

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 May 2015

Public Authority: The Chief Constable of Bedfordshire Police
Address: Bedfordshire Police HQ
Woburn Road
Bedford
MK43 9AX

Decision (including any steps ordered)

1. The complainant has requested information about a fatal road traffic accident. Bedfordshire Police ("Beds Police") refused to provide the information citing section 30(1)(a) and (b) (investigations and proceedings) as its basis for doing so. The Commissioner's decision is that Beds Police was entitled to do so and he requires no steps to be taken.

Request and response

2. On 23 February 2015, the complainant wrote to Beds Police and requested information in the following terms:

"I am a retired [police officer] and to assist me in my research I would be grateful if Bedfordshire officers would kindly supply me with the answers to two questions relating to the triple fatal that occurred at about 6.45am on Saturday February 14th on the northbound section of the M1 between J12 & J13.

The collision involved a car and a coach and three occupants of the car died and a fourth sustained serious injury.

At the time of the accident was the hard shoulder being used as a running lane?

What information was displayed on the overhead gantry prior to the location of the accident? (If the hard shoulder was in use as a traffic lane what speed limit was displayed on the gantry?)”.

3. Beds Police responded on 6 March 2015. It stated that it did hold information in relation to his request but considered it to be exempt under section s 30(1)(a) and (b) of the FOIA.
4. Following an internal review Beds Police wrote to the complainant on 27 March 2015. It maintained its position, but remarked that disclosure would be more likely after the investigation had concluded.

Scope of the case

5. The complainant wrote to the Commissioner on 27 March 2015 to complain about the way his request for information had been handled. It was his view that disclosure of the requested information could neither have an impact on the investigation nor influence any decision of the prosecuting agency.

Reasons for decision

Section 30 – investigations and proceedings

6. Section 30(1) provides 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”.*

7. The Commissioner does not believe that the Police have the power to conduct such proceedings as referred to in (b), rather such proceedings would be conducted by the Crown Prosecution Service. Therefore the Commissioner does not accept that the information in question is exempt from disclosure on the basis of section 30(1)(b).

8. Section 30(1)(a)(i) applies to information that has at any time been held by Beds Police for the purposes of an investigation that it has a duty to carry out with a view to ascertaining whether an individual should be charged with an offence. The information must relate to a specific investigation and not investigations in general. Section 30(1) is also a class based exemption, ie if information falls within its scope there is no need for a public authority to demonstrate prejudice in order for the exemption to be engaged.
9. Beds police advised the complainant that it had contacted officers that attended the scene of the collision, the Sergeant in the Forensic Collision Investigation Unit and the Chief Inspector of the Roads Policing Unit, for their views regarding disclosure. It had ascertained that the investigation was not only 'live' but also still at a very early stage. The parties consulted were in no doubt that disclosure of the requested information would prejudice their investigation.
10. The complainant does not accept that the exemption is engaged. He has argued as follows:

"The two questions I have asked are matters of fact (the status of the hard shoulder and the information displayed on the gantry prior to the scene are not the subject of any on - going investigation because the reporting officers will have recorded, in the Accident Report, eg 'the Hard Shoulder was a live running lane' and its use by motorists was legitimate and allowed in law OR it was 'designated a Hard Shoulder' and its use by motorists would constitute an offence against the law.

The officers would have noted the information displayed on the gantry prior to the accident scene as well as the specific information concerning the hard shoulder.

The information regarding the status of the hard shoulder and speed limits imposed will be available at the Motorway Control Centre and by now downloaded for inclusion in the file. Depending upon the status of the hard shoulder at the time of impact the implications, not just for the individual who caused the deaths but for the Highway Agency (and others) but especially the public who use Britain's roads.

To reiterate - nobody is investigating the status, condition or designation of this section of the M1 NOW. I accept that what the officers recorded will have a major bearing upon any criminal proceedings considered by the CPS in relation to the accident and I have not asked, nor would I ask, for any information that might prejudice any decision...

How will answering two simple questions of fact compromise any strand of the investigation?. The facts, as outlined above, are the facts - they cannot be altered to suit any ones purpose. I have not asked to see The Accident Report, The Investigator's Report, details of those involved or the witnesses nor have I asked for copies of any taped interviews or for sight of any statements. I am not seeking to have any effect upon the investigation and I do not understand how my knowledge of the status of the motorway at the time of the accident can in any way influence decisions as to future actions or how harm can come to the victims and their families".

11. Beds Police has countered this view by advising the complainant that the only reason it would hold the information was if it was a necessary part of the investigation and that, because the exemption is class-based, the exemption is therefore engaged.
12. It is clear to the Commissioner that the information relates to a specific investigation and that this investigation was ongoing when the request was made (and remains so at the time of writing) - the request was made only 9 days after the accident. The case had not at that point been presented to the CPS for consideration as it was still being prepared.
13. The Commissioner has also confirmed with Beds Police that the requested information is critical to that investigation as the designation of the carriageway as a running lane or hard shoulder, coupled with any accompanying signage, is likely to be a major factor in determining the matter of any culpability of the drivers involved in the accident. The Commissioner is therefore satisfied that the exemption is properly engaged.

The public interest test

14. Section 30(1) is a qualified exemption and is therefore subject to the public interest test under section 2(2)(b) of FOIA.

Public interest arguments in favour of disclosure

15. Beds Police confirmed to the complainant that:

"The public have an interest in knowing that the investigation is being conducted properly".

16. The Commissioner also accepts that the public will always have an interest in knowing what has happened in a serious case such as this one. Any issues regarding road markings and signage which could

possibly have contributed to the accident are therefore of particular significance.

Public interest in maintaining the exemption

17. Beds Police confirmed to the complainant that:

"The information held is in relation to an active on-going police investigation. Care must be taken not to compromise any strand of the investigation or cause undue harm to the victims or families of those involved.

Disclosure of information at this point could prejudice the information process. To disclose specific details regarding an investigation before criminal proceedings have been completed would harm future law enforcement capabilities of the force as well as hindering our ability to prevent and detect crime".

Balance of the public interest

18. When considering the application of any of the exemptions contained in s30(1), the Commissioner believes that consideration should only be given to protecting what is inherent in those exemptions – the effective investigation and prosecution of crime - which requires the following:

- the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
- the maintenance of independence of the judicial and prosecution processes;
- preservation of the criminal court as the sole forum for determining guilt;
- allowing the investigating body space to determine the course of an investigation; and
- information that deals with specialist techniques.

19. With the above underpinning the consideration of 30(1), when weighing up the public interest in relation to the exemption the following factors (amongst others) should be considered:

- the stage or stages reached in any particular investigation or criminal proceedings;
- whether and to what extent the information has already been released into the public domain;
- the significance or sensitivity of the information; and
- the age of the information.

20. Beds Police considered these factors when undertaking its internal review and advised the complainant as follows:

"Stage of the investigation or prosecution

The officers in case have advised that the information forms part of an on-going live investigation. At the time of your request the case was in the preliminary stages and they have explained that to publically disclose this specific information at this time will prejudice our ability to investigate and be likely to hinder the detection of the crime.

Information in the public domain

I have carried out checks and the information you are requesting is not in the public domain, so this does not add any weight in favour of disclosure.

Confidential sources

The information requested does not relate in any way to confidential sources so this aspect adds no weight to either side.

Significance of the information

The information being requested does not relate in any way to the integrity of the investigation and as such there is no weight added in favour of disclosure. The information is significant however, to the particular circumstances of how the collision occurred so this adds weight in favour of maintaining the exemption.

As set out by the ICO there will always be a strong public interest in maintaining the Section 30 exemption whilst an investigation is on-going. It is clear from the reasons given above that the Section 30 exemption does apply and that the public interest in allowing an investigation to take its course and ensuring it is not prejudiced by disclosing information at this stage, outweighs the public interest in knowing these two particular facts regarding the collision.

For these reasons I have upheld the original decision to maintain the Section 30 exemption and as such I am unable to disclose the requested information.

Although Section 30 will always apply to information that is held for the purposes of an investigation, the public interest considerations change and would be considered at the time of each request. It is

likely therefore, that once the case has been finalised the public interest in disclosure regarding the particular circumstances of the collision may weigh in favour of disclosure”.

21. The Commissioner accepts that there is a strong public interest in protecting information acquired by the police during their investigations. To disclose important evidence in a criminal investigation under the FOIA (without a sufficiently strong public interest in doing so) would undermine the existing procedures governing the disclosure of information in relation to criminal investigations. Such disclosure could impact on the running of the investigation and allow parties to make judgements prior to any case being properly heard in a court of law. With the request being made only 9 days after the accident occurred it is clear that all the evidence has not yet been gathered and that the case is very much in its infancy.
22. The Commissioner also accepts the argument put forward by Beds Police that the requirement to protect the information from premature disclosure will diminish as the case progresses and that there may well be a point in the future when the information can be disclosed. However, at this present time, the Commissioner accepts that disclosure would be prejudicial to the investigation.
23. Accordingly the Commissioner has decided that the balance of the public interest weighs in favour of maintaining the exemption at section 30(1).

Right of appeal

24. 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

25. 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.
26. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF