

## Freedom of Information Act 2000 (Section 50) Decision Notice

Date: 30 July 2007

**Public Authority:** Surrey Police ("the public authority")  
**Address:** Police Headquarters  
Mount Browne  
Sandy Lane  
Guildford  
Surrey  
GU3 1HG

### Summary

---

The complainant requested CCTV footage relating to the Amanda Dowler ("Milly Dowler") murder in 2002 from Surrey Police (the "public authority"). Having refined his request this was reduced specifically to 5 minutes of footage taken from the "Birdseye CCTV" camera on the Unilever Building on Station Avenue from 4.05pm to 4.10pm on the day that Milly Dowler went missing. This is believed to cover the last time Milly Dowler was seen.

The public authority refused to provide this information citing that the information is exempt under section 30 (investigations and proceedings conducted by public authorities).

The Commissioner is satisfied that the public authority appropriately cited the section 30 exemption and that the public interest in maintaining this exemption outweighs the public interest in disclosure. Therefore this complaint is not upheld.

### The Commissioner's Role

---

1. 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 Freedom of Information Act 2000 ("the FOI Act"). This Notice sets out his decision.
-

## Background

---

2. Before setting out the Commissioner's investigation and the reasoning behind his decision, this notice will outline the background to this case.
3. The complainant requested a copy of some CCTV footage which is believed to cover the last time Milly Dowler was seen whilst on her way home from Heathside school, Weybridge, on the afternoon of March 21, 2002. Milly went missing and her body was found six months later in woods at Yateley Heath, Hampshire.
4. During the investigation, over 250 tapes of CCTV footage have been seized from various locations, in particular CCTV from a nearby business premises (the "Birdseye CCTV") which has been constantly examined and re-examined and has been crucial to Surrey Police's investigation. A selection of stills from the footage have been released by the police to assist with their further enquiries. The footage requested has not been released in its entirety.

## The Request

---

5. The complainant's original request, received by the public authority on 30 January 2005, was for, *"a copy of the enhanced CCTV video, taken from the Birds Eye building on Station Avenue, Walton on Thames. This is the video from which the stills, displayed on the Surrey police web site, were taken."*
6. In its refusal notice dated 8 February 2005 the public authority specified the information was exempt under section 30.
7. The public authority provided the following public interest arguments:
  - In favour of disclosure it mentioned public debate saying that this would contribute to the quality and accuracy of public debate.
  - Against disclosure it referred to the Association of Chief Police Officer's (ACPO) position that information relating to a criminal investigation will rarely be disclosed under the FOIA and only where there is a strong public interest favouring disclosure.
  - It further commented that, for current investigations, it would not be in the public interest to release information that may be of assistance to offenders or prevent an individual from being brought to justice.
8. The public authority also included an extract from the ACPO Freedom of Information Manual regarding their use of section 30. This included the following statement in respect of information concerning police investigations:

*“Police investigations are conducted with due regard to the confidentiality and privacy of victims, witnesses and suspects. Such investigations may also frequently involve the use of policing tactics or techniques that, if widely known, would hinder the ability of the police service to prevent and detect crime. It is further recognised that the release of information concerning current investigations may compromise any subsequent court proceedings.....*

*Whilst adopting this general position, there is full recognition that in some cases there will be significant and compelling issues of public interest that require the disclosure of information. However, to override issues of personal privacy and harm to individuals involved in the investigation, this particular public interest must be significantly more than mere curiosity or interest in a particular investigation.”*

9. The document can be found in full on the ACPO website at:

<http://www.acpo.police.uk/policies.asp>

10. The complainant requested a review of this decision on 18 February 2005. He cited the following:

*“I understand that the information concerns an on-going investigation and an exemption is being applied under Section 30. However I can see no way in which the information in this footage can compromise the confidentiality and privacy of victims, witnesses or suspects. Nor does it reveal anything about police tactics or techniques. In fact parts of the CCTV footage have already been made public by the Surrey Police, as is usual, in an effort to obtain information from the public.”*

11. The request for an internal review was acknowledged by the public authority on 21 February 2005.

12. In its internal review decision letter of 18 March 2005 the public authority stated the following:

*“We wish to inform you that we uphold the original decision not to release the video as it is part of the continuing investigation into the murder of Milly Dowler. Certain video footage and stills have been released into the public domain, but the remainder is considered subject to the investigation. As you will be aware from recent press coverage, the video is still being used in the investigation.”*

13. The complainant subsequently wrote to the ICO; his letter was received on 16 August 2005. He further argued that if:

*“... Surrey Police can withhold this information simply by applying an exemption under Section 30, then it would appear that as long as they fail to catch the person responsible for what happened to her they will never make it public.”*

## The Investigation

---

14. On 21 March 2007 the Commissioner contacted the public authority to raise initial queries regarding their use of section 30. He wished to know why this particular piece of footage was deemed as being exempt under the Act whereas other footage had been made available. He also wished to know whether or not this specific piece of footage had ever been released.
15. The public authority confirmed it had already released much footage into the public domain. However, it further clarified that the release of CCTV stills and footage to date had been in a managed way in order to assist their investigation. The information that had been requested by the complainant had not been released into the public domain by the public authority. The public authority provided the Commissioner with a copy of the information requested by the complainant.
16. The public authority also provided the Commissioner with the following information:
17. Whilst it is noted that Milly Dowler's murder took place in 2002 it remains unsolved and is classed as an on-going, high profile investigation with a team actively allocated to the operation.
18. This particular footage is an exhibit in an on-going criminal investigation. The specific time parameters requested by the complainant have received much attention over the past 5 years and have already had various techniques applied by top experts in this country and also the FBI.
19. At the time of the request the investigation was still 'active'. Several arrests have been made in connection with this case, including one around the time of the request. This demonstrates that it was, as it remains, very much a 'live' investigation.
20. When it was processing the complainant's request the public authority was not aware of the complainant's reasons for wanting access to a copy of the footage. However, whilst undertaking the investigation, it became apparent that the complainant did have a specific motive and the Commissioner believes it is pertinent to offer a brief explanation.
21. The complainant had produced computer software which he believed could assist with the investigation. He provided an example of this to the Commissioner which he demonstrated using images already in the public domain. He wished to have the extra footage in order to build a clearer picture of events.

22. Where possible the Commissioner will try to obtain an 'informal' resolution to complaints. In this case, once the public authority became aware of the complainant's software it indicated that it might have been willing to allow him access to the information outside of the Act. The Commissioner therefore pursued the possibility of the public authority allowing the complainant supervised access to the footage and the opportunity to demonstrate his computer software. It is important to re-iterate that had supervised access been agreed between the public authority and the complainant this would have been a disclosure outside of the Act. This was not deemed practical by the complainant as he was not in close proximity to Surrey and the work he would need to undertake would take many hours.
23. The complainant also offered to 'guarantee' that he would not further disclose anything he might find as a result of his working with the footage and, on completion of his work, he would take it to Surrey Police. However, when this was put to the Senior Investigating Officer (SIO) at Surrey Police, she indicated that she was still of the opinion that the footage could not be released to the public at large. She believed that, "*any inappropriate and mismanaged releases of information into the public domain will have a serious impact on public confidence and the Dowler family.*" The Commissioner would point out that, had Surrey Police allowed a disclosure subject to conditions, again this would have been a voluntary release of information outside of the Act as public authorities cannot place confidentiality agreements on material released under the legislation.

## Analysis

---

24. The Commissioner has given full consideration to the public authority's refusal to provide the CCTV footage and the exemption it cited as its basis for doing so.
25. Section 30(1) applies to a particular class of information, namely information held at any time for the purpose of an investigation with a view to ascertaining whether a person should be charged with an offence. The Commissioner is satisfied that the requested information is held by the public authority for this purpose and the information is therefore caught entirely by the scope of section 30(1) – details of which are given in the Legal Annex to this Notice.
26. In deeming the section 30(1) exemption as class based rather than prejudice based, Parliament determined that there was an inherent harm in disclosing information of this class or type. Parliament also determined that even where the exemption is engaged, the information itself is only exempt from disclosure where the public interest in maintaining the exemption outweighs the public

interest in disclosure. The Commissioner therefore went on to consider the public interest test.

## The Public Interest Test

---

27. In considering the public interest test, the guidance states as follows:

*“For this exemption, it will involve weighing the harm that may be caused to an investigation against the wider public interest in disclosure. A critical issue is likely to be the timing of disclosure. The public interest in the disclosure of information is likely to be weaker while an investigation is being carried out. However, once an investigation is completed, the public interest in understanding why an investigation reached a particular conclusion, or in seeing that the investigation had been properly carried out, could well outweigh the public interest in maintaining the exemption..”*

28. The Commissioner also notes the Information Tribunal judgement in the case of *Toms v Information Commissioner (EA/2005/0027)* which dealt with the application of section 30(1). The Tribunal stated, with regard to the consideration of the public interest in relation to s.30(1) that:

*“In striking the balance of interest, regard should be had, inter alia, to such matters as 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, and the significance or sensitivity of the information requested.”*

29. The Information Tribunal also indicated that in considering the public interest test it had had regard to the White Paper which preceded the introduction of the 2000 Act: [Your Right To Know: The Government's Proposals for a FOI Act](#) (Cm.3818, 11 December 1997). The Information Tribunal stated:

*“Although the Act as enacted differs in some respects from the model propounded in the White Paper the following extract is relevant.*

*“[freedom of information] should not undermine the investigation, prosecution or prevention of crime, or the bringing of civil or criminal proceedings by public bodies. The investigation and prosecution of crime involve a number of essential requirements. These include the need to avoid prejudicing effective law enforcement, the need to protect witnesses and informers, the need to maintain the independence of the judicial and prosecution processes, and the need to preserve the criminal court as the sole forum for determining guilt. Because of this, the Act will exclude information relating to the investigation and prosecution functions of the police, prosecutors, and other bodies carrying out*

*law enforcement work such as the Department of Social Security or the Immigration Service. The Act will also exclude information relating to the commencement or conduct of civil proceedings.”*

30. Taking all the above points into account, the Commissioner therefore approached his analysis of the public interest in this case by considering the following questions:
- What stage has the investigation reached, is it ongoing, suspended or completed?
  - Is the withheld information significant to the investigation?
  - Is confidentiality critical to the success of the investigation?
  - Does the information reveal techniques used by the public authority which could harm the investigation?

**What stage has the investigation reached, is it ongoing, suspended or completed?**

31. The public authority has confirmed that this high profile investigation is on-going. This can be demonstrated by the fact that they still have an active SIO, a Detective Inspector and 10 Action Team Officers carrying out their enquiries; in addition, they also still have a disclosure and exhibit team.
32. The Commissioner considers that where investigations are live there is a strong public interest in preserving the public authority's ability to determine the direction of the investigation and to pursue new leads and different evidence as and when it arises and as far as it deems necessary. If the public were made aware of the additional information that has been requested by the complainant it may hinder the public authority's ability to pursue particular leads by revealing to potential suspects what it already knows or does not know.
33. The complainant has suggested that if the public authority is permitted to withhold the requested information simply because it is held for the purposes of an ongoing investigation, then as long as the person responsible for Milly Dowler's death is not caught it will not make the material available.
34. There may also be instances where it is in the public interest to reveal additional information about an investigation in order to generate additional leads and to allow the public to understand what actions have been taken. The Commissioner notes that the public authority has already done this in a managed way in order to both inform and include the public. He notes that some investigations remain unsolved for many years and will still be classed as 'ongoing' and it may be possible to argue that, in some of these cases, the information sought is no longer sensitive despite the fact that the investigation remains 'open'. This may be the case if there is no real prospect of further evidence emerging or if there is no realistic prospect of active investigation

continuing. Where information is old it may be possible to argue that any harm that may result from disclosure will be lower because the techniques or processes that it would reveal are no longer used by an investigating authority.

35. The fact that the sensitivity of information may reduce over time is in part recognised by the inclusion of section 63 in the Act which states that some of the exemptions, including section 30 (1) cannot apply to information within a historical record, one that is over thirty years old.
36. The Commissioner notes the complainant's argument however, in this particular case he does not consider that the information can be considered less sensitive due to age particularly as the investigation is ongoing.

### **Is the withheld information significant to the investigation?**

37. The Commissioner considers that in some cases the public interest may favour disclosure of certain information held for the purposes of an investigation if that information is not particularly significant to the investigation and where the harm that might arise as a result of disclosure would be low and/or is particularly unlikely. However, the more significant the information is to the investigation, arguably the more harm is likely to arise if it were disclosed and the stronger the public interest in maintaining the exemption. In this case the SIO and a member of the Crown Prosecution Service have both confirmed that the CCTV footage requested by the complainant is a significant piece of evidence in the investigation. Therefore, the Commissioner is satisfied that this is a significant argument in favour of maintaining the exemption in section 30(1).

### **Is confidentiality critical to the success of the investigation?**

38. The Commissioner notes that the success of an investigation often depends on the following-up of enquiries from any evidence obtained. Revealing evidence or lines of enquiry could allow an offender to plan their continued evasion from justice. The Commissioner recognises that, as a general principle, there is a strong public interest in allowing the police to withhold case evidence until such time as it is appropriate to confront the alleged offender or undertake a managed release to the public.
39. The Commissioner accepts that there is a public interest in people understanding what steps have been taken to investigate the murder of Milly Dowler. If more information were made available it may increase public confidence in the investigation. There is also the possibility that it could lead to new information coming to light which could provide new leads for the public authority to pursue. However, in this case he is satisfied that the public interest in ensuring that the police are able to reveal evidence at the point that they consider most appropriate has greater weight.



**Does the information reveal techniques used by the public authority which could harm the investigation?**

- 40. A considerable amount of detail about the investigation is known to the public. Surrey Police has disclosed sufficient information to assist its enquiries. Some of the requested footage has already been revealed in a 'stills' format for the purposes of tracing people or vehicles. Some of these remain available on the public authority's website.
- 41. When considering this point the Commissioner has been mindful of the fact that it is already a matter of public record that the FBI has assisted the public authority in improving the quality of the CCTV footage. Further, he also recognises that the public is well aware that the public authority has relied upon CCTV footage in the course of the investigation in order to locate and eliminate suspects and witnesses. The Commissioner does not therefore believe that the argument that disclosing the material would reveal the type of evidence relied upon, or the techniques used, to be a particularly strong one in this case.

**Public interest test conclusion**

---

- 42. Having considered all of the questions above, the Commissioner is satisfied that the public interest arguments in favour of maintaining section 30(1) outweigh those in favour of disclosure.

**The Decision**

---

- 43. The Commissioner's decision is that the public authority correctly applied the section 30(1) exemption to the requested information in this case. Therefore the complaint is not upheld.

**Steps Required**

---

- 44. The Commissioner requires the public authority to take no further steps.

**Other matters**

---

- 45. The complainant has argued that he does not accept that disclosing the footage would compromise the confidentiality or privacy of victims, witnesses or

suspects, which is one of the arguments contained in the ACPO Manual referred to in paragraph 10 above. The Commissioner notes that the public authority has not elaborated on this as an argument in favour of maintaining the exemption in either its refusal or review. However, the public authority did advise the Commissioner, during his investigation, that it believed “*any inappropriate or mismanaged releases of information into the public domain will have a serious impact on ... the Dowler family.*”

46. When considering the public interest test it is necessary to balance the arguments in favour of disclosure against those inherent to the exemption. Although he has not reached a formal conclusion on the arguments outlined in the paragraph above, the Commissioner does wish to make the following observations. He accepts in principle that releasing the requested information may have privacy implications for witnesses and suspects. He also recognises that releasing the information may well have a serious impact on the Dowler family. However, he considers that these are not considerations necessarily inherent to the section 30 exemption. If the public authority was in fact trying to protect the privacy of people depicted in the footage then he would consider the section 40 exemption to be more appropriate. Similarly he considers that section 38 is more relevant to the argument relating to the Dowler family. In any event as he has concluded that the section 30(1) exemption has been appropriately applied he has not considered these points further.

## Right of Appeal

---

47. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX  
Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 30<sup>th</sup> day of July 2007**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex - Freedom of Information Act 2000

### Section 30 – Investigations Exemption

30 (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.

30 (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.