

To: Quality Manager Dated 09/01/2024. 17.22
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Dear Quality Manager at the National Archives,

I am requesting an Internal Review of the rejection of my Freedom of Information requests set out below which I received by email 4th December 2023.

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MEPO 2/10438 - Unsolved murder of Dr Richard CASTILLO at Albert Studios, Bridge Road, Battersea SW11 on 7 May 1961

MEPO 2/10439 - Unsolved murder of Dr Richard CASTILLO at Albert Studios, Bridge Road, Battersea SW11 on 7 May 1961: further reports and laboratory papers

MEPO 2/10440 - Unsolved murder of Dr Richard CASTILLO at Albert Studios, Bridge Road, Battersea SW11 on 7 May 1961: original statements

MEPO 2/10441 - Unsolved murder of Dr Richard CASTILLO at Albert Studios, Bridge Road, Battersea SW11 on 7 May 1961: index to statements, typed statements and completed questionnaires of Malta League members

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

I previously explained that some of the information in these records is covered by **sections 38(1)(a) and 31(1)(b) and (c)** of the Freedom of Information Act 2000. **Section 31(1)(b) and (c)** exempts information if its disclosure under this Act would, or would be likely to, prejudice (b) the apprehension or prosecution of offenders or, (c) the administration of justice. **Section 38(1)(a)** exempts information if its disclosure under this Act would, or would be likely to (a) endanger the physical or mental health of any individual.

A public interest test was considered in consultation with the Metropolitan Police Service. The outcome of which is as follows:

Arguments made in favour of disclosure

Disclosure of information contained within this record would provide evidence of how the police investigate serious crime, in this instance a murder that remains unsolved.

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 as murder, there exists an interest in disclosing information about the police conduct of the investigation. Such disclosure would reassure the public, inspiring their confidence and co-operation whilst engendering a sense of well-being.

Arguments made in favour of non – disclosure

The information contained within this record relates to a murder that remains unsolved. Disclosure of this information into the public domain would prejudice a future investigation or prosecution.

The information within this record includes details of the murder. If released into the public domain, it would cause substantial mental distress to surviving immediate family members of the victim, to the point at which the health and safety of the individuals would be endangered.

Outcome of the public interest test

The perpetrator has not been found and the murder therefore remains unsolved. The file contains a significant amount of information that has not been made public before. There is a possibility that the perpetrator is still alive. It is not possible to identify particular information that might be released into the public domain without the risk 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. By releasing the information contained in this file, it could prejudice any future case should any new information come to light. The public would want an offender prosecuted and releasing this file could cause them not to be apprehend and

justice administered. The file should remain closed until a hypothetical suspect is assumed to no longer be alive.

This record also contains various pieces of information about the murder. Release of this information will be highly distressing for the victim's remaining family, to the point at which the health and safety of the individuals would be endangered. The individuals would not expect this information to be released into the public domain.

Information within the records is also covered by the exemption at **section 40 (2)** of the FOI Act. This exempts personal information about a 'third party' (someone other than the requester), if revealing it would break the terms of Data Protection Legislation. Data Protection Legislation 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. Personal information must be processed lawfully, fairly and in a transparent manner as set out by Art. 5 of the UK General Data Protection Regulation (UKGDPR).

In this case the exemption applies because the records contain the personal and the sensitive personal information of a number of identified individuals assumed still to be living. These individuals have a reasonable expectation of privacy which would not include the release of this information into the public domain by The National Archives during their lifetime. To do so would be likely to cause damage and/or distress and would be a breach of the first data protection principle, which is concerned with the fair, lawful and transparent processing of information of this kind.

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My argument is that the public interest balancing exercise has not been conducted properly and the outcome is wrong.

Under the Freedom of Information Act any public interest balancing exercise needs to be guided by legal precedents determining Article 10 Freedom of Expression and Article 8 Privacy in the Human Rights Act. These require public bodies and authorities to minimise any breach of Article 10 as much as possible.

This necessitates proper consideration in the context of historical documents in redacting the minimum amount of information considered to concern the breaching of Article 8 rights and any information concerning the need for state authorities to prosecute offenders, and maximising the release of information judged to be in favour of disclosure. This has not been done.

The files concern a murder case which took place 63 years ago and the event is so historical there is no reasonable possibility of any suspect still being alive and there is no reasonable possibility that release of the file contains information which 'will be highly distressing for the victim's remaining family, to the point at which the health and safety of the individuals would be endangered.' The FOI legislation sets a statutory threshold of likelihood. This threshold has not been reached.

The main suspect Dr. Ivan Weisz is dead (20th April 1980) and his divorced wife Margaret Weisz is also deceased (29th March 2020).

The immediate family of the murder victim Dr. Richard Castillo are all deceased. His first wife Gertrude and son Anthony died 9th September 1940. His daughter Mildred by his first wife Gertrude died in 2004. His daughter Angela by his second marriage died in 2017, and his first wife Renée died in 1995.

I would argue that invoking **Section 38(1)(a)** which exempts information if its disclosure under this Act would, or would be likely to (a) endanger the physical or mental health of any individual, requires specific knowledge of evidence that release of the information would at the very least 'be likely to (a) endanger the physical or mental health of any individual.' No such evidence as far as I am aware exists.

As you have indicated, **Section 31(1)(b) and (c)** exempts information if its disclosure under this Act would, or would be likely to, prejudice (b) the apprehension or prosecution of offenders or, (c) the administration of justice. Where is the evidence of the minimum threshold of likelihood? Since the offence took place in 1961- 63 years ago, and the main suspect is long deceased, there is less likelihood on the basis of probability of any other potential suspect being alive. Were they to have been 20 years old at the time of crime, they would now be 83 years of age.

The proportion of the inner London and outer London population in 2021 aged between 80 and 84 was around 1.5%. Since only 1.5% of the population of inner London and outer London in the youngest age range that criminologically could have committed the crime is now alive, there is no likelihood of any suspect being apprehended or prosecuted.

For **Section 31(1)(b) and (c)** to be applicable at the very least the Metropolitan Police need to formally announce publicly that this case is now under cold case review with officers actively reinvestigating. There is no evidence of this.

Consequently, the argument about new forensic science procedures being available to solve the crime is not tenable. There is a stronger argument that the release of the files and any publicity and publications arising from this would serve the public interest of raising general awareness and knowledge of the crime and bring forth information that could justify a cold case review and new investigation.

The decision has also engaged exemption at **section 40 (2)** of the FOI Act- 'personal information about a 'third party' (someone other than the requester), if revealing it would break the terms of Data Protection Legislation.' I would argue it is not reasonable in law to apply a suppression of the freedom of expression and information principle in these circumstances. The decision concedes that the files include 'personal and the sensitive personal information of a number of identified individuals assumed still to be living', but it does not analyse and investigate the likelihood of those *assumed* still to be living. Population longevity, probability in longevity, and population statistics mean that it is not

reasonable to assume they are still living. A 1.5% possibility that they could still be living is not a justification for invoking section 40(2).

Putting it another way, there is a 98.5% likelihood that they are not still living. In these circumstances the decision is not rational or reasonable in law.

[See <https://trustforlondon.org.uk/data/population-age-groups/>]

In conclusion, I would urge your Internal Review to recognise that under the Freedom of information Act all of these files should now be made public and available for research and public interest scrutiny.

Many thanks in advance for your courteous consideration.

sincerely and respectfully

[Professor Tim Crook](#)