

Our Ref: 165-08-647

Your Ref:



**SURREY
POLICE**
*With you, making
Surrey safer*

Dr J Levy

request-4692-0efa128f@whatdotheyknow.com

**Information Access Team
01483 630007**

19th July 2010

Dear Dr Levy

FREEDOM OF INFORMATION REQUEST REFERENCE NO: 165-08-647

I write in connection with your request for information dated 11th December 2008. You asked:

I am seeking information on anthrax or white powder Hoaxes utilizing the postal system in 2003.

Following receipt of decision notice FS50246819 from the Information Commissioner's Office, on 25th May 2010 I can now confirm that information relevant to your request is held by Surrey Police. May I apologise for the delays incurred by Surrey Police's initial approach in seeking to protect the information with the use of a neither confirm nor deny response. The ICO has ruled that Surrey Police was wrong to do so.

Your request for information has now been reconsidered and I am not obliged to release this information as the duty in Section 1(1)(b) of the Freedom of Information Act 2000 does not apply, by virtue of the following exemptions:

- **Section 30(1)(a)(b)(c)** Investigations *Qualified & Class Based*
- **Section 38(1)(a)(b)** Health and Safety *Qualified & Prejudice Based*
- **Section 40(2) Personal Information** *Absolute & Class Based*

Section 17(1) of the Freedom of Information Act 2000 requires Surrey Police, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which: (a) states that fact, (b) specifies the exemption in question and (C) states (if that would not otherwise be apparent) why the exemption applies. This letter acts as such a notice.

Overall Evidence of Harm

Prejudice based exemptions require me to evidence the harm that disclosure will cause or would be likely to be cause.

Offences of this nature fall under the category of National Extremism and are considered to be and are investigated as terrorist incidents. The threat from terrorism and extremism cannot be ignored and should not be underestimated. It should be recognised that the international security landscape is increasingly complex and unpredictable. It is acknowledged that the information requested here relates to information that at the time of the request was 5 years old. However, it is not unusual for offences of this nature, because of their complexity and the meticulous linking and cross referencing that is involved in such investigations, to take much longer to bring to trial than conventional volume crime investigations.

The UK faces a sustained threat from terrorists and violent extremists whose tactics have included the sending of devices and material through the postal system with the intent to injure, kill or disrupt the lives of those individuals and organisations who have been targeted. Since 2006, the UK Government have published the threat level, based upon current intelligence and that threat has remained at the second highest level, 'severe', except for two short periods during August 2006 and June and July 2007, when it was raised to the highest threat, 'critical', and in July 2009, when it was reduced to 'substantial'.

The substances that are used in these attacks can range from inert white powders at one end of the scale, to Anthrax and Ricin at the other. These substances are considered so dangerous that they are included in the Anti-terrorism, Crime and Security Act 2001 Part 7 regarding their security. The following extract from the legislation demonstrates the seriousness with which the legislators take this threat:

Sec 58(3)

The Secretary of State may not add any pathogen or toxin to that Schedule unless he is satisfied that the pathogen or toxin could be used in an act of terrorism to endanger life or cause serious harm to human health.

Tiny amounts of these substances can be lethal following contact with the skin or through ingestion or inhalation. In each case a CBRN operation will be put in place, until such time as it can be confirmed that the substance is harmless. Apart from the obvious physical injury that can be caused there will invariably be a psychological impact on the victim.

Modern-day policing is intelligence led, and intelligence changes on a day-by-day basis. Current investigations are in many case reliant on intelligence gleamed from similar previous and continuing investigations and information from such investigations is held on national databases for this purpose. Disclosures under the Freedom of Information Act are disclosures to the world, not just to the individual making the request. To release the requested information would disclose the levels of police activity and whether particular offences are still being actively investigated or otherwise. This would provide information that would be of use to the offender about the current status of an investigation. If an individual, or a group knew they were

being investigated this would lead to them going 'underground', destroying evidence or moving their operations to different locations, or avoiding those areas where police activity is concentrated. This would ultimately compromise police tactics, operations and future prosecutions. Any information identifying the focus of policing activity could be used to the advantage of offenders. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement.

The Police Service may choose to not publicise information about specific attacks, or series of attacks for tactical purposes. Inevitably, some information may find its way into the public domain, this usually occurs where the level of disruption is so significant that it is widely reported or it may be necessary for public safety to release some information. It may also be when the public are asked for assistance of one sort or another. Disclosure in all other cases would harm our ability to be able to deal effectively with investigations which may or may not still be under investigation. Even in cases which are currently not being actively investigated, but remain open, material from them may be inexorably linked to other and more recent offences or series of offences. Disclosure would be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public.

Investigations of this type are rarely limited to one policing area. They will, in most cases extend across police borders and may even have an international element to them. As a result of this it is difficult to identify the full extent of the harm that disclosure will or would be likely to cause. That said, I believe that, for the reasons articulated above, there is strong evidence to show the type of harm and the likelihood of it occurring, if the material requested were to be disclosed.

Public Interest tests for each of the Qualified exemptions.

Qualified exemptions are subject to the application of a public interest test. Even when such exemptions are engaged, the information must be disclosed unless the public interest in maintaining the exemption is greater than the public interest in disclosing it.

Factors favouring disclosure for S30 – The investigation of this type of offence, even if it transpired to have been a hoax, is a highly emotive subject area often attracting high profile media and public interest. Disclosure of information relating to this subject could provide reassurance to the general public that the investigation of such offences and the attempts to identify the offenders is conducted appropriately. The release of such information would provide an insight into the police service and enable the public to have better understanding of the effectiveness of the police. The release of information could allow the public to make informed decisions about police procedures and the money spent in this business area promoting informed debate. By disclosing the information held in respect of Anthrax or white powder hoaxes, it could make those at risk more aware of the threat and therefore be more alert when they receive unexpected or suspicious packages. Better public awareness may reduce crime or lead to more information from the public. Disclosure could add to the level of accountability, the public would see where public funds are being spent.

Factors against disclosure for S30 – Disclosing the information held in respect of such investigations would hinder the prevention or detection of crime. As identified in the harm section above, information of this sort would be invaluable to an offender who may be prompted to change his or her modus operandi or acting on the information, take steps to remain at large. This would impact on police resources and increase the risk of further similar offences being committed, placing individuals and the community at additional risk. In addition, in those cases which remain undetected disclosure would be very likely to harm any future judicial process. It is widely known that investigations of this nature employ a whole range of tactics many of which have been developed to stay one step ahead of the offenders. In many cases there may be a covert or technical element employed. It may be that a particular tactic can only be used a limited number of times and if it were to be compromised the investigative edge that currently keeps the community safe would be eroded. This would invariably make the job of the law enforcement teams more difficult and impact on resources and already limited budgets.

Factors favouring disclosure for S38 – The public may feel safer if they were aware of those locations that had previously been targeted and the nature of the offences. They would be able to make informed choices as to whether they should avoid particular locations. Disclosure of this information may lead to better informed public awareness and debate.

Factors against disclosure for S38 – Attacks of this kind, are by their very nature designed to either cause injury or death or in the case of a hoax alarm distress and disruption. Disclosing information of the sort requested would be likely to lead to the diminution of the services ability to disrupt attacks which are currently being planned. This would increase the risk of the offenders remaining undiscovered and there would be substantial harm to the public if their criminal activities were allowed to continue undetected.

Balance test

The most compelling reasons for disclosure in this case revolve around accountability, and public awareness and debate. This has to be balanced against the strongest reasons for not disclosing the information which are Investigations and Health and safety.

There is a public interest in the transparency of policing operations and providing assurance that the police service is appropriately and effectively engaging with the threat posed by terrorists and extremists. Also, in this case providing assurance that the police service is appropriately and effectively engaging with the threat posed by the threat and disruption caused by an anthrax or white powder attack whether it be substantive or a hoax. there is a very strong public interest in protecting the integrity of police investigations and operations in this highly sensitive area. All police forces provide links to the [National Counter Terrorism Security Office](#) where advice is readily available. In addition, on the Surrey Police Website there are a series of booklets available to download [here](#) (*scroll down page*) which give advice on specific locations and activities and how to stay safe etc. Those persons or organisations that are felt to be at particular risk will have been made aware of any likely threat and given relevant advice. I believe that because of the measures described above that are already in place to keep the public aware of the threat and how to counter it, that the disclosure

of the information held would add little or nothing to the debate. As much as there is public interest in knowing that policing activity is appropriate and balanced in matters such as this, it will only be overridden in exceptional circumstances.

The Police Service is charged with the protection of life and property, enforcing the law, preventing and detecting crime and protecting the communities we serve. The security of the country is of paramount importance and the police service would be irresponsible to divulge information if to do so, would be likely to place the safety of an individual or the community at risk or to undermine national security.

Qualified exemptions are subject to the application of a public interest test to assess if the public interest in disclosing the information is greater than the public interest in maintaining the exemption. The 'public interest' is not however, what the public may find interesting, there must be some tangible benefit to the community. Having weighed up the arguments for and against disclosure I have decided that it is not in the public interest to disclose the requested information in this case.

Surrey Police provides you the right to request a re-examination of your case under its review procedure. How to do this is set out in the attached Appeals Notice. Having followed the full procedure, if you are still dissatisfied, then you have the right to direct your comments to the Information Commissioner who will give your case consideration.

I would like to thank you for your interest in Surrey Police and should you have any further inquiries concerning this matter, please write or contact us on telephone number 01483 – 630007 quoting the reference number above.

Yours sincerely

**D/Inspector Tony Smith
Information Access Manager**