

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 June 2013

Public Authority: Chief Constable of Dyfed-Powys Police

Address: Dyfed Powys Police Headquarters
PO Box 99
Llangunnor
Carmarthen
SA31 2PF

Decision (including any steps ordered)

1. The complainant requested information about an investigation into a named individual as a result of a complaint he submitted to Dyfed Powys Police. Dyfed Powys Police refused to either confirm or deny whether it held any relevant information citing section 30(3) and section 40(5) of the FOIA. The Commissioner's decision is that Dyfed Powys Police was entitled to refuse to confirm or deny under section 30(3). The Commissioner does not require Dyfed Powys Police to take any steps in relation to the request.

Request and response

2. On 12 November 2012, the complainant wrote to Dyfed Powys Police in connection with an allegation made by him against a named individual of possible fraud. He submitted an information request for the following:
 1. "What were the findings of the investigation?
 3. Who conducted the review?
 4. Who made the decision to take no further action?
 5. Was the Crown Prosecution Service consulted in relation to the allegations made against [named individual]?
 6. If so, what was their advice?
 7. If they were not consulted, why not?
 8. Was [named individual] interviewed in connection with any allegations against him?
 9. How many separate allegations of fraud or other criminal offences against [named individual] were received by the Police?

10. Was the decision to take no further action against [named individual] based on a lack of evidence, or on the financial implications to the police if a full and proper investigation had been carried out?
 11. Was any other individual interviewed as a suspect in the allegations made to the police?
 12. If so, how many individuals were interviewed.
 13. Was anybody arrested in connection with the allegations made to the police?"
3. Dyfed Powys Police issued a refusal notice on 10 December 2012 stating that it could neither confirm nor deny whether it held the requested information by virtue of sections 40(5) and 30(3) of the FOIA.
 4. On 12 August 2012 the complainant requested an internal review of Dyfed Powys Police's decision in relation to his request.
 5. Dyfed Powys Police provided the outcome of its internal review on 27 December 2012 and upheld its decision to neither confirm nor deny whether it held the requested information.

Scope of the case

6. The complainant contacted the Commissioner on 8 January 2013 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether Dyfed Powys Police acted correctly in refusing to confirm or deny whether it held the requested information.
8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. In considering such matters, the Commissioner is mindful that whilst an individual may be aware that information does or does not exist because of their involvement in events, it does not follow that the general public is also aware of the existence of that information. Disclosure under the FOIA is a disclosure to the world at large.
9. In a case such as this one, the decision for the Commissioner is whether confirmation or denial that the information is held should be placed in the public domain. The Commissioner recognises that the complainant has personal reasons for making the request in this case. However, neither the identity of the applicant nor any purely personal reasons for wanting the requested information are relevant to the consideration of a

freedom of information request. FOIA concerns disclosure to the public, and public interests, rather than a specified individual's private interests.

Reasons for decision

Exemptions claimed

10. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise the applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.

Section 30(3): investigations and proceedings

11. Section 30(3) provides an exemption from the duty to confirm or deny in relation to any information, whether held or not, that falls within any of the classes specified in sections 30(1) or 30(2). In this case Dyfed Powys Police considers section 30(1)(a) to be the relevant class.
12. Section 30(1)(a)(i) provides an exemption to disclosure for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person should be charged with an offence. Section 30(1)(a)(ii) provides an exemption for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person charged with an offence is guilty of it. In order for the exemptions within section 30(1) to be applicable, any information held must be held for a specific or particular investigation, and not for investigations in general.
13. The Commissioner has therefore considered whether, if at the time of the request Dyfed Powys Police held information falling within the scope of the request, any such information would fall within the classes specified in section 30(1)(a)(i) and / or (ii).
14. The public authority in this case is a police force and the Commissioner is satisfied that it has the power to carry out investigations of the sort described in sections 30(1)(a)(i) and (ii) to establish whether an offence has occurred.
15. The Commissioner is satisfied that any information falling within the scope of the request that may be held by Dyfed Powys Police would have been held for the purposes of a specific investigation, which it has a duty to conduct with a view to ascertaining whether a person should be charged with an offence or whether a person charged with an offence

is guilty of it. The Commissioner is therefore of the view that the exemption at section 30 is engaged.

The public interest test

16. As section 30 is a qualified exemption the Commissioner has gone on to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether Dyfed Powys Police holds any information falling within the scope of the request.

Public interest arguments in favour of confirming or denying that information

17. Dyfed Powys Police is charged with enforcing the law, preventing and detecting crime and protecting the communities it serves. There is a public interest in the transparency of policing such investigations and Dyfed Powys Police acknowledge that confirming or denying whether the information is held would ensure transparency.
18. Dyfed Powys Police accepts that there is a public interest in ensuring that the public has confidence in the way it acts on information it receives about allegations that a crime has been committed. Confirmation or denial in this case would result in an increased level of public confidence and trust in the Force.
19. Dyfed Powys Police also acknowledge the general public interest in promoting transparency and accountability in relation to its activities. To confirm or deny whether there is any information held in respect of the outcome of allegations made by a member of the public would provide the world at large with some information about how it deals with such reports made by the public, and would confirm to the public that the Force does not "screen out" crimes but investigates all reported crimes.
20. The complainant pointed out that he made the allegations about the individual in question. He argued that, as the fact that allegations about the individual in question have been reported on the internet on a number of blogs, it was unreasonable for Dyfed Powys Police to refuse to confirm or deny whether the information he had requested was held.

Public interest test arguments against confirmation or denial that information is held

21. Dyfed Powys Police argues that confirmation or denial of the existence of any information concerning an allegation made by a member of the public concerning a crime which is believed to have been committed would undermine any subsequent investigation which would impinge on an alleged offender's right to a fair trial under Article 6 of the Human

Rights Act 1998. This could result in sub-judice and Dyfed Powys Police being held in contempt of court. This is particularly relevant where (as in this case) a request for information relates to named individuals.

22. The purpose of the Police Service is to uphold the law fairly and firmly; to prevent and detect crime; to pursue and bring to justice those who break the law; to protect, help and reassure the community and to be seen to meet these objectives with integrity, common sense and sound judgement. Dyfed Powys Police consider that to confirm or deny whether there is any information held in this case has the potential to interfere with these purposes.
23. Dyfed Powys Police confirmed that it does not routinely disclose whether it has or has not undertaken an investigation into a particular individual or allegation. It pointed out that information disclosed under the FOIA is essentially disclosure into the public domain. Therefore, by simply confirming or denying whether any information is held in relation to a specific investigation or by applying an exemption to information which may be held would confirm whether an investigation in respect of a particular individual or allegation had been carried out. Dyfed Powys Police consider this would breach principle one of the Data Protection Act 1998 ('the DPA').
24. Dyfed Powys Police considers that, as section 30 is designed to protect information surrounding investigations, it is in the public interest to protect the investigation process. Confirmation or denial as to whether the requested information is held or not could impede any investigation process which may have taken place. The investigation process is such that an individual accused of a crime(s) may not know that they are under investigation until such time as they are interviewed or arrested for a crime. Therefore, to confirm or deny under the FOIA whether an individual has been or is under investigation could alert those individuals to that fact and as a consequence it could impede the investigation process. There is always the potential, should any new evidence come to light, for an investigation to be re-opened. Dyfed Powys Police considers that confirming or denying whether information is held about a particular investigation could potentially have a negative impact on any future re-opened investigation.
25. The police service relies on information being supplied by the public about alleged criminal offences. Members of the public rely on information about or supplied by them to the police service being handled sensitively, confidentially and appropriately. Dyfed Powys Police considers that any disclosure which undermines this trust and confidence would be likely to result in less people willing to contact the police for fear that such a fact could be disclosed, which would in turn impact on the ability to prevent and detect crime.

Balance of the public interest arguments

26. The Commissioner's guidance on the duty to confirm or deny¹ explores the implications of the wording of the request in relation to the duty to confirm or deny. In the Commissioner's view, the wording of the request for information will affect whether or not a public authority will confirm or deny it holds that information. The Commissioner also considers that, in many cases, the more specific the request, the lower the likelihood of the duty arising.
27. In this case the request focuses on a particular investigation rather than investigations in general and specifically asks for information about an investigation in relation to a named individual.
28. In the Commissioner's view, it is important that a "neither confirm nor deny" response does not imply anything about whether information is or is not held. It should therefore be applied consistently by a public authority whether or not information is actually held. In other words, the authority should consider both whether any harm would arise from confirming that information is held *and* whether harm would arise from stating that no information is held. Otherwise, if the same (or same type of) request were made on several occasions over time, the changing response could reveal whether information was held.
29. The Commissioner recognises that the complainant has personal reasons for making the request as he was the person who submitted the allegations about the individual in question. However, the FOIA is motive blind which means that the Commissioner can only decide whether confirmation or denial that the information is held should be put into the public domain.
30. The Commissioner's consideration of the complainant's contentions in relations to his allegations is contained within a confidential annex to this notice. This annex will be provided to the public authority only.

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/when_to_refuse_to_confirm_or_deny_section_1_foia.ashx

31. In considering the balance of the public interest in relation to the application of the neither confirm nor deny provisions of section 30 in this case, the Commissioner's view is that significant weight has to be given to the need to protect the public authority's ability to adopt a consistent approach when responding to similar requests in the future. That is to say, if Dyfed Powys Police routinely confirmed that it was not conducting investigations into a particular individual – because this was in fact the case – and when it actually was investigating a particular individual organisation it adopted a neither confirm nor deny approach, then its decision to do so could be reasonably assumed to be taken as an indication that it was in fact conducting an investigation into the organisation cited in the request. This would of course undermine the rationale for adopting the neither confirm nor deny response in the first place.
32. Having considered both sets of arguments in this particular case, the Commissioner's view is that the public interest arguments in favour of maintaining the refusal to either confirm or deny whether information is held outweigh those in favour of Dyfed Powys Police issuing such a confirmation/denial. Therefore, the Commissioner finds that Dyfed Powys Police was entitled to rely on the refusal to confirm or deny provided by section 30(3) of the FOIA.

Other exemptions

33. As the Commissioner is satisfied that the section 30(3) exemption has been correctly applied to the requested information, he has not gone on to consider Dyfed Powys Police's application of section 40(5) in respect of the same information.

Right of appeal

34. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
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