

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 October 2014

Public Authority: West Yorkshire Police
Address: P O Box 9
Laburnum Road
Wakefield
West Yorkshire

Decision (including any steps ordered)

1. The complainant has requested a specific report. West Yorkshire Police has refused to confirm or deny whether the information is held, under section 40(5)(b)(i) (personal information).
2. The Commissioner's decision is that West Yorkshire Police has applied section 40(5)(b)(i) appropriately.
3. The Commissioner does not require West Yorkshire Police to take any steps.

Request and response

4. On 24 October 2013, the complainant wrote to West Yorkshire Police (WYP) and requested information in the following terms:

"I note in your letter that when outlining the conclusions reached by Devon and Cornwall Constabulary you are careful to suffix them with the words, "in their opinion". Does that mean it is not WYP's opinion or hat you might disagree with their findings?

In view of the above ambiguity, does WYP still maintain that the 'thorough PSD investigation' into my complaint as described to the High Court by its lawyers, was thorough?

Did WYP intend to inform me of Devon and Cornwall Constabulary's conclusions re my complaint's flawed investigation? If so why has it taken nearly 7 months?

Your letter refers to Devon and Cornwall Constabulary reaching a number of conclusions and then commences a new sentence with 'in

particular, ...'. This a clear indication that the conclusions outlined in your letter are not the only ones reached. What are the others? Exactly when did the WYP PSD investigation conclude and what evidence did they find of wrong-doing by WYP officers, if any? In particular did their conclusions concur with the Court's findings re intellectual property misappropriation? What were the PSD's specific conclusion in relation to the re-badged documentary evidence submitted by the HTCUC? What were Devon and Cornwall Constabulary's specific conclusions re the re-badging of the documentary evidence by the HTCUC? Please explain exactly what is meant by 'Opportunities to identify and address inappropriate behaviour were missed? What was the inappropriate behaviour and by whom? And, why would the 'inappropriate behaviour' not be something that warranted internal misconduct proceedings? In the Terms of Reference for the review mention is made of whether the circumstances might warrant further investigation, but then in paragraph 3, page 2 concludes that there is insufficient evidence to progress a prosecution. Is the purpose of a 'further criminal investigation', as opposed to a superficial review, not to seek out potential evidence? ...On that basis I ask that I be provided with a copy of the review and in the event of a refusal, as alluded to in my earlier letter of 11 October, I ask that I be acknowledged as a request under the Freedom of Information Act 2000."

5. The context in which this request was made was a court case involving the complainant, and a report relating to another party's complaint.
6. WYP responded 15 January 2014 and applied section 40(5).
7. The complainant requested an internal review on 27 January 2014.
8. Following an internal review WYP wrote to the complainant on 25 February 2014, upholding its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 2 December 2013 to complain about the way his request for information had been handled. He explained that WYP had let him see a redacted copy of the requested report and let him take notes, but had not provided him with a copy of it.
10. During the Commissioner's investigation, the complainant confirmed that he wanted a copy of the requested report – a review carried out

Devon and Cornwall Police- and its Appendix A, relating to the failings of West Yorkshire Police's Professional Standards Department.

11. The Commissioner will consider whether WYP has applied section 40(5)(b)(i) appropriately.

Reasons for decision

Section 40(5)(b)(i)

12. Under section 1 of FOIA a public authority is obliged to inform an applicant whether the requested information is held. However, section 40(5)(b)(i) removes that obligation if either confirming or denying the information is held would disclose personal data relating to a third party in breach any of the data protection principles.
13. When considering the application of section 40(5)(b)(i) the Commissioner must first consider whether confirmation or denial would involve the disclosure of personal data, and secondly whether disclosure of personal data would be in breach of at least one of the data protection principles.

Is the information personal data?

14. When considering whether confirmation or denial would involve the disclosure of personal data, the Commissioner must consider the definition of personal data. Section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as:

*'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 intentions of the data controller or any other person in respect of the individual.'*

15. In his guidance on the section 40 exemption the Commissioner expanded on what constituted personal data:

'For data to constitute personal data, it must relate to a living individual, and that individual must be identifiable. In considering whether information requested under FOIA is personal data, the public authority must decide whether the information satisfies both parts of the definition.'

16. The Commissioner is satisfied that the information, if held by WYP, would fall within the definition of personal data as set out in the DPA as it 'relates to' an identifiable living person.

Would disclosure contravene any of the Data Protection Principles?

17. The Data Protection Principles are set out in Schedule 1 of the DPA. The first data protection principle and the most relevant in this case, states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner has considered the issue of fairness. When considering this, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

18. The Commissioner notes that disclosure under the FOIA is to the world at large. The information, if held by WYP, would identify a third party. The Commissioner considers that it would not be in the third party's reasonable expectations to have his personal information disclosed.
19. The personal data that would be disclosed if it was held in this case would most likely relate to a complaint made by that person. The Commissioner's view is that there is a clear distinction between information relating solely to professional matters and information relating to an individual outside their professional capacity. The Commissioner's position is that he considers it far less likely that disclosure of personal data relating to professional matters would be unfair than disclosure of information relating to an individual on a non-professional capacity.
20. The Commissioner considers that the type of information in the present case relates to the individual's private life.

Consequences of disclosure

21. The Commissioner also considers that in this case, the disclosure of information relating to an individual's complaint against a public authority would be unfair, as individuals would have a reasonable expectation that such information would not be disclosed and because of the potential detriment that could result from disclosure of information of this kind.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

22. The complainant explained that he had made a formal complaint against WYP and was informed that it would be fully investigated. However, up to the date of his complaint, the complainant had not received the outcome of his complaint.
23. The complainant took WYP to the High Court where he won his case. The complainant explained that WYP confirmed that it had concluded its investigation into his complaint and had found nothing untoward.
24. The complainant also explained that he had been informed that he should contact WYP for either a copy of the outcome or to be told the outcome.
25. The Commissioner acknowledges the complainant's concerns that the public should know whether WYP had behaved appropriately, and about a copy of any outcome being available. However, the Commissioner notes that there has been a court case regarding this matter. He notes that the complainant won his case. Therefore, he considers that this issue has already been dealt with through the appropriate channels.
26. The Commissioner considers that disclosure of whether any information is held would be unfair to the third party concerned.
27. Therefore, the Commissioner considers that WYP has applied section 40(5)(b)(i) appropriately and that it does not have to confirm or deny whether it holds the requested information.

Other matters

28. The Commissioner notes the complainant's comments regarding WYP's offer to show him information relevant to the request. The complainant stated that, as he had said he was making his request under the FOIA, WYP should therefore have dealt with it under FOIA.
29. The Commissioner considers that it is for a public authority to decide which regime it is dealing with a request under. However, the Commissioner also considers that this has to be made clear to the complainant. In this case, while it appears that WYP was trying to be helpful in providing sight of a redacted copy of the requested information, it was very confusing as it had not made it clear in what context it was doing this.

Right of appeal

30. 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

31. 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.
32. 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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