

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 October 2014

Public Authority: The Chief Constable of Derbyshire Constabulary
Address: Police Headquarters
Butterley Hall
Ripley
Derbyshire
DE5 3RS

Decision (including any steps ordered)

1. The complainant requested information from Derbyshire Constabulary relating to incidents in which the police were contacted by staff at a named school. Derbyshire Constabulary confirmed it held information within the scope of the request. It provided the complainant with some of that information but refused to provide the remainder, citing section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that Derbyshire Constabulary correctly applied section 40(2). He requires no steps to be taken.

Request and response

3. On 29 May 2014 the complainant made the following request for information under the FOIA:

"For the period 3 Sep 2009 - 27 May 2014, please confirm on how many occasions Derbyshire Police have been contacted/telephoned by staff at [name and address of school redacted] to attend the site. I wish to understand dates, who telephoned Derbyshire Police, why/for what purpose, how did Derbyshire Police respond and what was the outcome.

For the avoidance of doubt you should include blue & non-blue light incidents, and occasions when [name redacted] or others have made false & unsubstantiated allegations against me".

4. Derbyshire Constabulary acknowledged the request on 29 May 2014. It provided the complainant with advice about the subject access provisions of the Data Protection Act (DPA) 1998 - and the necessary documentation – in order to make a subject access request in relation to any personal data it may hold of which the complainant is the data subject.
5. The complainant responded on the same day saying:

"... This is NOT a DPA Subject Access Request. I did NOT ask for the information solely in relation to me. I asked for details of the incidents (regardless of the names of 3rd parties who were involved) in which Derbyshire Police were contacted by staff at [name redacted] School, and a summary of the responses on each occasion. I did NOT ask for the names of the 3rd parties involved or the personal contact details of the staff, just the name of the member of staff making the call on each occasion.

.... I made reference to incidents involving me so that you could be clear about the type & nature of the incidents to which I am referring".
6. Derbyshire Constabulary responded on 25 June 2014. It provided some information within the scope of the request (comprising year, month of incident, incident type and generic police response) but refused to provide the remainder. It cited the section 40(2) exemption of FOIA (personal information) as its basis for doing so.
7. The complainant requested an internal review on 25 June 2014. The Constabulary sent him the outcome of its internal review on 17 July 2014 upholding its original position.

Scope of the case

8. The complainant provided the Commissioner with the relevant documentation on 12 August 2014 to complain about the way his request for information had been handled.
9. The complainant asked the Commissioner to look at this case in conjunction with other cases where Derbyshire Constabulary has refused to disclose information to him *"as they are related and show a pattern of wilful obstruction"*.
10. Notwithstanding that view, the Commissioner considers each case on its own merit.

11. The right of subject access is created by section 7 of the Data Protection Act (DPA). It is most often used by individuals who want to see a copy of the information an organisation holds about them.
12. In this case, the Commissioner notes that the complainant clearly stated that his request was not a DPA subject access request (SAR).
13. He also notes that, in requesting an internal review, the complainant told the Derbyshire Police:

"Where the incidents listed in the attached data sheet do NOT refer to an incident involving me, I am content to allow Derbyshire Police to withhold the names of the parties (complainant & others), otherwise please disclose all the data as requested originally".
14. In determining the scope of his investigation in this case the Commissioner has had due regard to:
 - the wording of the request;
 - the complainant's clarification that the request is not a SAR; and
 - the basis of his request for internal review.
15. The Commissioner considers the scope of this case to be to determine whether Derbyshire Constabulary has correctly applied section 40(2) of the FOIA.

Reasons for decision

Section 40 personal information

16. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3) or 40(4) is satisfied.
17. In this case the relevant condition is contained in section 40(3)(a)(i). This applies where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act (DPA).
18. The Commissioner has therefore considered:
 - whether the withheld information constitutes personal data; and if so
 - whether disclosure would breach one of the data protection principles.

Is the information personal data?

19. The definition of personal data is set out in section 1(1) of the Data Protection Act 1998 (DPA). This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
20. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
21. The withheld information in this case, a copy of which was provided to the Commissioner during the course of his investigation, records details of occasions when staff have telephoned Derbyshire Police to report an incident at the school.
22. The Commissioner is satisfied that, given the nature of the information and the context in which it was created, the withheld information constitutes information that falls within the definition of 'personal data'.
23. In other words, he is satisfied that it relates to living individuals who may be identified from that data and that it constitutes their personal data.
24. He has reached that conclusion on the basis that the focus of the information is the staff and that the information is clearly linked to those individuals because it is about their activities, namely their reporting of incidents at the school to the police.
25. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles.
26. The Commissioner considers the first data protection principle is most relevant in this case.

Would disclosure contravene the first data protection principle?

27. The first data protection principle 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."

28. In the case of a 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 one of the Schedule 3 conditions if relevant). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would disclosure be fair?

29. 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.

30. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.

Reasonable expectations

31. In the Commissioner's view, a key issue to consider in assessing fairness is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy and also the purpose for which they provided their personal data.

32. In this case, Derbyshire Constabulary told the complainant that when an individual reports an incident to the police, they do so "*in the strictest of confidence between the two parties*".

33. Similarly, in correspondence with the Commissioner, Derbyshire Constabulary explained that, in its view, there is a legitimate expectation that, when reporting issues to the police, it is done in confidence.

34. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible data controller, will not disclose certain information and that they will respect its confidentiality.

35. The Commissioner acknowledges that the disputed information in this case relates to staff acting in a work related capacity. Nevertheless, the Commissioner considers that most people who make complaints to public authorities, including the reporting of incidents to the police, do so with the expectation that such matters would be treated with some degree of confidentiality.
36. In the circumstances of this case, the Commissioner is satisfied that the staff would have had a reasonable expectation that the withheld information, which constitutes their personal data, would not be disclosed to the public at large.

Consequences of disclosure

37. As to the consequences of disclosure upon the data subjects, the question – in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
38. The Commissioner considers that disclosure in this case would amount to an infringement into the privacy of the staff making the telephone calls and has the potential to cause damage and distress, particularly as he has found that disclosure of the information would not have been within their reasonable expectations.

The legitimate public interest

39. Assessing fairness also involves balancing the individuals' rights and freedoms against the legitimate interest in disclosure to the public. 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.
40. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.
41. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
42. The complainant made submissions in relation to his interest in the information in this case being disclosed. However, while the complainant may have personal reasons for wanting access to the requested information, the Commissioner must consider whether or not it is

appropriate for the requested information to be released to the general public.

43. In other words, the Commissioner must consider whether there is a sufficient wider legitimate public interest which would outweigh the rights and freedoms of those members of staff who contacted the police to report an incident at the school.
44. While the complainant's wish to access this information is a matter that the Commissioner can appreciate, in the Commissioner's view it is nonetheless a personal need.
45. The Commissioner accepts that legitimate interests include the general public interest in transparency. He notes that, in this regard, the police have disclosed some information about the occasions when it has been contacted, which would generally satisfy any wider public interest. However he has not seen any evidence to indicate that there is a sufficient wider legitimate public interest in this case which would outweigh the rights and freedoms of the data subjects and support further disclosure.

Conclusion

46. As disclosure under FOIA is considered to be disclosure to the public at large and not to the individual applicant, it is the legitimate interests of the public in disclosure that must be balanced against the interests of the data subject, including their right to privacy.
47. Taking all of the above into account, the Commissioner is satisfied that it would be unfair to the staff concerned to release the requested information. Disclosure would not be within their reasonable expectations and the loss of privacy could cause unwarranted distress.
48. The Commissioner is therefore satisfied that the Derbyshire Constabulary was entitled to withhold the information under section 40(2) by way of section 40(3)(a)(i).
49. As the Commissioner has concluded that the disclosure of this information would be unfair, and therefore be in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Other matters

50. The Commissioner acknowledges that the information at issue is of particular interest to the complainant. However, in the Commissioner's

view, there are more appropriate routes open to the complainant if he considers that the actions taken by either the school or the Constabulary are not proportionate or reasonable. For example, complaints to the IPCC or the Professional Standards Department.

Right of appeal

51. 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

52. 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.
53. 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
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