



Suspect anonymity: Should arrested persons be named by the police?

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Section Home Affairs Section

Should the identities of arrested suspects be made public by the police before they have been charged with an offence? Some commentators argue that doing so encourages more victims to come forward, while others argue that it can cause irreparable damage to reputations. New guidance was issued by the College of Policing in May 2013 and the Law Commission recently consulted on the issue in relation to contempt of court (but is yet to respond). This note provides an overview of the debate and developments.

Contents

| | | |
|----------|---|----------|
| 1 | The debate | 2 |
| 2 | Law Commission consultation on contempt of court | 2 |
| | 2.1 Senior Judiciary response | 3 |
| | 2.2 Information Commissioner's Office response | 3 |
| 3 | New College of Policing guidance | 4 |
| 4 | Anonymity (Arrested Persons) Bill 2010-12 | 4 |
| 5 | Further reading | 4 |

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1 The debate

The debate whether the police should name arrested suspects before they have been charged is longstanding.

The issue has received particular attention in recent years following the case of Christopher Jeffries (the initial suspect in the investigation into the murder of Joanna Yeates) and his treatment by parts of the media;¹ the findings of Leveson Inquiry into the practices of the press; and the Law Commission's consultation on contempt of court.²

Those generally in favour of naming suspects upon arrest argue that it can encourage more victims to come forward, with more evidence. They maintain that to do otherwise would be an affront to the principle of open justice and akin to "secret arrests".³

Those against the routine naming of suspects argue that it is an invasion of individual privacy and can cause irreparable damage to reputations, even when individuals are innocent.⁴

Some have called for a more nuanced approach. The Bar Council, for example, have argued for anonymity for suspects of sexual offences only, because of the particular stigma in such cases,⁵ while others, such as the Attorney General, have suggested that the police should confirm the names of suspects if they have already been identified in the media.⁶

In May 2013, amid concerns about inconsistency of approach among police forces,⁷ the Home Secretary said in a letter to the Chief Executive of the College of Policing that, apart from extremely unusual circumstances, suspects should not be named until they are charged.⁸

The day after the Home Secretary's comments, the Prime Minister noted that there was a "difficult balance" between publicising arrests and respecting the privacy of suspects and said that there was no simple answer.⁹

2 Law Commission consultation on contempt of court

In November 2012, following a number of high profile contempt cases (including the case of Christopher Jeffries), the Law Commission identified the need for reform and published a consultation paper on *Contempt of Court*.

One of the issues discussed was the risk of publishers committing contempt by publishing information about an arrestee of whose identity they are unaware or about a person whom the publisher is unaware has been arrested. In response, the Law Commission expressed

¹ Christopher Jeffries was subsequently awarded damages in 2011 for defamatory allegations made by some newspapers following his arrest. See, [Joanna Yeates's landlord Chris Jefferies wins libel payout](#), *Telegraph*, 29 July 2011

² Consultation closed, Still awaiting full response. The Law Commission has so far only [responded](#) to one part of the consultation, *Juror Misconduct and Internet Publications*, in December 2013

³ See for example, ['Secret arrests' undermine confidence in police, says former top officer](#), *Telegraph*, 3 May 2013, and [Yes, suspects are sometimes innocent - but secret arrests are not the answer](#), *Guardian*, 10 April 2013

⁴ See, [Press intrusion: Don't name suspects in the media until charged, urges MP](#), *Guardian*, 21 April 2013

⁵ [Sex case defendants 'should get anonymity'](#), *BBC*, 16 February 2013

⁶ [Police should name arrested suspects that are already identified by the press, Attorney General says](#), *Telegraph*, 4 June 2013

⁷ [Third of police forces won't name suspects after they are charged](#), *Daily Mail*, 2 May 2013

⁸ [Suspects should have right to anonymity at arrest - Theresa May](#), *BBC*, 15 May 2013

⁹ [Arrest anonymity not simple, says PM David Cameron](#), *BBC*, 16 May 2013

the opinion that, with appropriate safeguards, the names of arrestees should generally be released:

We propose that the Home Office request that the Association of Chief Police Officers issue guidance, for dissemination to police forces, which would encourage the police to adopt consistent decision-making about whether to release information about arrestees following a request from the media to identify the arrestee. We consider that such policy should establish that, generally, the names of arrestees will be released but that appropriate safeguards will need to be put in place to ensure that some names are withheld, for example, where it would lead to the unlawful identification of a complainant, where the arrestee is a youth or where an ongoing investigation may be hampered. We consider that such safeguards should be widely defined given that once a name is released, it may not be possible to retract it. Do consultees agree that there should be a consistent policy adopted by police forces about whether to release information about arrestees, with appropriate safeguards?¹⁰

2.1 Senior Judiciary response

In their response to the consultation and on the question of suspect anonymity, a number of senior judges (including Lord Justice Leveson) disagreed with the Law Commission's proposal and adopted the exact wording of the report of the Leveson Inquiry, arguing that the identity of arrestees should only be released to the media or public in exceptional circumstances:

A decision by the police to publish the name of a person arrested must be made after consideration of the rights of such persons, including their rights under ECHR Art 8, on a case by case basis. The police arrest many people who are never charged. If there were a policy that the police should consistently publish the fact that a person has been arrested, in many cases that information would attract substantial publicity, causing irremediable damage to the person's reputation. Even if the fact that the person was not charged were subsequently published, that would not receive the same publicity, and would not prevent subsequent internet searches disclosing that the person had been arrested

We adopt the words of Leveson LJ in his [Report at G Ch 3 para 2.39](#): "the current guidance in this area needs to be strengthened. For example, I think that it should be made abundantly clear that save in exceptional and clearly identified circumstances (for example, where there may be an immediate risk to the public), the names or identifying details of those who are arrested or suspected of a crime should not be released to the press nor the public." It may be that the civil law should be reformed to give a remedy for the publication of prejudicial information, in addition to the law of contempt. But that is beyond the scope of this consultation.¹¹

2.2 Information Commissioner's Office response

In its response to the consultation, the Information Commissioner's Office (ICO) said that the Law Commission's proposal in favour of generally releasing the names of arrestees raised serious data protection and human rights concerns:

It is recognised that some disclosures of arrestee details occur now, although policies on this differ from force to force. The option of addressing this by introducing a policy whereby 'generally' the names of arrestees will be released raises serious concerns

¹⁰ Law Commission, [Contempt of Court: A Consultation Paper](#), November 2012, [Para 2.19-2.20](#) [Consultation closed]

¹¹ Lord Justice Treacy and Lord Justice Tugendhat et al, [Contempt of Court: A Judicial Response to Law Commission Consultation Paper No 209](#), March 2013, pp4-5

and it is unclear how this indiscriminate approach would comply with the DPA or human rights legislation.

Any blanket policy will raise human rights concerns and particularly when the disclosure relates to sensitive personal data (typically here where this relates to a criminal offence being linked to an individual). Adopting a case by case approach is far more likely to be compliant with the DPA, with considerations such as the gravity of the offence and public interest being taken into account when considering whether disclosure of a name would be appropriate.¹²

3 New College of Policing guidance

In May 2013, the College of Policing issued new guidance on police relations with the media and the naming of arrested suspects. In essence, the guidance states that, although there is nothing to prevent police forces naming suspects where there is a policing purpose, the names of arrested suspects should not be released by the police to the press or public save for exceptional circumstances:

There is nothing to prevent police forces from naming an arrested person where there is a policing purpose for doing so. The media will often identify and name an arrested person without assistance from the police. Individuals themselves have the right to inform others of their arrest.

Police forces must balance an individual's right to respect for a private and family life, the rights of publishers to freedom of expression and the rights of defendants to a fair trial. Decisions must be made on a case-by-case basis but, save in clearly identified circumstances, or where legal restrictions apply, the names or identifying details of those who are arrested or suspected of a crime should not be released by police forces to the press or the public. Such circumstances include a threat to life, the prevention or detection of crime or a matter of public interest and confidence. This approach aims to support consistency and avoid undesirable variance which can confuse press and public.¹³

4 Anonymity (Arrested Persons) Bill 2010-12

The issue of suspect anonymity was also the subject of a Private Member's Bill in June 2010, when the [Anonymity \(Arrested Persons\) Bill](#), was presented to Parliament by Anna Soubry.

Following the media coverage of the murder of Joanna Yeates and the treatment of Christopher Jeffries, the Bill sought to prohibit the publication of an arrested person's name, address or image before they were charged.

The Bill had its second reading on 4 February 2011 but was later withdrawn after the Government said it would re-examine the law on contempt of court.

Further background is available from Library Research Paper, [Anonymity \(Arrested Persons\) Bill \[Bill 9 of 2010-11\]](#), February 2011.

5 Further reading

The following journal articles also provide a useful commentary of recent developments:

¹² ICO, [The Information Commissioner's response to the Law Commission's consultation on 'Contempt of Court'](#), February 2013, pp1-2

¹³ College of Policing, [Guidance on Relationships with the Media](#), May 2013 (Para 3.5.2), see also, [Arrested suspects should retain anonymity, police told](#), BBC, 20 May 2013

- Criminal Law & Justice Weekly, [Anonymity Before Charge – Part I](#), 4 May 2013
- Criminal Law & Justice Weekly, [Anonymity Before Charge – Part II](#), 11 May 2013
- Criminal Law & Justice Weekly, [Safeguarding Pre-Charge Anonymity by Law – Part I](#), 15 June 2013
- Criminal Law & Justice Weekly, [Safeguarding Pre-Charge Anonymity by Law – Part II](#), 20 June 2013
- Criminal Law & Justice Weekly, [A Guarantee Scheme for Pre-Charge Anonymity – Part I](#), 22 November 2013
- Criminal Law & Justice Weekly, [A Guarantee Scheme for Pre-Charge Anonymity - Part II](#), 7 December 2013