
Annex C

**Refusal Notice issued by The National
Archives in response to the FOIA opening
request for MEPO 2/11028**

Freedom of Information Request: Reference F0038586

Dear

Thank you for your enquiry of 14th May 2014 regarding a review of:

MEPO 2/11028 - Murder of Elsie FROST at Wakefield, Yorkshire, on 9 October 1965, and charging with murder, later acquitted, of John SPENCER: Metropolitan Police enquiry action file

Having considered the public interest test we have decided that this information should be withheld. I regret to say this means we cannot make this document open to you or to the public in general.

I explained that all of the information in the document is covered by section 38 of the Freedom of Information Act 2000. This exempts information that, if it was released, would endanger the physical or mental health or safety of any individual.

It is standard practice when informing requesters that a public interest test is to be conducted, to make them aware of all qualified exemptions which apply. We omitted to inform you at the time of the updates that all the information was covered by a second qualified exemption.

All the information in the document is also covered by section 31 of the Freedom of Information Act 2000.

Section 31 of the Act exempts information that, if it was released, could put at risk certain law-enforcement matters. These include:

- preventing or detecting crime;
- arresting or prosecuting offenders;
- administering justice;
- collecting or assessing a tax or duty;
- operating immigration controls; and
- maintaining security and order in prisons.

This section also exempts information that, if it was released, could put at risk civil proceedings brought by or on behalf of a public authority when that public authority is carrying out certain functions including:

- following the law;
- investigating improper conduct;
- finding out the cause of an accident;
- protecting charities from mismanagement; and
- health and safety.

The file relates to an unsolved murder and the information contained within it may be used to reinvestigate this case at a later stage.

Please find below the arguments made by the Metropolitan Police Service in favour of and against the release of the information requested and the outcome of the public interest test.

Arguments made in favour of the release of the information requested:

Disclosure of information contained within this record would provide evidence of how the police investigate serious crime, in this case the murder of a fourteen-year old girl.

As the police service is a public service it is in the common interest that information that demonstrates how the police perform across the range of their duties is made available. Particularly in cases of crime where there is public concern, such murder, there is an interest in disclosing information about the police conduct of the investigation. This concern becomes more acute if the victim is perceived to be vulnerable and the crime remains unsolved. Another aspect of this case which would have caused the public concern was the randomness and apparent lack of motive. Such disclosure would reassure the public, inspiring their confidence and co-operation whilst engendering a sense of well-being, the caveat being that disclosure would not prejudice any future investigation or infringe the rights of individuals.

Arguments made against the release of the information requested:

The information within this record relates to a murder that remains unsolved; disclosure into the public domain may prejudice a future investigation.

The information within this record if disclosed could cause the victim's surviving immediate family substantial distress to the point at which their welfare could be endangered.

Outcome of the public interest test:

As an unsolved murder the Metropolitan Police would desire that the details of the investigation remain confidential until any hypothetical suspect could be considered deceased, a prosecution is unlikely to be pursued. This closure period would be based on an assumption that the suspect(s) would have been at least 16 years old at the material time. The rationale for this is that there remains a possibility that this murder could still be investigated and that a suspect could be identified, charged, brought to trial and convicted.

The premature release of the case file into the public domain, information from which would form the basis of the prosecution, might prejudice any future investigation and prosecution. It is not possible to identify information from this record that might be released into the public domain at this point without the risking of compromising any future police actions; information that appears innocuous may have significance to an experienced investigator that is not immediately obvious to the lay reader; or may assume a new significance in the light of newly discovered evidence or developments in forensic or investigative techniques. The evolution of new scientific techniques means that cases hitherto considered unsolvable, are being examined afresh. Increasingly police services throughout the country are setting up 'cold case' teams to review their case files on unsolved murders; in some instances these unsolved murders date back to the 1940s.

In this case, besides the individual charged with but later acquitted of the murder, several other individuals were identified as possible suspects and investigated by the police, but against whom there were no proceedings at the time. This information is unlikely to have passed into the public domain.

This record should remain closed citing section 31 because disclosure of the information contained therein could risk prejudicing a future investigation and

prosecution with the result that a suspect might evade apprehension, which is not in the public interest.

This record contains information that graphically describes the cause of death of the victim, the circumstances of the discovery and the condition of the body. Disclosure of this information is likely to cause substantial distress to the victim's surviving, immediate family to the point where their welfare could be significantly harmed. The victim had a young brother. The record also identifies other individuals who were considered suspects but not proceeded against. Disclosure of this information might distress or otherwise endanger these individuals. Closure of the record is sought for the lifetime of the victim's youngest sibling citing section 38.

Some of the information which you are looking for is also exempt under section 40 (2) of the Act (by virtue of section 40 (3) (a) (i)).

Section 40 exempts personal information about a 'third party' (someone other than the requester), if revealing it would breach the terms of the Data Protection Act (DPA) 1998. The DPA prevents personal information from release if it would be unfair or at odds with the reason why it was collected, or where the subject had officially served notice that releasing it would cause them damage or distress.

In this case the exemption applies because the document contains sensitive personal data of living identifiable individuals; namely references to their private lives and unsubstantiated criminal allegations. This information is classed as sensitive personal data under section 2 of the Data Protection Act, 1998. Release of this information would be unfair as it would be highly likely to cause the individuals concerned damage and distress. They would also have no expectation that it would be open to public scrutiny during their lifetime. Consequently release of this information would be a breach of the first principle of the Data Protection Act, 1998.

If you are dissatisfied with the handling of your request or the decision which has been reached, you have the right to ask for an internal review. Internal review requests must be submitted within two months of the date of this response and should be addressed to:

Quality Manager
Public Services Development Unit
The National Archives
Kew
Richmond
Surrey
TW9 4DU
complaints@nationalarchives.gov.uk

Please mark your complaint clearly. You have the right to ask the Information Commissioner (ICO) to investigate any aspect of your complaint. However, please note that the ICO is likely to expect internal complaints procedures to have been exhausted before beginning his investigation.

Yours sincerely,



Freedom of Information Assessor
Freedom of Information Centre
Information Management and Practice Department
The National Archives

Redacted under
FOI exemption
40(2).