

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2015

Public Authority: Chief Constable of Kent
Address: Kent Police Headquarters
Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant has requested information about any disciplinary action that might have been taken by Kent Police (the police) against a police officer and a civilian police employee arising from an incident.
2. The Commissioner's decision is that police correctly relied on the section 40(5)(b)(i) FOIA in neither confirming nor denying holding the information requested; he does not require the police to take any steps to ensure compliance with the legislation.

Request and response

3. On 1 July 2015, the complainant wrote to the police and requested information in the following terms:

Pursuant to the findings of the IPCC can you tell me what Disciplinary Action has been taken against this man/ lady?

I am used to seeing the outcomes Nationally on the Internet/. Why can I not find what action was taken against this PSO?

4. The police responded on 3 July 2015 refusing to confirm or deny holding the requested information and relying on the section 40(5)(b)(i) FOIA exemption (Personal information).

5. Following an internal review the police wrote to the complainant on 23 July 2015 saying that the identity of a relevant senior police officer was now being disclosed since: the officer in question was senior, the information related to his role and there was no legitimate expectation of privacy. The police explained that another, more junior, officer also came within the scope of the request in addition to a civilian police service employee (PSE). The police neither confirmed nor denied holding the requested information in respect of the junior officer and the PSE and again relied on the section 40(5)(b)(i) FOIA exemption.

Scope of the case

6. The complainant contacted the Commissioner on 26 July 2015 about the way his request for information had been handled. He said that he had reported to the Independent Police Complaints Commission (IPCC) his treatment at the hands of the police during an incident. He said that the IPCC had found in his favour. He said that the police had undertaken to learn lessons from the incident and he wanted to know what disciplinary measures the police had taken as a result of it. He added that his question for the police could be put as :

"Was Disciplinary Action Taken and a simple Yes or No will do!"

7. The Commissioner considered the application of the section 40(5) FOIA exemption to the relevant police personnel. He received and considered representations from both the police and the complainant.

Reasons for decision

8. Under section 1(1)(a) of FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny holding information through reliance on certain exemptions under FOIA.

Section 40 – personal information

9. Generally, the provisions in section 40 subsections 1 to 4 FOIA exempt personal data from disclosure. Section 40(5) of FOIA states that the duty to confirm or deny whether information is held does not arise if providing the public with that confirmation or denial would contravene

any of the data protection principles set out in the Data Protection Act 1988 (the 'DPA').

10. In this case, the police consider that section 40(5)(b)(i) FOIA applies arguing that confirming whether or not the requested information is held would breach the data protection rights of the identified individuals concerned, as it would reveal under FOIA whether they had been the subject of disciplinary action. The complainant argued that he should be told if disciplinary action had been taken and be reassured that the police had not 'swept the matter under the carpet'. Such an argument is relevant to the exemption contained at section 40(5)(b)(i).
11. Consideration of section 40(5) involves two steps: first, whether providing the confirmation or denial would involve the disclosure of personal data, and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

Would confirmation or denial disclose personal data?

12. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

"personal data' means data which relate to a living individual who can be identified:

(a) from those data, or

(b) from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller".

13. The Commissioner considers that the way in which the request is worded clearly indicates that the complainant is seeking information which can be linked with identifiable individuals known to him and others.
14. As the complainant has requested information specifically about identified individuals, by its nature the request identifies those individuals and that information, if held, would constitute their personal data. Confirmation or denial as to whether or not those persons have been subject to disciplinary action of the type referred to in his request would reveal something of a personal nature about those individuals and would therefore constitute their personal data.

Would disclosure breach any principles?

15. The police said that confirmation or denial would breach the first data protection principle. They explained to the complainant that confirming

whether or not individuals had been subject to disciplinary proceedings would breach their legitimate expectation of privacy.

16. When considering the first principle the Commissioner will generally seek to balance the reasonable expectations of the data subject(s) with the consequences of compliance with the request, and the general principles of accountability and transparency.
17. The first data protection principle requires that personal data is processed fairly and lawfully and that one of the conditions in schedule 2 of the DPA is met in order to disclose personal data.
18. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
19. The Commissioner considers that information relating to personnel matters such as discipline will usually be inherently 'private' in nature and he recognises that officers and other employees will have a high expectation that such matters will not be placed in the public domain and that their privacy will be respected. As such, an officer's reasonable expectation would be that information of the type requested would not be disclosed.
20. Confirmation that disciplinary proceedings have been initiated does not prove that an allegation was upheld, nor the seriousness of any particular allegation, and could prove of considerable detriment to any police employee if it were placed into the public domain via FOIA. As such it could cause unnecessary and unjustified damage to the employee concerned. Were there any serious allegations of the nature suggested by the complainant then the Commissioner would expect these to have been fully investigated by the police under its disciplinary processes and that the matter would be properly dealt with under that regime.
21. The Commissioner appreciates that there is a general public interest in accountability and transparency, and the public is entitled to be reassured regarding the integrity of police employees and that such matters are not 'swept under the carpet'. On the other hand the Commissioner recognises that this legitimate interest must be weighed

against any unwarranted prejudice to the rights and freedoms or legitimate interests of any individual who would be affected by confirming or denying that the requested information is held, ie the police employees themselves.

Conclusion

22. The Commissioner appreciates that there is a general public interest in accountability and transparency, and that the public is entitled to be reassured about the integrity of its officers and other police staff.
23. However, the Commissioner recognises that this legitimate interest must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of those officers and other staff members who would be affected by the police confirming or denying that the requested information is held.
24. In considering whether the exemption contained within the section 40(5)(b)(i) FOIA exemption was correctly applied, the Commissioner has taken into account that disclosure under FOIA should be considered in its widest sense – which is to the public at large. A confirmation or denial in the circumstances of this case would reveal to the public information which is not already in the public domain.
25. Having regard for the reasonable expectations of the data subjects, and the potential impact on them if the existence of their personal data were to be confirmed or denied, the Commissioner considers that it would be unfair to do so. While he accepts that there is a limited legitimate interest in the disclosure of this information, he does not consider that this outweighs these other factors.
26. The Commissioner is therefore of the opinion that the information requested, if held, would be the personal data of the police employees as it relates to them personally. He also finds that, if held, it would be unfair to disclose it and to do so would breach of the first DPA data protection principle. The information would accordingly be exempt from disclosure under section 40(2) FOIA. Therefore, under section 40(5)(b)(i) FOIA, the police are not required to confirm or deny that it is held.

Right of appeal

27. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

28. 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.
29. 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

Jon Manners
Group Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF