



Neutral citation number: [2025] UKFTT 00633 (GRC)

Case Reference: FT/EA/2024/0426

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

**Heard by Cloud Video Platform
Heard on: 8 May 2025
Decision given on: 02 June 2025**

Before

**JUDGE FOSS
JUDGE SAWARD
MEMBER EMMA YATES**

Between

CHRISTOPHER BILLINGS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: Unrepresented and in person

For the Respondent: Did not attend

Decision: The appeal is allowed in part.

Substituted Decision Notice: IC-305117-Y8P5

1. Hampshire Constabulary was not entitled to rely on section 30(3) of the Freedom of Information Act 2000 to refuse to confirm or deny whether information was held relating to a review of an investigation as set out in Request 4, and an application made by Hampshire Constabulary for a Court Order, as set out in Request 6. Hampshire Constabulary must confirm or deny whether the information was held within 35 days of the promulgation of this decision, or (if there is an application to

appeal this decision) within 28 days after being notified of an unsuccessful outcome to such application or any resulting appeal.

2. Hampshire Constabulary was entitled to rely on section 30(3) of the Freedom of Information Act 2000 in relation to the remainder of the requested information. The exemption is engaged because the information, if held, would fall within the class described in section 30(1)(a) and/or section 30(2)(a)(i), and the public interest in maintaining the exemption is not outweighed by the public interest in Hampshire Constabulary having to confirm or deny whether it holds the requested information.
3. Failure to comply may result in the Tribunal making written certification of this fact to the Upper Tribunal, in accordance with rule 7A of the First-tier Tribunal (General Regulatory Chamber) Rules 2009 **and** may be dealt with as a contempt of court.

REASONS

Introduction

1. This is an appeal against a decision of the Information Commissioner ("the Commissioner") dated 2 October 2024 referenced IC-305117-Y8P5 ("the Decision Notice"). The appeal concerns requests for information made to Hampshire Constabulary made under FOIA.

The Requests

2. On 26 February 2024, the Appellant sent the following requests to Hampshire Constabulary (as summarised and redacted in the Decision Notice to protect the individuals concerned):

Request 1

"I [redacted] Ex Husband of [redacted] along with our daughters [redacted] would like to request a copy of the Detective Sergeant's submitted 'Closing Report' sent [date redacted]. We are referring to the submitted 'Closing Report' indicating that the matter [name redacted] Death) was not a UK Police investigation sent to the coroner Mr [name redacted]. Senior Coroner for [redacted]. We also want the name of the Detective Sergeant and his badge number to remain on the requested 'Closing Report'."

Request 2

"I [redacted] would like to request a copy of RMS record [reference redacted] (Highlighted to us by Chief Inspector [redacted] Hampshire Constabulary Professional Standards Dept) which shows that it was me [redacted] the Ex Husband of [redacted] that on [date redacted] sent an email to Detective Sergeant [redacted]

[that] referred to the death of [redacted] as suspicious. Along with a copy of my email that I sent Detective Sergeant [redacted] to that fact.”

Request 3

“I [redacted] would also like to request a copy of the email/letter that was sent to the coroner on my behalf that showed my concerns that I thought [redacted]'s death was suspicious and subsequently, on the strength of that email/letter, prompted the coroner to tell Hampshire Constabulary that, in his view, Hampshire Constabulary should be looking at a Home Office Post Mortem.”

Request 4

“I [redacted] (Ex Husband of [redacted]) and my daughters [redacted] would like to request a copy of the Review into the Investigation of [redacted] carried out in the summer of [date redacted], by 5 retired Hampshire Constabulary Police Officers, at the instruction of Detective Superintendent [redacted] Head of Serious and Organised Crime Investigation Command Hampshire Constabulary Detective Superintendent [redacted] told us that the review was an in-house unofficial review carried out by 5 retired police officers, both he and Hampshire Constabulary have made reference to this review on many occasions, for transparency we request a copy of it.”

Request 5

“I [redacted] (Ex Husband of [redacted]) and my daughters [redacted] would like to request a copy of Professor [name pathologist Dr [redacted] report carried out in 2014. Dr [redacted] was asked in [date redacted] by Hampshire Constabulary to give his opinion relating to the injuries identified by two earlier post mortems, Professor [redacted] opinion on report was actioned by Detective Superintendent [redacted] and Senior Investigating Officer Detective Inspector [redacted].”

Request 6

“I [redacted] (Ex Husband of [redacted]) and my daughters [redacted], would like to request a copy of the following from Solicitors.

[...]

Detective Superintendent [redacted] told us on [date redacted] that she could confirm that the investigative team did apply for a Court Order to obtain the documentation from [redacted]. This Order was refused by the Court. We sought further legal advice on this point and were advised that there were no further legal avenues to pursue in relation to this. We would Like to request a copy of the Court application to obtain the documentation from [redacted]. The Court's refusal documentation. And a copy of the documentation on the legal advice sought and a copy of the documentation of the advice that there were no further legal avenues to pursue in relation to the matter.”

Request 7

"I [redacted] (Ex Husband of [redacted]) and my daughters would like to request a copy of the following from Insurance documentation. This is a 106-page report detailing the following and provided to Police. [...redacted]."

3. On 27 February 2024, the Appellant added the following requests:

Request 8

"I [redacted] would like to request a copy of the reply from the coroner to the letter/email that I [redacted] the Ex Husband of [redacted] sent on [date redacted] to Detective Sergeant [name redacted] to pass onto the coroner expressing my concerns that the death of [name redacted] in my opinion was suspicious. The aforementioned letter is referred to in RMS record [reference redacted] (Highlighted to us by Chief Inspector [name redacted] Hampshire Constabulary Professional Standards Dept) which shows that it was me [name redacted] that on [date redacted] sent an email to Detective Sergeant [name redacted] referred to the death of [name redacted] as suspicious."

Request 9 (withdrawn)

"I [name redacted] would like to request a copy of RMS record [reference redacted] (Highlighted to me by Investigator [name redacted] Hampshire Constabulary Professional Standards Dept) which shows that it was me [...] that made a report on [date redacted] of a number of assaults on [redacted] I would like to request a copy of RMS [reference redacted] encompassing the report made by me on [date redacted]....".

4. The table of consolidated requests and responses prepared by Hampshire Constabulary of 7 March 2024 reveals a tenth request, which although similar to others, does not appear in the Commissioner's decision. At the hearing, Mr Billings confirmed that the request formed part of his complaint and remains outstanding. Therefore, the Tribunal addresses this as Request 10.

Request 10

A copy of [the Detective Inspector's] email/letter dated 26 September 2012 to the Senior Coroner informing [them] that the circumstances of [redacted] death did not warrant further police investigation. I would also like to request a copy of the Senior Coroner's response/reply.

Refusal of the Request

5. The response from Hampshire Constabulary of 7 March 2024 neither confirmed nor denied holding the information in the nine requests, citing section 40(5)(a)(b) FOIA (personal information).

6. On 7 April 2024, the Appellant withdrew 'Request 9' and sought an internal review of Hampshire Constabulary's response of 7 March 2024. Following an internal review, Hampshire Constabulary wrote to the Appellant on 30 April 2024 maintaining its reliance upon section 40(5).
7. The Appellant referred the matter to the Commissioner on 6 May 2024.
8. During the Commissioner's investigation, Hampshire Constabulary additionally cited section 30(3) of FOIA (investigations and proceedings) as a reason to neither confirm nor deny holding the information, relying upon sections 30(1) and (2).

The Decision Notice

9. In the Decision Notice of 2 October 2024, the Commissioner decided that Hampshire Constabulary was entitled to rely upon section 30(3) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of the requests. This was on the basis that the information, if held, would fall within the class described in section 30(1)(a). The Commissioner did not accept that section 30(2) could be relevant as it is intended to relate to confidential sources, and there is no evidence to support the application of that provision.
10. The Commissioner has not considered whether the information, if held, should be disclosed. As the Commissioner had found that section 30(3) applied, he did not go on to consider the application of section 40(5).
11. In the reasons for the decision, the Commissioner quoted from his guidance on section 30 FOIA that states the words "at any time" in section 30(1) FOIA means that information can be exempt under section 30(1) if it relates to a specific, ongoing, closed or abandoned investigation. He also quoted the following from his guidance, which states:

"It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence. However, the purpose of the investigation must be to establish whether there were grounds for charging someone, or if they have been charged, to gather sufficient evidence for a court to determine their guilt. Section 30(1)(a) will still protect information if a police investigation fails to establish that an offence has been committed, or concludes that there is insufficient evidence to charge anyone."
12. In applying the public interest test, the Commissioner considered the act of confirming or denying whether the requested information is held could have a harmful impact on the ability of the public authority to carry out effective investigations. He accepted that the Appellant has a strong personal interest in the requested information but noted that section 2(2) of FOIA refers to the *public* interest. Disclosures of information under FOIA are to the world at large, not just the individual requester. The factors in favour of confirmation or denial were found not to equal or outweigh those in favour of maintaining the exemption.

The Appeal and Responses

13. The Appellant appealed to the Tribunal on 26 October 2024. The grounds of appeal can be summarised as:

- a. The requested information does not fall within section 30(3) of FOIA.
- b. The Appellant has already been told about the information as it was confirmed in emails sent to him by Hampshire Constabulary.
- c. The case was closed on 1 March 2023. The requested information would not impede or compromise any further investigations if the case was reopened.
- d. Some of the information cannot be used in court, as confirmed by the CPS.
- e. The data subject is deceased and so the Data Protection Act does not apply.
- f. The Constabulary's Professional Standards Department pre-findings release meeting took place on 28 February 2022. The Appellant was told by the senior officers present that they did not see any reason not to share the review into the investigation of Operation Bowline conducted in the summer of 2018 by 5 retired officers of the Constabulary. The Appellant recorded the meeting for their own personal use.
- g. The review was never received after repeated requests. Despite this, the Constabulary continued to say they had received it. [name redacted] wrote:

"In relation to the report itself this was the independent review of the investigation, conducted as you would expect with the intention of identifying both failings in that investigation and opportunities for further investigative activity. As the report notes, and as you are fully aware, there is no doubt that failings at the start of the investigation have had a material impact on that investigation. The impact of those failings cannot now be recovered. The findings, recommendations and actions arising out of those recommendations have been fully shared with you."

14. The Commissioner maintains that the Decision Notice was correct. In summary:

- a. Hampshire Constabulary may have been willing, or at least, expressed a willingness to share certain information with the Appellant. However, different factors must be considered to requests under FOIA. The issue is whether Hampshire Constabulary should confirm or deny the existence of the requested information in response to the Requests.
- b. The wording of the exemption confirms that the engagement of section 30(1)(a) does not include a prejudice test.

- c. It is the Commissioner's position that the requested information, if held, would be held for the purposes of an investigation which the Police had a duty to conduct to ascertain whether a person should be charged with an offence. As such section 30(3) is engaged.
- d. To the extent that the Appellant seeks to argue the public interest test, the Commissioner relies upon its Decision Notice.

Legal Framework

15. The relevant provisions of FOIA are set out below:

Section 1 - General right of access to information held by public authorities.

- (1) Any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

....

Section 2 - Effect of the exemptions in Part II.

....

- (2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –
 - (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
 - (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

....

Section 30 - Investigations and proceedings conducted by public authorities

- (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, or
 - (c) any criminal proceedings which the authority has power to conduct.
- (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 which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
 - (b) it relates to the obtaining of information from confidential sources.
- (3) 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).
- (4) In relation to the institution or conduct of criminal proceedings or the power to conduct them, references in subsection (1)(b) or (c) and subsection (2)(a) to the public authority include references –
- (a) to any officer of the authority,

....

16. Section 30 FOIA is a qualified exemption, subject to the public interest test. It is also a class-based exemption, meaning that there is no requirement for any prejudice to any investigation or proceedings to be shown for the exemption to apply.
17. To rely upon section 30, there must be a past or current criminal investigation in respect of which the information has been or is being held. The Tribunal must undertake a fact-specific analysis in order to decide whether the information was held at any time for the purposes of a criminal investigation. It does not need to have been obtained for that criminal investigation but may form part of subsequent criminal investigations or there may be a pre-existing criminal investigation of which it forms part. Section 30 does not exempt from disclosure information that may be

the subject of future or potential criminal investigations (*Williams v ICO and Chief Constable of Kent Police* [2021] UKUT 149).

18. There is no requirement in section 30(1)(a)(i) for the public authority to be the body that will ascertain whether a person should be charged with an offence. It is sufficient that investigation is conducted by the public authority with a view to it being ascertained by another body whether a person should be charged with an offence (*Williams v ICO* [2023] UKUT 142).

Public Interest Test

19. In *All Party Parliamentary Group on Extraordinary Rendition v Information Commissioner* [2013] UKUT 0560 (AAC) (“APPGER”) the Upper Tribunal gave helpful guidance on how the balancing exercise required by section 2(2)(b) of FOIA is carried out:

“... when assessing competing public interests under FOIA the correct approach is to identify the actual harm or prejudice that the proposed disclosure would (or would be likely to or may) cause and the actual benefits its disclosure would (or would be likely to or may) confer or promote. This requires an appropriately detailed identification of, proof, explanation and examination of both (a) the harm or prejudice, and (b) benefits that the proposed disclosure of the relevant material in respect of which the exemption is claimed would (or would be likely to or may) cause or promote.”

Role of the Tribunal

20. The role of the Tribunal is governed by section 58 FOIA. This requires the Tribunal to consider whether the Commissioner’s Decision Notice is in accordance with the law, or, where the Commissioner’s decision involved an exercise of discretion, whether he should have exercised it differently. The Tribunal may review any finding of fact on which the Decision Notice was based (section 58(2)). This means that we may review all the evidence provided to us (even if that evidence was not before the Commissioner) and make our own decision on the merits.

The Issues

21. The issues for the Tribunal to determine in this appeal are:

- Is section 30 FOIA engaged?
- Is Hampshire Constabulary entitled to neither confirm nor deny holding the requested information?
- If so, in all the circumstances of the case, does the public interest in maintaining the exemption outweigh the public interest in Hampshire Constabulary either confirming or denying whether it holds the requested information?

Evidence

22. The documentary evidence comprises an open bundle only of some 135 pages, which the panel has read in full and carefully considered.
23. The Tribunal was greatly assisted at the hearing by Mr Billings who attended in person. He explained the background to his requests in the search for information since 2012 about the death of his ex-wife (and the mother of his daughters) whilst on holiday in the Dominican Republic. Mr Billings took assiduous care in the presentation of his case taking us through each of his requests, speaking with clarity and answering the Tribunal's questions, for which the Tribunal is most grateful.
24. Whilst neither the Commissioner nor Hampshire Constabulary were represented at the hearing, the Tribunal has considered all the material within the bundle, which includes the responses from the Commissioner and documents supplied by the public authority.

Consideration

25. The Commissioner relies upon sections 30(1)(a) and 30(3) of FOIA.
26. The starting point is whether there is or was an investigation. The investigation must be one which the public authority has a duty to conduct. Plainly there was an investigation because Hampshire Constabulary investigated the circumstances of the death of the Appellant's ex-wife in order to ascertain if charges should be brought for a crime. An arrest was made but no charges followed.
27. For the purposes of section 30(1) FOIA, it does not matter that the investigation closed in March 2023. Information is exempt if it has "at any time" been held by Hampshire Constabulary for the purpose of any investigation which it has a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.
28. During the hearing, Mr Billings clarified that the requests for information from Solicitors (Request 6) and the 106-page report from the holiday insurers (Request 7) were both directed at Hampshire Constabulary, who he believes obtained documentation from those sources during the course of its investigation.
29. The Tribunal finds that section 30(1)(a)(i) is engaged. If held, all the requested information would be held for the purposes of that investigation, except Request 4.
30. Request 4 differs because it concerns an internal review by Hampshire Constabulary into its own performance in conducting an investigation rather than information obtained in the course of an investigation into a possible crime. The Tribunal does not consider that such a review would be held for the purposes of the investigation per se to fall within section 30(1)(a).
31. It is noted that the Commissioner dismissed the application of section 30(2), but it is only subsection (2)(b) that relates to information obtained from confidential sources.

Hypothetically, a review would be captured by section 30(2)(a)(i) as information held by a public authority obtained or recorded for the purposes of its functions relating to an investigation falling within subsection (1)(a). That is because it must be anticipated that a performance review is for the purposes of a police function in establishing whether further criminal investigation is required. It follows that section 30(2)(a)(i) applies to Request 4.

32. Furthermore, during the hearing Mr Billings clarified that the emails sought in Requests 2 and 3 are those that he himself sent (but had not retained) expressing the belief that the death of his ex-wife was suspicious. Request 2 concerns a single email of 19 September 2012. We find that those emails would likely be captured by both section 30(1)(a) and section 30(2)(a)(i) as obtained by the Constabulary for the purposes of its functions relating to an investigation.
33. Accordingly, the Tribunal finds that all the requests are for information, which is, or if it were held by the Constabulary, would be exempt by virtue of subsections (1) or (2) of section 30. That being so, under section 30(3) the duty to confirm or deny that the requested information is held did not arise. That is not the end of the matter, the question turns to the public interest test.

The Public Interest

34. As section 30(3) FOIA is a qualified exclusion of the duty to confirm or deny, the Tribunal must still determine the public interest in Hampshire Constabulary neither confirming nor denying whether it held the requested information. This involves considering whether in all the circumstances, the maintenance of the exclusion of the duty outweighs the public interest in disclosing whether the public authority holds the information. To be clear, we are not in this decision determining whether any responsive information should be disclosed. That is because the appeal is against the Commissioner's decision that reliance can be placed on section 30(3) by Hampshire Constabulary to neither confirm nor deny that the requested information is held.
35. The Tribunal must consider the public interest as matters stood at the time of the decision which the public authority was obliged to make by Part I of FOIA (as per paragraph 86 of *Montague v Information Commissioner and DIT* [2022] UKUT 104 (AAC)). As Hampshire Constabulary refused the Request on 7 March 2024, that is the date the public interest must be assessed. However, the Tribunal may properly take into account circumstances or matters that come to light subsequently where they shed light on the public interest at the time it falls to be considered.
36. Section 2(2)(b) FOIA requires the Tribunal to conduct a balancing exercise weighing the factors in favour of maintaining the exemption against the public interest factors that favour disclosure. The Tribunal has undertaken this balancing exercise for each individual request.
37. In all bar Requests 4 and 6 (which are addressed separately below) we find strong public interest in the Police neither confirming nor denying whether they hold the requested information relating to an investigation where any future investigation or

proceedings might be compromised. There is less likely to be a harmful impact now that the investigation is closed, but it cannot be known if it might be re-opened in future. Indeed, Mr Billings was at pains to emphasise that he sought justice and had carefully “cherry picked” the information requests because he did not want to impede any future investigation. The requests only relate to information the family think they should know.

38. As a general rule, the broader the terms of the request, the more difficult it will become for the public authority to contend that the public interest in excluding the duty to confirm or deny that information is held outweighs the public duty in compliance with that duty. In this case, the requests are very specific and narrow in scope. Should the investigation be re-opened then there is risk of prejudice by assisting those under investigation if it is publicly known whether the Police hold specific information. That applies to the specific communications with the Police, such as Request 2. There is an even stronger need to keep confidential information related to pathology reports (Request 5), communications with the Coroner (Requests 1, 3, 8 and 10) and the report Mr Billings says was obtained from insurers revealing its investigations (Request 7).
39. This is undoubtedly a sensitive and highly emotional case of the utmost personal interest to the Appellant and his family. As much as the Tribunal can empathise with their long and undoubtedly painful journey endured in the search for answers, the Tribunal must consider the wider public interest. Having weighed the competing factors, the Tribunal agrees with the Commissioner that the factors in favour of confirmation or denial do not equal or outweigh those in favour of maintaining the exemption in terms of Requests 1,2,3,5,7,8 and 10.
40. Public authorities are expected to be consistent in their application of the exclusion of the duty to confirm or deny under section 30(3). Nevertheless, that does not negate the need to look at the specifics of each request and weigh up the public interest considerations relevant to the particular circumstances. In this instance, it strikes the Tribunal that the same somewhat broad approach has been taken across all the requests. That is notable from Hampshire Constabulary’s response that: “The Police Service will never disclose information under FOIA which could identify investigative activity and therefore undermine their past, present and future investigations. To do so would hinder its ability to perform this function”. There is a distinction to be drawn between the actual disclosure of information and the duty to confirm or deny its existence.
41. In terms of Request 4, it is known that Hampshire Constabulary did undertake a review of its investigation. Indeed, within the open bundle is a letter from Hampshire Constabulary to Mr Billings dated 29 June 2023 regarding the review. The letter is neither marked as confidential nor is Mr Billings instructed not to share it. The letter encloses “a summary of the report prepared by officers from the Serious Crime Review Team following their review of the investigation”. The summary is said to contain full details of both the findings from that review, the recommendations made, and summary of the action taken.

42. The supply by Hampshire Constabulary of a summary of the report in those circumstances severely diminishes any argument that confirming or denying the existence of a full report would prejudice any investigation or proceedings or hinder the ability of the Police to fulfil its functions. There is strong public interest in knowing whether a police force has conducted a review and recorded the findings in a report for reasons of accountability, transparency, and public confidence. That is particularly so where someone has died. On balance, we find that the public interest in favour of confirmation or denial outweighs those in favour of maintaining the exemption. As such, there was not entitlement to rely upon section 30(3) in terms of Request 4.
43. Turning to Request 6. Mr Billings believes that Hampshire Constabulary applied for a Court Order to obtain documentation from the Solicitors who acted in civil proceedings connected with his ex-wife's death. The fact of an application to court and any order made should be on the court file. Thus, it should be a matter of public record already in the public forum. To this extent, the public interest weighs in favour of confirmation or denial so that reliance cannot be placed on section 30(3).
44. Part of Request 6 also seeks a copy of legal advice sought and obtained. Legal advice is protected by legal professional privilege. It is unlikely there will be any entitlement to know whether legal advice has been secured in the course of a police investigation or review.
45. Accordingly, in terms of Request 6 the duty to confirm or deny applies only insofar as it relates to an application made by Hampshire Constabulary for a Court Order.
46. In reaching these findings, the Tribunal makes clear that where the appeal has succeeded the decision concerns solely the duty to confirm or deny whether the requested information is held. It does not mean that any information held must be disclosed. That is a separate question to which other exemptions may be claimed. The Tribunal makes no comment on the possible merits of that question.

Conclusion

47. For the reasons given, we find that the Commissioner erred to conclude that Hampshire Constabulary was entitled, pursuant to section 30(3) FOIA, neither to confirm nor deny that it held information relating to (i) a Review of the investigation as set out in Request 4, and (ii) an application made by Hampshire Constabulary for a Court Order as set out in Request 6.
48. To that extent only, the appeal is allowed, and a Substituted Decision Notice is issued. The appeal is otherwise dismissed.

Signed: **Judge Saward**

Date:

2 June 2025