

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 June 2014

Public Authority: The Chief Constable of Sussex Police

Address: Sussex Police Headquarters
Malling House
Church Lane
Lewes
BN7 2DZ

Decision (including any steps ordered)

1. The complainant submitted a request to Sussex Police for a copy of an 'internal review' it conducted in 2012 about an investigation it had undertaken in 2008 following an allegation by a woman that Jimmy Savile had sexually assaulted her in 1970. Sussex Police withheld the requested information in its entirety on the basis of section 30 (investigations) and furthermore argued that parts of the information were also exempt on the basis of the exemptions contained at the following sections of FOIA: 40 (personal data), 41 (information provided in confidence) and 21 (reasonably accessible by other means).
2. The Commissioner accepts that the requested information is exempt on the basis of section 30. However, with the exception of certain parts, the Commissioner has concluded that the public interest favours disclosure. Furthermore, in the circumstances of the case, the Commissioner has found that section 21 has been wrongly applied. With regard to the application of sections 40 and 41, the Commissioner has concluded that the vast majority of the information withheld under these exemptions had been correctly withheld on the basis of section 30. The only exception to this is a small proportion of information concerning names of police staff which are exempt on the basis of section 40; some miscellaneous information which is not exempt from disclosure on the basis of section 40; and some remaining information which the Commissioner believes is in the public domain and thus not exempt from disclosure on the basis of section 41.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a copy of the 'internal review' that he requested. The only redactions that can be made to this document are those identified in the confidential annex which has been provided to Sussex Police only.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. In March 2008 Sussex Police received a report from a local woman that she had been sexually assaulted by Jimmy Savile in the summer of 1970. The matter did not lead to a prosecution.
6. During 2007 and 2008 Surrey Police investigated three, apparently unrelated, complaints that Savile had been engaged with sexual behaviour with young girls. These complaints did not lead to a prosecution.
7. On 3 October 2012, ITV broadcast an 'Exposure' documentary entitled 'The other side of Jimmy Savile'. (Savile had died in October the previous year). As a consequence of the documentary many people came forward from across the United Kingdom and made previously unreported allegations against Jimmy Savile. The Metropolitan Police Service (MPS) were tasked with leading an investigation – *Operation Yewtree* - into new allegations.
8. Following the ITV documentary, Sussex Police conducted a search of its crime intelligence databases which revealed details of the matter reported to them in 2008. As the matter had not led to a prosecution, a management decision was taken to commission an 'internal review' in order to examine, assess and report on the investigation that had taken place.
9. Sussex Police published a summary of the outcome of internal review, but the review itself was not disclosed. This complainant focuses on a request for a full copy of the review.
10. Following the documentary a number of other organisations also undertook reviews of their own previous actions and decisions in relation

to Savile. Central to this complaint is the CPS review of the four complaints referred to above (the one investigated by Sussex Police and the three investigated by Surrey Police) and whether the decision not bring a prosecution in any of the cases was correct. The CPS published an anonymised version of its report on 11 January 2013.¹

Request and response

11. On 12 January 2013 the complainant wrote to Sussex Police and requested information in the following terms:

'Please provide a copy of the internal review carried out by Sussex Police in relation to an investigation the force carried out into Jimmy Savile.

The internal review is mentioned on page 2 of this CPS report by Alison Levitt QC

http://www.cps.gov.uk/news/assets/uploads/files/savile_report.pdf

Surrey Police has published its internal review and I am requesting a copy of the Sussex Police review.'

12. Sussex Police responded on 18 February 2013 and explained that although it held a copy of the review it considered this to be exempt from disclosure on the basis of section 30 of FOIA (investigations) and that the public interest favoured maintaining the exemption.

13. Sussex Police also explained that:

'In addition to the response we have given the force can neither confirm nor deny that any other information is held in relation to information that may or may not originate from exempt bodies, or in relation to any other material which may or may not form part of the investigation.'

14. The refusal notice explained that sections 23(5) (security bodies) and 30(3) were being relied upon to adopt this neither confirm nor deny position (NCND).

¹ 'IN THE MATTER OF THE LATE JIMMY SAVILE',
http://www.cps.gov.uk/news/assets/uploads/files/savile_report.pdf

15. The complainant contacted Sussex Police on 19 February 2013 in order to ask for an internal review of the refusal under FOIA. In doing so the complainant provided detailed submissions which he asked Sussex Police to consider.
16. The complainant was not informed of the outcome of the internal review until 11 September 2013. This was despite the fact that he had chased Sussex Police on a number of occasions in order to ascertain why this review had not been carried out. The review upheld the application of the exemptions as cited in the refusal notice. Furthermore, Sussex Police noted that if the requested document was disclosed, redactions would have to be made to it on the basis of sections 40 (personal data) and 41 (information provided in confidence).

Scope of the case

17. The complainant first contacted the Commissioner on 16 May 2013 in order to complain about Sussex Police's failure to complete the internal review. At that stage the Commissioner contacted Sussex Police and asked it to ensure that the outstanding internal review was completed within 20 working days.
18. The complainant contacted the Commissioner again on 21 June 2013 and explained that Sussex Police had still not completed the internal review.
19. At that stage the Commissioner agreed to exercise his discretion and take on this complaint as valid despite the fact that the internal review had not been completed.² This was in light of Sussex Police's failure to conduct the internal review with a reasonable time period.
20. During the course of the Commissioner's investigation, Sussex Police explained that it was no longer seeking to rely on sections 23(5) and 30(3) in relation to its NCND position. However, it explained that in addition to sections 30, 40 and 41, it also considered parts of the report to be exempt from disclosure on the basis of section 21 (information reasonable accessible by other means).

² Under section 50(2)(a) of FOIA the Commissioner does not have to take on a complaint about a public authority's handling of a request unless the requestor has exhausted the public authority's complaints procedure.

21. The complainant disputes the application of these exemptions and has provided the Commissioner with detailed submissions to support his position. These submissions are referred to below.
22. The complainant is also dissatisfied with Sussex Police's delay in completing the internal review of their refusal of his request. However, there is no statutory time limit for completing an internal review. Rather this is a matter of good practice which is addressed in the code of practice issued under section 45 of FOIA. However, the Commissioner has commented on the complainant's concerns regarding internal review delays in the Other Matters section at the end of this notice.

Reasons for decision

Section 30 - investigations

23. Sussex Police have argued that the requested information is exempt from disclosure in its entirety on the basis of section 30(1)(a). This states that:
 - '(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,'*
24. Section 30(1) is class based; that is to say if information falls within the scope of any of the classes described in section 30(1) then it is exempt. There is no need for a public authority to demonstrate any level of prejudice arising from disclosure in order for the exemption to be engaged.
25. The Commissioner notes that the requested document actually consists of a review by Sussex Police into their own 2008 investigation of an allegation of sexual assault made against Jimmy Savile. The purpose of the requested document is not therefore to ascertain whether a person should be charged with an offence or whether a person charged with an offence is guilty of it. However, the requested document inevitably includes detailed and numerous references to Sussex Police's original 2008 investigation file. The information contained in that file clearly falls within the scope of the exemption provided by section 30(1)(a) of FOIA. Having carefully considered the contents of the requested information,

in the Commissioner's view that there is no easy or practical way in which information from the original 2008 investigation could be separated from the information which relates solely to the review of that investigation. Therefore, the Commissioner accepts that the requested information, in its entirety, falls within section 30(1)(a) and thus is exempt.

26. However, section 30(1)(a) is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in maintaining the exemption

27. Sussex Police acknowledged that the suspect in the investigation on which the requested information focuses is dead and thus there is no likelihood of him being prosecuted in relation to this allegation. However, they explained that the review which is the subject of this request was prompted by *Operation Yewtree*. They explained that *Operation Yewtree* concerned a large number of historical crime allegations and involves a number of suspects, both alive and dead. This operation was live at the time of the request and indeed remains ongoing.
28. Sussex Police explained that disclosure of the requested information would result in the disclosure of details of its original 2008 investigation, including the methods used during the investigation. They explained that it was not clear at present what effect disclosure of such material through FOIA might have on *Operation Yewtree*. Consequently care must be taken not to compromise any strand of the investigation or cause undue harm to the victims and families involved.
29. Sussex Police suggested that the fact that the CPS and Surrey Police had published reports concerning the investigations of the alleged abuses committed by Jimmy Savile did not affect their decision whether to disclose the requested information. In the alternative, to the extent that these disclosures did impact on their consideration of this request, Sussex Police argued that the fact that these other reports discussed aspects of their own investigation negated the need for full disclosure of their own report. They also noted that they had already published a summary of their own report which had been available prior to this request being submitted.

Public interest in disclosing the requested information

30. Sussex Police acknowledged that serious allegations have been made against Jimmy Savile and such incidents are widespread and may

involve other persons who are in the public eye. The public therefore have a genuine interest in being informed as to the nature and circumstances of the investigation of the 2008 allegation.

31. In his submissions, the complainant explained that it was his understanding that the requested information only concerned an allegation against Jimmy Savile. Given that he was now dead, the complainant emphasised that disclosure of the report could not prejudice any criminal proceedings against him. Furthermore, the complainant argued that even if the requested information did contain material prejudicial to any other potential criminal proceedings, then this could be easily redacted to enable transparency and openness on the part of the Police.
32. The complainant argued that there was a compelling public interest in disclosure of the requested information. It was paramount that the public are given all details relating to investigations which have failed to provide justice for victims. The complainant noted that the recent 'Giving Victims a Voice' report by the MPS and NSPCC highlighted this need by saying that the lack of criminal proceedings – and justice for victims – had '*contributed to the MPS and NSPCC view that the information contained in our joint report should be put into the public domain*'.³
33. The complainant suggested that the CPS' findings in relation to Sussex Police's dealings with the victim are damning and clearly demonstrate the need for them to be open and transparent about their investigation, an aim which is not met by the publication of short summary of the report. Furthermore, the complainant argued that without publication of the full report, it was impossible for the public to assess the nature of that summary.
34. The complainant highlighted the following example which he argued supported the case for full transparency and thus disclosure of the requested information:
35. The CPS report included the following in relation to the Sussex Police internal review:

'However, he [one of the officers who interviewed the victim] had left her [the victim] in no doubt as to how difficult it would be for a

³ http://www.nspcc.org.uk/news-and-views/our-news/child-protection-news/13-01-11-yewtree-report/yewtree-report-pdf_wdf93652.pdf

prosecution to take place because Jimmy Savile was a "big celebrity"; she said to me [the author of the report] that the police had told her that no one would believe her. She remembered DC T telling her that because he had plenty of money, Jimmy Savile would have the best lawyers, it would all take place in a "big court in London" and his lawyers would make "mincemeat" of her. She also got the clear impression from the police that she would be publicly branded a liar and that her name would be all over the newspapers, particularly if she "lost the case".⁴

36. And:

'I [the report's author] asked Ms A whether it had been explained to her that the Press are not allowed to identify those who make allegations of sexual assaults to the police, or about the "special measures" available in criminal trials to allow complainants to give evidence from behind a screen or by television link. She said she had known nothing of these things... She and her partner both told me that she might have been prepared to give evidence had she known these things. She was happy for me to publish this as part of my review.'⁵

37. The complainant suggested that the following extract from Sussex Police's summary of their report contradicted the findings of the CPS report:

'During the course of discussion with the victim the officers informed her that if she wished to pursue a criminal allegation of sexual assault they would of course undertake an investigation and leave no stone unturned. The officers explained what the investigative process was likely to involve so as to ensure she had realistic expectations and fully understood the process. The victim asked questions about the nature of future court proceedings and was suitably advised about judicial proceedings.'

38. Finally, the complainant emphasised that the CPS and Surrey Police published their review of the allegations into Jimmy Savile in full. (In submissions to the Commissioner, Sussex Police suggested that the Surrey Police report was in fact redacted, not least to protect the identities of the victims).

⁴ Para 33 of the CPS report.

⁵ Para 40 and 44 of the CPS report.

Balance of the public interest arguments

39. When considering the public interest in maintaining the exemptions provided by section 30(1), the Commissioner takes the view 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 informants to ensure people are not deterred from making statements or reports by fear they might be publicised;
 - the maintenance of independence of the judicial and prosecution processes;
 - the 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
 - protecting information that deals with specialist techniques.
40. Therefore 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.
41. Before turning to the weight that should be attributed to the various public interest arguments, the Commissioner has considered it important to clarify the information that was in the public domain at the point this request was submitted. In the Commissioner's view the key document is the CPS report which the complainant referred to in his request. As explained above, the CPS report concerns the original investigation of four allegations against Jimmy Savile made in 2007 and 2008. The report considers whether the decisions not to bring prosecutions in those cases were correct. For the purposes of this complaint, it is important to note that the report contains a detailed examination and analysis of Sussex Police's 2008 investigation into the one allegation made to them. The CPS report includes extracts from statements given by the victims, albeit anonymised to protect their identity. The CPS report makes clear that where such information has been included, the consent has been obtained from the individual in question to do so.
42. Sussex Police's main argument for maintaining the application of section 30 is the potential harm disclosure would cause to *Operation Yewtree*.

The Commissioner accepts that there is obviously a link between Sussex Police's investigation and *Operation Yewtree*, which was at the time of the request, and remains, a live investigation. However, having studied the requested information and considered what was already in the public domain at the time of this request, in particular the CPS report, the Commissioner finds it very difficult to accept that disclosure of the requested information would cause any real harm to *Operation Yewtree*. This is because the content, in his opinion, does not merit protection for any of the reasons listed in paragraph 39 above. Some of the information which might at some stage have been worthy of protection is already in the public domain. It should be noted that Sussex Police have not specified or highlighted where the report includes information about investigatory methods or techniques which should not be revealed.

43. Consequently, the Commissioner considers Sussex Police's main argument for upholding section 30 to be speculative, hypothetical and unsupported by any clear evidence. The hypothetical nature of this position is arguably supported by their own comments in the refusal notice *'It cannot be clear at present what effect disclosures through FOI of investigation material may have upon this investigation'*. The Commissioner therefore has no basis for according any weight to the main reason given for maintaining the section 30 exemption.
44. Sussex Police also inferred that there was a public interest in maintaining the exemption in order not to cause any harm to victims and families involved (presumably those affected by the *Operation Yewtree* investigation). In any event, the Commissioner's own guidance on this exemption explains that such an argument is not a relevant factor in the consideration of section 30 as they are not matters which impact on the effective investigation and prosecution of offences. If a public authority wishes to prevent harm of this nature then they would have to consider other exemptions, eg section 38, the health and safety exemption.⁶ The Commissioner has not seen any evidence to suggest that any such harm would be likely to arise from the disclosure of the requested information in this case.
45. Nevertheless, as noted above, the Commissioner considers that a key factor in favour of maintaining the section 30 exemption to be the

6

http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/investigations-and-proceedings-foi-section-30.ashx - see paras 73 and 74.

protection of witnesses and informants to ensure that people are not deterred from making statements or reports by fear they might be published. Sussex Police have not referred directly to this line of argument in this case. However, the Commissioner notes that the report contains the name of the victim and other biographical information about her that could be used to identify her. The report also contains lengthy quotes taken directly from the victim's statement to the Police. The Commissioner notes that Sussex Police have argued that such information is also exempt from disclosure on the basis of section 40 and/or section 41.

46. The Commissioner believes that there is also a compelling public interest in withholding such information in the context of section 30. This is precisely because disclosure of such information would, in the Commissioner's opinion, bring about the very real prospect of deterring witnesses in other cases from reporting allegations or making statements to the Police. Such a prejudicial effect would not, in the Commissioner's opinion, be limited to *Operation Yewtree*, but would be felt more broadly in relation to all criminal matters. There is therefore, in the Commissioner's opinion, a very significant public interest in withholding information of this nature under section 30. The Commissioner therefore accepts that this information should be withheld.
47. In reaching this conclusion the Commissioner recognises a number of complicating factors. Firstly, one paragraph of the victim's statement which appears in the withheld report has already been reproduced in the CPS report and thus was in the public domain at the time of the request.⁷ The same is true of a summary of information contained in the executive summary of the report.⁸ For such information the Commissioner does not accept there can be said to be a public interest in maintaining the exemption as it is not plausible to argue that disclosure of this information would undermine effective investigation and prosecution of crime. The information has already been disclosed.
48. Secondly, the Commissioner recognises that the remaining content of the victim's statement has essentially been summarised in parts of the CPS report. However, in the Commissioner's opinion there is a distinction between the disclosure of a summary of a statement, or references to the content of a statement, and the disclosure of

⁷ Paragraph 5.16.

⁸ The third, fourth and fifth paragraphs of the Executive Summary.

significant extracts of statement itself. In the Commissioner's view the disclosure of the latter still risks having a damaging effect on further police investigations.

49. Thirdly, the complainant suggested that given the victim's cooperation with the CPS, and her agreement that parts of her statements could be released in its report, it was likely that she may well have consented to the disclosure of information included in the Sussex Police's report. However, no such consent had been sought. As the Commissioner is restricted to considering the application of exemptions based upon the circumstances as they existed at the time of the request, ie when consent had neither been sought nor given, he cannot take into account the likelihood of the victim consenting to the disclosure of further parts of the statement to Sussex Police in considering the public interest in maintaining the section 30 exemption.
50. Turning to the public interest arguments in favour of disclosure, the Commissioner agrees with the complainant that there is a compelling public interest in the disclosure of information which would reveal how bodies, in this case Sussex Police, handled allegations regarding Jimmy Savile when they had come to their attention. The Commissioner recognises that Sussex Police have disclosed a summary of the report. However, in the Commissioner's opinion, disclosure of the withheld report would add considerably to the public's understanding of Sussex Police's review of its investigation and would, as the complainant argues, allow the public to assess the accuracy of the published summary. In the Commissioner's view the need for such transparency should not be underestimated given the unprecedented and unique circumstances of the Jimmy Savile case. Furthermore, the Commissioner believes that this argument attracts notable additional weight in light of the apparent differences between some of the comments in the CPS report and the Sussex Police summary of their own report, as evidenced at paragraphs 33 to 37 above.
51. Finally, the Commissioner rejects Sussex Police's assertion that because of the information already in the public domain (principally the CPS report) this negates the public interest in the disclosure of the requested information. On the contrary, in the Commissioner's view the approach taken by the CPS in publishing its own report emphasises the need for public authorities to be as transparent as possible regarding this case. Moreover, as discussed above, the fact that the CPS report contains so much commentary and candid analysis of the Sussex Police investigation, it is very difficult for Sussex Police to convincingly argue that the disclosure of the requested information would be genuinely prejudicial.

52. In conclusion, with the exception of the information contained in the report which could identify the complainant (in essence the information Sussex Police consider to be the victim's personal data) and the extracts of the statement not already in the public domain (ie the information discussed and referred to in paragraphs 45 and 46), the Commissioner finds that the public interest favours disclosure of the requested information.
53. The Commissioner notes that in November 2013 Sussex Police informed him that the Independent Police Complaints Commission (IPCC) had directed it to record and refer the conduct of two detectives over their handling of the 2008 allegation. Sussex Police explained that it had only just been made aware of this investigation. However it argued that this clearly supported its position that the entire internal review should be exempt from disclosure on the basis of section 30 of FOIA. It argued that at least for the duration of the IPCC investigation it would be inappropriate to release the requested information in order not to prejudice the investigation as well as to protect the interests of all those involved.
54. The Commissioner has considered this development but takes the view that it does not affect his conclusions as set out above. Primarily this is because the role of the Commissioner is to consider the application of exemptions at the point when a request is submitted. This request was submitted in January 2013, ie before the commencement of the IPCC investigation. Therefore any harm which could occur to the IPCC's investigation as a result of the requested information being disclosed is irrelevant to the Commissioner's considerations of the exemptions as they apply to a request submitted in January 2013. In any event, even if the Commissioner was to consider the potential impact on the IPCC's investigation he does not accept that this would alter his findings as set out above. The Commissioner accepts that potential harm to a IPCC investigation - rather than potential harm to *Operation Yewtree* or other police investigations - would require the withheld information, and thus the application of section 30 to be viewed from a different perspective. However, given the amount of information already in the public domain by virtue of the CPS report the Commissioner cannot envisage how disclosure of the information he has ordered to be disclosed would undermine the IPCC's investigation. Moreover, at no stage did Sussex Police provide the Commissioner with submissions to explain why this might in fact be the case.
55. The Commissioner has identified the parts of the requested information that can be redacted on the basis of section 30 in a confidential annex which has been provided to Sussex Police only.

Section 21 – information reasonably accessible by other means

56. Section 21 states that information is exempt from disclosure if it is reasonably accessible to the applicant by other means.
57. Sussex Police have argued that significant portions of the requested report are exempt on the basis of section 21 as they are contained in summary of the report that had been previously released (of which the complainant had received a copy) and/or also contained in the CPS report.
58. In the Commissioner's view in determining whether section 21 can be correctly relied upon, consideration needs to be given not only to whether information may be available elsewhere, but also whether that information is reasonable accessible to the applicant.
59. The Commissioner does not dispute Sussex Police's suggestion that the information which it has identified as exempt from disclosure under section 21 is contained in either, or both, their own summary of its own report or the CPS report.
60. However, the Commissioner is not persuaded that it is plausible to argue that such information is actually reasonably accessible to the complainant. This is because section 21 has been applied to some paragraphs of the report but not others, and in some cases to particular sentences within a paragraph. In the Commissioner's opinion it is not plausible to argue that such information is truly accessible to the complainant when, in reality he has no obvious way of establishing precisely what information contained in the withheld report he is meant to be accessing somewhere else.
61. Moreover, even if it was clear to the complainant the precise nature of the information that was apparently available elsewhere, the Commissioner does not consider it sufficient for a public authority to simply direct a requestor to a document or website. Rather, a public authority has to be reasonably specific to ensure that the information is found without difficulty and not hidden within a mass of other information. Given that the CPS report runs to some 129 pages, the Commissioner does not consider it sufficient for Sussex Police to simply refer the complainant to this report without directing him to particular parts of it. For these reasons, the Commissioner does not accept that Sussex Police can rely on section 21 to withhold any parts of the withheld information.

Section 40 – personal data

62. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection

principles contained within the DPA. The relevant data protection principle here is the first principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

63. Sussex Police have argued that a range of information is exempt from disclosure on the basis of section 40(2).
64. The majority of this information consists of the victim's personal data and the Commissioner has already concluded that such information is exempt from disclosure on the basis of section 30. The Commissioner has not therefore formally considered whether this information is also exempt from disclosure on basis of section 40 (although he would have no hesitation in concluding that it is).
65. The remaining information consists largely of the names of individual police officers and the name of journalist from *The Sun* newspaper who contacted the victim. There is some additional miscellaneous information.
66. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.

- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
67. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
68. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
69. The Commissioner is satisfied that the police officers named in the report were of relatively junior ranks and would not therefore expect their names to be disclosed under FOIA in the context of this report. Such a disclosure could in the Commissioner's view potentially cause damage or distress to some officers in question given the comments contained in the CPS report as to the way in which the victim's allegations were originally investigated. Furthermore, although the Commissioner believes that there is significant and weighty legitimate interest in the disclosure of the information concerning the Police's investigation of the allegation against Jimmy Savile, he does not believe that disclosure of the names of individual officers would add greatly, if at all, to the public's understanding of this case. The disclosure of the names of the police officers and staff as they appear in report would therefore be unfair and thus such information is exempt from disclosure on the basis of section 40(2).
70. Similarly, the Commissioner accepts that the journalist in question would have no expectation that her name would be disclosed in this context and again there is no obvious legitimate interest in the disclosure of her name. Such information is therefore also exempt from disclosure on the basis of section 40(2). The Commissioner notes that

neither the police officers nor the journalist in question have been named in the CPS report or elsewhere.

71. With regard to the very small amount of remaining miscellaneous information, the Commissioner is of the view that such information is not exempt from disclosure on the basis of section 40(2) and he has explained his reasoning for reaching this conclusion in the confidential annex.

Section 41 – information provided in confidence

72. Section 41(1) states that:

‘Information is exempt information if -

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.’

73. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party **and** the disclosure of that information has to constitute an actionable breach of confidence.

74. With regard to section 41(1)(b), in most cases the approach adopted by the Commissioner in assessing whether disclosure would constitute an actionable breach of confidence is to follow the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:

- Whether the information had the necessary quality of confidence;
- Whether the information was imparted in circumstances importing an obligation of confidence; and
- Whether an unauthorised use of the information would result in detriment to the confider.

75. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.

76. In its submissions to the Commissioner Sussex Police identified certain passages of the requested report with it considered to be exempt from disclosure on the basis of section 41(1). Such information consists

primarily of extracts from the statement the victim gave to Sussex Police and also to some information contained in the executive summary of the report. The Commissioner accepts that the vast majority of the information withheld on the basis of section 41 is in fact exempt from disclosure on the basis of section 30 for the reasons discussed above. He has not therefore considered whether this information is also exempt from disclosure on the basis of section 41.

77. However, in his analysis of section 30, the Commissioner has explained that he does not believe that the third to fifth paragraphs of the executive summary and paragraph 5.16 of the report itself can be exempt from disclosure under that exemption because such information is already in the public domain. The Commissioner is also of the view that such information cannot be exempt from disclosure under section 41 either. This is because although it meets the requirements of section 41(1)(a), as the information is in the public domain it cannot be said to have the quality of confidence and thus does not meet the requirements of section 41(1)(b). This information therefore needs to be disclosed

Other matters

78. As the Commissioner has explained in the main body of this notice, there is no statutory time limit for completing internal reviews. However, the Commissioner has issued guidance in which he has stated that in his view internal reviews should take no longer than 20 working days to complete and even in exceptional circumstances the total time taken should not exceed 40 working days.
79. The complainant submitted his request for an internal review on 19 February 2013. Sussex Police did not inform him of the outcome of the internal review until 11 September 2013, some 142 working days later. Such a delay occurred despite the fact that the Commissioner contacted Sussex Police on 16 May 2013 and asked it to ensure that the internal review was completed within 20 working days. Indeed, it would appear that the trigger for Sussex Police to actually complete the internal review was the Commissioner's decision to take this case forward without the internal review, at the point, being completed. Such an excessive delay in completing an internal review is clearly unacceptable.
80. Sussex Police explained to the Commissioner that this particular internal review had been 'lost in the system' due to administrative issues, in addition to broader resource pressures and rising request numbers. However, Sussex Police explained to the Commissioner it was taking steps to address those issues.
81. The Commissioner wishes to highlight during the period of 1 July to 30 September 2013 the Commissioner formally monitored the Police's timeliness in responding to requests. This action was as a result of concerns about the time Sussex Police were taking to respond to requests. Once a public authority has been selected for monitoring although the main focus is on its statutory time obligations for responding to requests, the monitoring also takes into account a public authority's performance in relation to internal reviews. Before the Commissioner closes a monitoring case he has to be satisfied that an authority has shown sufficient improvement to merit such closure and that includes its general performance in relation to internal reviews. In January 2014 the Commissioner announced that Sussex Police had improved their performance in meeting the statutory deadline for replying to FOI requests and were no longer being monitored.

Right of appeal

82. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

83. 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.

84. 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

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