

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 November 2016

**Public Authority:** Chief Constable of South Yorkshire Police  
**Address:** South Yorkshire Police HQ  
Carbrook House  
5 Carbrook Hall Road  
Sheffield  
South Yorkshire  
S9 2EH

#### Decision (including any steps ordered)

---

1. The complainant requested the personnel file of two named police officers. South Yorkshire Police withheld the information, citing section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that South Yorkshire Police has applied section 40(2) of the FOIA appropriately.
3. The Commissioner does not require South Yorkshire Police to take any steps as a result of this decision.

#### Request and response

---

4. On 14 July 2015 the complainant wrote to South Yorkshire Police (SYP) and requested information in the following terms:

" *REQUEST 1*

*[name redacted]*

*Could I have a copy of the personnel file of this officer, who is based at Snig Hill station, including records of any criminal convictions and disciplinary hearing*

*REQUEST 2*

*[name redacted]*

*Could I have a copy of the full personnel record of this officer, who is based at Snig Hill Station, Sheffield, including any criminal convictions and disciplinary matters."*

5. SYP responded on 15 July 2015. It stated that it was neither confirming nor denying whether it held the requested information by virtue of section 40(5) (personal information).
6. Following an internal review SYP wrote to the complainant on 4 August 2015. It stated that it was no longer relying upon section 40(5) but was instead relying on section 40(2) (personal information).

### **Scope of the case**

---

7. Initially the complainant wrote to the Commissioner on 4 August 2015 complaining about the way in which SYP handled his request. However, the complainant had not included a copy of his request or SYP's refusal notice. There was correspondence between the Commissioner and the complainant, who provided the necessary documentation on 24 February 2016.
8. The complainant explained that he considered that one of the named officers was corrupt and incompetent; therefore it was important for him to have access to the officer's personal file in order to discover whether there had been any disciplinary charges against him, and whether he has any criminal convictions. The complainant also confirmed that he was not asking for information about the second officer at the time of his complaint to the Commissioner.
9. Furthermore, the complainant asked the Commissioner to take into account that it was very widely held that SYP is institutionally and systemically corrupt and incompetent. He explained that the obvious examples were Orgreave, Hillsborough and the Rotherham sex abuse cases.
10. The Commissioner will consider whether SYP has applied section 40(2) appropriately.

### **Reasons for decision**

---

#### **Section 40(2) – personal information**

11. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the

requester and its disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).

***Is the information personal data?***

12. The definition of personal data is set out in section 1 of the DPA:

*"...data which relate to a living individual who can be identified*

*a) from those data, or*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*

13. The two main elements of personal data are that the information must 'relate' to a living individual and the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

14. In this case, SYP told the complainant that it considered the police officer's personnel file constituted his personal data and that it would be unfair to disclose it.

15. The Commissioner is satisfied that the personnel file of the named officer constitutes information which falls within the definition of 'personal data' as set out in section (1) of the DPA as the information comprises personal data relating to that named police officer.

***Is the information sensitive personal data?***

16. Sensitive personal data is defined in section 2 of the DPA. It is personal information which falls into one of the categories set out in section 2 of the DPA. SYP confirmed that it considered the some of the requested information would be sensitive personal data as it relates to health issues. Of relevance in this case is that section 2 relates to personal data consisting of information as to:

*(e) his physical or mental health or condition.*

17. The Commissioner is satisfied that some of the withheld information is also sensitive personal data. This is because it relates to health issues about the named police officer.

18. In light of this finding the Commissioner will go on to consider whether disclosure of the named officer's personal data would breach one of the data protection principles.

***Would disclosure breach one of the data protection principles?***

19. SYP told the complainant that it considered that disclosure of the requested information would contravene the first data protection principle. The Commissioner agrees that the first data protection principle is relevant in this case.

***Would disclosure contravene the first data protection principle?***

20. The first principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".*

21. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions and, in this case, one of the Schedule 3 conditions for sensitive personal data. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

***Would it be fair to disclose the requested information?***

22. When 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.
23. Under the first principle, the disclosure of the information must be fair to the data subject. Assessing fairness involves balancing the data

subject's rights and freedoms against the legitimate interest in disclosure to the public.

24. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.

***Has the data subject consented to the disclosure?***

25. The Commissioner is not aware of anything to suggest that consent has been given for disclosure of the requested information by the police officer concerned.

***Has the data subject actively put some or all of the requested information into the public domain?***

26. Where the data subject has put some or all of the requested information into the public domain, the Commissioner considers that this weakens the argument that disclosure would be unfair.
27. In this case the Commissioner has not seen any evidence that the data subject has actively put some or all of the requested information into the public domain.

***Reasonable expectations***

28. In order to reach a view on whether the disclosure of this information would be fair in this case, the Commissioner has placed specific emphasis on the nature of the information itself.
29. The requested information, if disclosed, would reveal information about the named police officer, including health issues. The Commissioner does not accept that disclosing this information would be fair and considers that it would be very likely to cause distress to the individual involved or have an unfair impact on him.
30. The Commissioner notes the complainant's concern about whether the named officer is corrupt and incompetent and that the only way he could know this is if he sees the police officer's personnel file. He also notes that the complainant has alleged that SYP are widely held to be corrupt and incompetent.

***Consequences of disclosure***

31. In looking at the consequences of disclosure on the data subject, the Commissioner has considered what they might be.

32. SYP argued that disclosure in this case would mean that information regarding the named officer's private life would be disclosed. The Commissioner accepts that disclosure of the type of information the requester has asked for, could have a detrimental or distressing effect on the individual concerned, particularly as she has found that disclosure of the information would not have been within the named officer's reasonable expectations.

### **Conclusion**

33. The Commissioner considers there is some legitimate public interest in the disclosure of the requested information, especially as it is alleged that the police officer in question may be incompetent and/or corrupt. However, the Commissioner considers that if there were any incompetency issues and allegations of corruption, SYP would deal with them through the appropriate channels rather than through disclosure of the officer's personnel file to the public at large.
34. Furthermore, the Commissioner notes that some of the requested information is considered to be 'sensitive' personal data in terms of the named police officer. Disclosure of sensitive personal data must have justification, whatever the circumstances of the individual. It is clearly possible for the disclosure of sensitive personal data to be fair. However, in the circumstances of this case, the Commissioner accepts that it would be unfair to disclose the information requested, as it is the named officer's personal data, disclosure of which would contravene the first data protection principle.
35. The Commissioner has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA conditions is met.
36. As the Commissioner is satisfied that disclosure would breach the first data protection principle she upholds SYP's application of the section 40(2) exemption to the withheld information.

## Right of appeal

---

37. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**