

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 April 2017

Public Authority: Chief Constable of Durham Police
Address: Durham Police Headquarters
Aykley Heads
Durham
DH1 5TT

Decision (including any steps ordered)

1. The complainant has requested about a meeting between Durham Police and Sunderland Football Association Club regarding allegations against one of its footballers. Durham Police withheld the information under sections 30(1) (investigations), 38 (health and safety) and 40(2) of FOIA.
2. The Commissioner's decision is that Durham Police has applied section 30(1) of FOIA appropriately.
3. The Commissioner does not require Durham Constabulary to take any steps as a result of this decision.

Request and response

4. On 4 March 2016, the complainant wrote to Durham Police (DP) and requested information in the following terms:

*"*Please provide copies of all records relating to a meeting involving DI Sampson and the Sunderland chief executive in March last year relating to the Adam Johnson case. By records, I mean all notes, documents and emails relating to the meeting. This includes copies of all notes, documents and emails made prior to the meeting and after the meeting which relate in any way to the meeting and issues raised at the meeting. I believe the meeting was held on March 2, 2015.*

*If not included in the above, please provide copies of *the written log detailing what was said *any typed log detailing what was said.**

5. DP responded on 31 March 2016. It stated that it was withholding the requested information and cited section 30(1) and also neither confirmed nor denied whether it held information by virtue of 23(5) (bodies dealing with security matters).
6. Following an internal review DP wrote to the complainant on 19 May 2016, upholding its original decision. However, DP did explain that it would look more favourably on the request once court proceedings had been completed.

Background

7. Adam Johnson, a footballer for Sunderland Association Football Club, pleaded guilty to offences of grooming a female child aged 15 and also sexual activity with the same child. Following a trial at Bradford Crown Court on 2 March 2016, he was found guilty of an additional offence of sexual activity with a girl aged 15. He was found not guilty of a second count of sexual activity with the same girl.
8. Adam Johnson was jailed for six years by Bradford Crown Court on 24 March 2016.
9. Initially, he had been suspended for two weeks but then allowed to play again. SAFC explained that it understood that he was going to deny all the charges against him.
10. SAFC sacked Adam Johnson on the first day of his trial after he admitted grooming and kissing the girl.

Scope of the case

11. The complainant contacted the Commissioner on 19 May 2016 to complain about the way his request for information had been handled.
12. He explained that at the time of his request, the investigation into Adam Johnson was concluded as there had been a court hearing and Adam Johnson had been sentenced to six years in prison. The complainant also pointed out that at the time of his request there were no investigative matters that remained live.
13. During the Commissioner's investigation, DP confirmed that it was relying upon section 30(1)(a)(i). It also explained that it wanted to rely upon the following additional exemptions: sections 38(1) and (2) (health and safety) and 40(2) (personal information).

14. DP also confirmed that it was no longer relying upon the section 23(5) exemption therefore the Commissioner will not consider the application of this exemption any further.
15. The Commissioner will consider DP's application of sections 30(1), 38(1) and (2) and 40(2) and how it dealt with the request under FOIA.

Reasons for decision

Section 30 – investigations and proceedings

Section 30(1)(a)(i) states 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.”

16. The Commissioner considers that the phrase “at any time” means that information can be exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation
17. In order for the exemption to be applicable, any information must be held for a specific or particular investigation and not for investigations in general. Section 30(1) is a class-based exemption; if information falls within its scope there is no need to demonstrate harm or prejudice in order for the exemption to be engaged.
18. The Commissioner has viewed the withheld information and is satisfied that it relates to a specific criminal investigation which had been concluded by the date of the request. The Commissioner is also satisfied that DP has a duty to conduct investigations of the sort described in section 30(1)(a).
19. The Commissioner therefore considers that the exemption is engaged.

Public interest test

20. As section 30(1) is a qualified exemption it is subject to the public interest test: in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of maintaining the exemption

21. DP argued that the public interest in maintaining section 30(1)(a)(i) outweighed the public interest in disclosure.
22. It explained that the investigation was ongoing, as Adam Johnson had appealed both his conviction and sentence. DP argued that for this reason the public benefit in releasing the information was reduced as it must be measured against the fact that any disclosure may compromise the hearing before the higher court. DP also argued that there was a stronger public interest in seeing that the proper and fair procedures are followed in order to allow the judicial process to run its course.
23. DP explained that, following the court hearing and before sentencing at court on 24 March 2016, the case's Senior Investigating Officer (SIO) DI Sampson disclosed necessary and proportionate additional investigative details to the media on 3 and 4 March 2016 about some of DP's interactions with SAFC. DP also explained that it had done this both in the wider public interest and in direct response to the strength of the reaction arising from the questions raised and explored in court, regarding what SAFC knew and when, from DP about Adam Johnson's offending and arrest. In addition, DP explained that it had recognised the public interest regarding the safeguarding of vulnerable groups in society and that disclosure could provide an assurance that it had disclosed necessary and proportionate safeguarding information to SAFC.
24. Furthermore, DP explained that the National Police Chiefs' Council's approach is that information relating to an active investigation will rarely be disclosed under the provisions of the FOIA. Whilst such information may be released in order to provide a tangible community benefit (i.e. to protect life and property and/or assist in prevention and detection of crime and/or in the apprehension and prosecution of offenders), it will only be disclosed following a freedom of information request if there are strong public interest considerations favouring disclosure. It does not consider this to be the case in this instance.
25. In addition, DP argued that there was a greater public interest in encouraging public engagement and confidence in its investigative actions, therefore any actions which may result in individuals being less willing to co-operate with its investigations would not be in the public interest.
26. DP also argued that disclosure would inhibit the co-operation of employers and their staff, as well as any other witnesses or victims, to co-operate and contribute to ongoing or future criminal investigations. It explained that it considered that such a disclosure could act as a deterrent to those providing information to DP and the wider police service and therefore act as a disincentive and hindrance to other criminal investigations. DP argued that this diminution of essential public

assistance would damage the investigation and detection of crimes and would lead to a reduction in the public's confidence in the criminal processes employed by DP and other forces.

27. DP went on to argue that it was clearly in the public interest to ensure that no damage or potential prejudice is done to future investigations, as a result of victims or witnesses viewing disclosure of case material to the world at large as a breach of confidence, which could discourage them from providing valuable information.
28. DP also pointed out that, as a matter of fact, the case was heard in open court, during which DP's dealings with SAFC and SAFC's actions following Adam Johnson's arrest were widely reported at both a local and national level. It argued that as a result of the information already disclosed by it in court and post-trial to the media, the thoroughness of its investigation, including any information held about its interactions with SAFC, has already been open to sufficient public scrutiny and therefore satisfied the public interest.
29. With regard to safeguarding, DP acknowledged that there are continuing public interest concerns about the adequacy of SAFC's child protection procedures; and SAFC having been widely criticised by the media, MPs and child protection agencies. However, DP confirmed that no criticism was made by the judge, the National Society for the Prevention of Cruelty to Children (NSPCC) or any other child protection and welfare agencies or MPs regarding its disclosures or other interactions with SAFC. DP argued that the continuing press concerns as to what SAFC knew, when it knew it and how it acted do not outweigh the need for DP to protect information obtained as part of a criminal child protection investigation.
30. Furthermore, DP pointed out that after listening to all of the questioning and evidence about what SAFC knew (and when) from DP and/or from Adam Johnson, the judge did not make a court order directing that DPs and SAFC's information exchanges be made public.

Public interest arguments in favour of disclosure

31. DP acknowledged that arguments for disclosure of the information carry some weight, given the seriousness of the crimes involved and the continuing speculation and concerns about what SAFC knew. It also acknowledged the importance of public debate in building public confidence regarding protection of the public – in this case a young victim; disclosure may also encourage and promote public confidence in the effective and efficient conduct of police investigations into serious crime matters and highlight any issues relating to the conduct of DP.

32. The complainant explained that it is well established in law that, while a jury trial could potentially be at risk from prejudice through the publication of material about the case, appeal court judges cannot be influenced by matters outside the court ie disclosure of information in the public interest about the case itself.
33. Furthermore, the complainant pointed out that disclosure of the requested information would not cause prejudice as it relates to a meeting between the SIO and SAFC early on in the investigation into Adam Johnson. The complainant explained that the SIO had referred to this meeting publicly and indicated what SAFC was told. The complainant also pointed out that SAFC issued a statement after Adam Johnson's conviction in which it defended its actions and attempted to downplay the information disclosed by DP.
34. The complainant also explained that it was well-known that SAFC had allowed Adam Johnson to continue to play football and earn hundreds of thousands of pounds, after it knew about his alleged offences.
35. The complainant went on to argue that given the above, there was a compelling public interest in disclosure of the requested information. He pointed out that disclosure would show what information was given to SAFC about Adam Johnson.
36. In addition, the complainant argued that disclosure would enable the public to scrutinise the actions taken by a club which earns millions of pounds each year from fee-paying fans. Disclosure would also allow the public to scrutinise the actions taken by SAFC and its chief executive.
37. The complainant pointed out that the public must have confidence that such high profile clubs are being honest and open, particularly in cases where the young victim (as in the present case) was made to endure abuse as a result of SAFC appearing to believe Adam Johnson and allowing him to play on. The complainant argued that there was a compelling and significant public interest in disclosure of information which shows what SAFC based its decision-making on.
38. Furthermore, the complainant went on to acknowledge that DP had rightly suggested that disclosure would allow transparency about the actions taken during its investigation. He argued that this meant that there is a compelling public interest in disclosure of information showing how DP conducted the investigation, as it would be capable of demonstrating the professionalism and robustness of the investigation. He argued that this would be capable of improving public confidence in the DP and the police service.
39. The complainant also explained that in its internal review, DP had indicated that it would look more favourably on his request, following

the completion of the proceedings. He argued that, as he had already stated, no prejudice could be caused to any such appeal hearing and disclosure, as outlined by him above, would be clearly in the public interest.

Balance of the public interest

40. The Commissioner has considered the public interest arguments from both parties, including the public interest in transparency.
41. The general public interest served by section 30(1) is the effective investigation and prosecution of crime. The police service is charged with enforcing the laws, preventing and detecting crime and protecting the communities it serves. Anything which interferes with this ability to deliver this service will clearly be against the public interest.
42. In this case, the Commissioner notes the complainant's argument that while a jury could potentially be at risk from prejudice through the publication of material about a case, appeal judges cannot be influenced in the same way. She acknowledges that this is usually the case. However, DP has provided further arguments on this point. The Commissioner cannot discuss the confidential information provided by DP in the main body of the decision notice, as to do so would risk divulging withheld information. The confidential arguments are contained in a confidential annex.
43. The Commissioner also notes the complainant's argument that Adam Johnson had been allowed to continue to play football after SAFC knew about his offending and that it was in the public interest to disclose the requested information, in order to find out what SAFC knew.
44. The Commissioner notes that there was extensive media coverage of the court hearing concerning Adam Johnson. She considers that this goes some way to satisfying the public interest about what had taken place between DP and SAFC about the allegations against Adam Johnson.
45. The Commissioner also notes DP's confirmation that no criticism was made by the judge or by the NSPCC or any other child protection and welfare agencies or MPs regarding its disclosures or other interactions with SAFC. She accepts DP's arguments that the continuing press concerns as to what SAFC knew, when it knew it and how it acted do not outweigh the need for DP to protect information obtained as part of a criminal child protection investigation.
46. The Commissioner also accepts DP's argument that as a result of information already disclosed by it post-trial to the media, the thoroughness of its investigation, including any information held about its interactions with SAFC, has already been open to sufficient public scrutiny; this goes some way to satisfying the public interest. She also

attaches weight to DP's point that after listening to all of the questioning and evidence about what (and when) SAFC knew from DP and/or from Adam Johnson, the judge did not make a court order directing for DP's and SAFC's information exchanges be made public.

47. Furthermore, the Commissioner notes that DP disclosed information about its interactions with SAFC into the public domain after the trial. The Commissioner notes DP's explanation that this was done because of issues raised in the court hearing regarding what SAFC knew and about safeguarding. She is therefore satisfied that this goes some way to satisfying the public interest regarding what SAFC knew, DP's interactions with it and safeguarding issues.
48. In addition, the Commissioner notes DP's arguments about disclosure inhibiting the co-operation of victims and witnesses to ongoing or future criminal investigations. She accepts that anything that could prevent victims or witnesses from cooperating with either ongoing or future police investigations would not be in the public interest.
49. The Commissioner notes that the police service is charged with detecting crime and protecting the communities it serves. She considers that anything that could interfere with this, including breaching confidences, is not in the public interest and would interfere with its duties set out under section (30)(1)(a)(i).

Conclusion

50. Taking all of the above into account, the Commissioner is satisfied that section 30(1)(a)(i) has been applied appropriately in this case and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
51. As the Commissioner considers that section 30(1)(a)(i) is engaged, she will not consider the other exemptions cited.

Other matters

52. The complainant requested an internal review on 31 March 2016. DP responded on 19 May 2016.
53. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.
54. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt of the request for review. In

exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

55. The Commissioner is concerned that it took over 20 working days for DP to complete the internal review.

Right of appeal

56. 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

57. 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.
58. 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

Jon Manners
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