



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2019/0127

**Determined, by consent, on written evidence and submissions
Considered on the papers on 20 September 2019.**

Before
Judge Stephen Cragg Q.C.

Tribunal Members
Suzanne Cosgrave
and
Michael Jones

Between

Keith Redman

Appellant

and

The Information Commissioner

Respondents

BACKGROUND

1. On 22 February 2018 the Appellant wrote to West Yorkshire Police (WYP) and requested information in the following terms:

“I would like to request, to know how the police resolved a report of violent assault by a sixty two year old man against two workmen half his age. Made by the manager of the Piazza shopping centre Huddersfield at 06.41 on the ninth of April 2015. Which was incorrectly in-coded by police as violent assault, and later corrected.”

2. WYP responded on 23 February 2018. The initial response was that that disclosure under the FOIA amounted to disclosure to the world and not just the individual requesting the information. WYP told the Appellant that if he was directly involved in the incident referred to in the request, then it was possible to acquire information by way of a subject access request. The Appellant requested an internal review of the decision on 24 May 2018. There was an internal review on 25 July 2018 where WYP accepted that it had not responded to the Appellant’s request fully. It was then explained that WYP would neither confirm nor deny (NCND) whether it held the requested information, relying on section 30(3) FOIA (which refers to investigations and proceedings) and section 40(5) FOIA.
3. On 9 August 2018 the Appellant complained to the Commissioner about the way his request for information had been handled. He said that WYP had relied on section 30 FOIA, but that no offence had been committed. He said that whether or not there was an investigation was irrelevant: the request was for the procedure that was followed by the police in response to a report of an incident.
4. During the Commissioner’s investigation, WYP also explained that it was relying on section 31(3) FOIA to NCND whether it held any of the requested information. The Commissioner said that she would consider WYP’s application of sections 30(3), 31(3) and 40(5) FOIA in the decision notice. In fact, the decision notice concentrates on the application of section 30(3) FOIA.

THE LEGAL FRAMEWORK

5. The right of access provided by FOIA is set out in section 1(1) and is separated into two parts, both of which are relevant in this case.
6. Section 1(1)(a) FOIA gives an applicant the right to know *whether* a public authority holds the information that has been requested.
7. Section 1(1)(b) FOIA gives an applicant the right to be *provided with* the requested information, if it is held. However, both of these rights are subject to exemptions.
8. Section 30(1) FOIA states materially:

(1) 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...”

9. Section 30(2)(a)(i) and (ii) FOIA states:

“(2) Information held by a public authority is exempt information if –

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings with the authority has power to conduct ... and
- (b) it relates to the obtaining of information from confidential sources.”

10. Section 30(3) FOIA states:

The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

THE DECISION NOTICE

11. The Commissioner's decision notice dated 13 March 2019 stated at paragraph 9 that:-

9. The Commissioner has considered the wording of the request. She considers that this is not a request for any procedure followed regarding any investigation, as the complainant has provided a date and time regarding an alleged incident and details relating to that alleged incident.

12. As the Commissioner explains in the decision notice (correctly in our view):-

23. Consideration of section 30(3) involves two stages; first, the information described in the request must fall within the class described in sections 30(1) and/or (2). 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.

13. The Commissioner summarises what she had been told by WYP as follows:-

24. WYP explained that police have general common law powers to allow them to fulfil their common law and policing purposes to prevent and detect crime, apprehend and prosecute offenders and to protect life and assist the public. It also explained that there are a number of statutory powers available to police generally, for example: The Police Act 1996 and the Crime and Disorder Act 1998.

25. In addition, WYP explained that if held the requested information would have been recorded by it in relation to and for the purpose of a criminal investigation, with a view to ascertaining whether a person should be charged with an offence or was guilty of an offence and in relation to bringing criminal proceedings.

14. On that basis, the Commissioner accepted that if the WYP held the information then it would be held for the purposes of an investigation and would fall within the class of information covered by s30(1)(a)(i) FOIA. Thus, other than consideration of the public interest test, the Commissioner was satisfied that the test in s30(3) FOIA was met.

15. In relation to the public interest test, WYP emphasised the importance of protecting the identity of witnesses and victims, if any, who may have provided information to the police in relation to the incident on 9 April 2015, and in ensuring that witnesses and victims in other cases were not discouraged from coming forward. Confirming or denying whether the information was held

would be confirming the assertions made in the request by the Appellant: he would discover whether or not for example the manager of the Piazza shopping centre had made a report of violent assault.

16. In favour of disclosure the Commissioner noted that WYP accepted that confirmation or denial that the requested information exists could provide reassurance to the Appellant and the public that such investigations are conducted thoroughly and appropriately. The Commissioner noted that other than arguing that as no offence had been committed then there was no request for personal information, the Appellant had not put forward any reasons why it would be in the public interest for WYP to confirm or deny that it held the information.
17. The Commissioner decided that the balance of the public interest fell in favour of WYP upholding their NCND response. Essentially the need for the police to protect confidential information received from witnesses and victims, and to protect suspects who have not been charged, and the need to ensure the flow of such information to the police in future, was sufficient to outweigh any public interest benefit in the present case of having transparency in how the police dealt with reports of a violent assault.

THE APPEAL

18. The Appellant's appeal is dated 9 April 2019. The main point raised by him is that the s30(3) FOIA exemption does not apply 'where no offence has been committed, and the need for investigation never arose, and the identity of individuals and any information provided will remain confidential'.
19. The Appellant re-iterates his point that 'the request was for the procedure used by the police to resolve a report, which it is their duty to do, and how this duty was carried out in the public domain...'
20. The Appellant says 'This was not a request if WYP had investigated a report of violent assault'. He also says that 'This may also be a public interest in appreciating that the police will respond to a report of violent assault in a public

place, and the procedure used to resolve this report remains public'. The outcome he seeks is for WYP 'to disclose how they resolved a report of violent assault in a public place'.

DISCUSSION AND DECISION

21. In our view, the Commissioner was correct not to consider the request as referring to some sort of general procedure of WYP for dealing with investigations. The request makes specific reference to a date and time regarding an alleged incident and details relating to that alleged incident. The Appellant wants to know how the police resolved the particular report about a violent assault. On the face of it that means that he wanted information from the police as to what steps they took in relation to that report. That is reinforced by the Appellant repeating in the 'outcome' part of the appeal form that he wanted WYP to disclose 'how they resolved a report of violent assault'.
22. The Appellant also claims that s30(3) FOIA should not apply because he says, in relation to the incident he has referenced, there was no offence committed and no need for an investigation. We have no way of knowing whether either of those things is correct on the information before us. However, in our view, these matters are irrelevant, given the wording of the statutory provisions. Thus, pursuant to s30(1) FOIA information is exempt if it is held – at any time - for the purposes of an investigation with a view to ascertaining whether a person should be charged with an offence. Thus it would be perfectly possible for information to be held in relation to such an investigation when it has been ascertained that no one should be charged, either because no offence has been committed or for any other reason. In our view, and agreeing with the Commissioner's reasoning, the information falls within s30(1)(a) and (b) FOIA, and therefore by s30(3) FOIA the usual obligation to confirm or deny that the information is held, does not arise.
23. In relation to the public interest test, the Appellant's case appears to be that there is a public interest in knowing how the police have responded to a report of a violent assault. We accept that that is true. However, other than asserting

that no offence was committed (upon which we cannot rule), and that no personal information needs to be disclosed, the Appellant has not referred to any other reason on the facts of this case why the public interest is in favour of confirming or denying whether the information is held.

24. We are of the view that confirming or denying that information is held in such circumstances could deter victims and witnesses coming forward, in this case, and in future cases, if it is known that the police will not protect confidentiality. This is especially the position in this case where the request itself makes reference to a specific person (by way of their job title) who, the Appellant says, has reported a matter to the police.
25. In our view, the balance of the public interest in this particular case falls heavily in favour of non-disclosure, given (a) the need for the police to give a guarantee of confidentiality to anyone who wishes to complain or give evidence to it or who may be willing to cooperate with it about criminal matters; and (b) the particular facts of this case where a readily identified individual is said by the Appellant to have reported a specific incident to the police.
26. For those reasons, this appeal is dismissed.

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 22 October 2019

Promulgated: 25 October 2019