case is about the commendations awarded and that section 38 was applied in relation to the deceased officer, who is the subject of the present request. She also notes that in that case, she upheld Staffordshire Police's application of section 38(1)(a).

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2018/2259609/fs50733478.pdf>

34. The Commissioner is satisfied that the level and nature of the endangerment identified would be likely to go beyond stress or worry and would constitute an endangerment to the mental health of the parties identified above.
35. With regard to the third point, Staffordshire Police explained that disclosure of the requested information would endanger mental wellbeing.
36. The Commissioner considers that the physical or mental health of family members needs to be considered when disclosure 'to the world at large' is being made under the FOIA. For reasons set out in the confidential annex, the Commissioner considers that there would be a substantial likelihood of endangering, in particular, their mental wellbeing.
37. The Commissioner has considered the arguments put forward by Staffordshire Police which are expanded on in the confidential annex and is satisfied that section 38(1)(a) is engaged on that basis. Having accepted that the exemption is engaged, she will go on to consider the public interest arguments.

Public interest arguments in favour of maintaining the exemption

38. Staffordshire Police argued that the public interest in maintaining section 38(1)(a) outweighed the public interest in disclosure. It explained that when any individual dies, no matter what the circumstances are surrounding the death, there will be family, friends and colleagues who will be deeply affected. It argued that it would be distressing to have details relating to a deceased person put into the public domain as it would cause mental anguish.
39. Staffordshire Police also explained that disclosure would dredge up circumstances from the past which, after a period of time, the family may be starting to come to terms with.

Public interest argument in favour of disclosing the requested information

40. Staffordshire Police acknowledged that disclosure of the requested information would give the public confidence that it is open and transparent in matters relating to the conduct of officers and staff members.
41. The complainant argued that it was in the public interest to disclose the requested information. He explained that in 2007 and 2008 Staffordshire Police had provided the names of officers commended for their work in the investigation into the desecration of a grave by animal activists. He also pointed out that the investigation had been closely monitored by the Home Office and following the conviction of a number of animal

rights activists, the Home Secretary at the time had personally commended Staffordshire Police for the work carried out. The complainant argued that "Anything which cast any form of shadow over the case, would have been most unwelcome."

42. The complainant also argued that awarding a posthumous Chief Constable's commendation to a police officer facing criminal proceedings for multiple criminal offences was "most unusual and, bizarre." He alleged that after the death of the officer concerned the investigation into that officer had been immediately closed down and "the whole matter was covered up."
43. Furthermore, the complainant argued that Staffordshire Police had presented the deceased officer as a hero rather than a disgraced police officer, in order to protect its reputation and avoid prompting possible appeals from those convicted.
44. In addition, the complainant pointed out that more than ten years had elapsed since the incidents referred to in his request and that Staffordshire Police had named and identified staff involved in the investigation. He also pointed out that Staffordshire Police was now arguing that the risk of revealing any details was too great to comply with his request. The complainant argued that there was no credulity in Staffordshire Police's suggestion that any persons named were likely to face any danger. He pointed out that if that was the case, then why would the Deputy Chief Constable have exposed himself and his family to danger when he proudly announced his involvement in the case, on the force website.
45. The complainant acknowledged that Staffordshire Police had maintained that disclosure of the information relating to the deceased officer would be distressing for family and friends. He conceded that disclosure may cause a degree of sadness or distress. Additionally, he confirmed that he could not say whether the family had been properly briefed about the matters for which the deceased officer had been under investigation for, but if they had not been told the truth, it may come as a shock to them.
46. Additionally, the complainant argued that the circumstances surrounding the criminal investigation into the deceased officer and the subsequent disclosures to the press, in particular the Burton Mail, were key to identifying whether Staffordshire Police had acted appropriately and within the legal framework in respect of this matter.
47. The complainant also explained that where a police officer in a criminal investigation was subsequently found to have acted dishonestly or with a lack of integrity, the details should be passed to the Crown Prosecution Service so that the impact on current or previous cases could be properly assessed and dealt with. He pointed to the fact that

Staffordshire Police stating that it does not hold information in relation to 2(d) of his request: "Any report(s) submitted to the CPS together with any advice received which relates to the investigation" suggested this was not done.

Balance of public interest arguments

48. The Commissioner has considered the public interest arguments from both parties, including the public interest in openness and transparency.
49. She notes Staffordshire Police's arguments regarding the impact of disclosure on the deceased's family and on those colleagues who also received commendations.
50. In her guidance, the Commissioner states: "Once section 38 is engaged and it has been established that there is a real and actual danger to someone's health and safety, it is difficult to find in favour of disclosure." This view is supported by a First-tier Tribunal decision in *British Union for the Abolition of Vivisection vs Information Commissioner and Newcastle University* EA/2010/0064, (10 November 2010) which states: "the public interest in maintaining the s38 (1) exemption, where it is engaged, is also strong. Self-evidently, there would need to be very weighty countervailing considerations to outweigh a risk to health and safety which was of sufficient severity to engage s38 (1)".
51. The Commissioner places significant weight on protecting individuals from risk to their physical and mental well-being. She considers disclosure will only be justified where a compelling reason can be provided to support such a decision.
52. The Commissioner notes the complainant's arguments regarding disclosure. However, she notes that he has not provided any evidence to show any wrong-doing and that his arguments appear to be his own personal views.
53. The Commissioner does not consider that, beyond the general public interest in public authorities being open and transparent, she has been presented with any arguments which provide any compelling reasons as to why the requested information should be disclosed. She considers that it is very important to safeguard the mental health of the deceased's family, friends and colleagues.
54. The Commissioner also considers that disclosure of the redacted executive summary in relation to question 3, goes some way to satisfying the public interest.

55. Taking all of the above into account, the Commissioner is satisfied that section 38(1)(a) has been applied appropriately in this case and that the public interest in maintaining the exemption outweighs the public interest in disclosure. She will not therefore consider the other exemptions cited.
56. With regard to question 2(d): "Any report(s) submitted to the CPS together with any advice received which relates to the investigation", Staffordshire Police explained that it does not hold the requested information.

Section 1 – information held/not held

57. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have the information communicated to him.
58. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held.
59. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
60. The Commissioner asked Staffordshire Police what searches it had carried out. Staffordshire Police explained that all information relating to this case was contained in its performance and standards unit (PSU) file boxes. It also confirmed that there were no electronic files held and that no report was submitted to the Crown Prosecution Service. Staffordshire Police explained the type of offence that allegedly had occurred was considered to be low level and it was (and still remains) the case, that it does not have to seek the Crown Prosecution Service's advice to charge; therefore to not have a report sent to it or advice obtained from it, would not be unusual.
61. The Commissioner also asked if searches included electronic data, to explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails. Staffordshire Police explained that due to the age of the arrest, if advice was sought from the Crown Prosecution Service, it was not able to search for it as its email archive system only retains data for 7 years.
62. Furthermore, Staffordshire Police explained that advice may have been requested via email but a manual record would have been kept in its

PSU file boxes for the investigation. It confirmed that there is no manual record in the PSU boxes and reiterated that its email archive system only retains data for 7 years so there is no way of searching to see if a report was sent and advice provided.

63. The Commissioner also asked if information was held, would it be held as manual or electronic records. Staffordshire Police explained that all the information regarding the case in question was held manually.
64. The Commissioner asked Staffordshire Police whether there was a business purpose for which the requested information should be held and if so what that purpose would be. Staffordshire Police confirmed that there was no business purpose for it to hold the requested information.
65. Furthermore, the Commissioner asked whether there were any statutory requirements upon Staffordshire Police to retain the requested information. Staffordshire Police confirmed that there were no statutory requirements for it to hold the requested information.
66. Taking everything into account, the Commissioner does not consider that there is any evidence that show that Staffordshire Police holds any recorded information in relation to question 2(d).
67. The Commissioner is therefore satisfied that, on the balance of probabilities, Staffordshire Police do not hold any recorded information in relation to question 2(d). Accordingly, she does not consider that there is a breach of section 1 of the FOIA.

Procedural issues

68. The complainant submitted his request on 23 May 2018. Staffordshire Police did not confirm that it was applying section 38(1)(a) to part 2(f) of the request until the Commissioner's investigation.
69. In addition, it did not disclose a redacted copy of the report referred to in question 3 and confirm that it was applying section 38 to withhold information, until the Commissioner's investigation

Section 10 – Time for compliance

70. Section 10(1) provides that a public authority must respond to a request promptly and in any event no later than 20 working days after the date of receipt.
71. The Commissioner considers that Staffordshire Police breached section 10(1) as it took longer than 20 working days to disclose a redacted copy of the executive summary of the report referred to in question 3.

Section 17 – Refusal of a request

72. Section 17(1) provides that if a public authority wishes to refuse a request it must issue a refusal notice within the 20 working days, citing the relevant exemption(s).
73. The Commissioner considers that Staffordshire Police breached regulation 17(1) as it took longer than 20 working days to confirm its reliance on section 38 to question 2(f) and to the withheld information in the redacted executive summary report.

Right of appeal

74. 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

75. 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.
76. 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

**Gerrard Tracey
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