

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2017

Public Authority: Police and Crime Commissioner for North Yorkshire

Address: Office of the Police and Crime Commissioner
12 Granby Road
Harrogate
North Yorkshire
HG1 4ST

Decision (including any steps ordered)

1. The complainant has requested information relating to a personal court case from the Police and Crime Commissioner for North Yorkshire (the "PCC"). The PCC would neither confirm nor deny holding the requested information by virtue of section 40(5)(a)(personal information) of the FOIA. The Commissioner's decision is that it was correct to do so. No steps are required.

Request and response

2. On 8 August 2016 the complainant wrote to the PCC and requested information in the following terms:

"Please supply the following information:

1. Total billed by Weightmans to North Yorkshire Police and Crime Commissioner (or North Yorkshire Police) for all work done by Weightmans up to and including close of business on 8th August, 2016 (This request, under FOIA, will be deemed to have been received on 9th August, 2016) in connection with county court claim number [number redacted]. Listed as [complainant's name

redacted] -v- *Police and Crime Commissioner of North Yorkshire. Invoices should be disclosed where available.*

2. Name of all NYPCC officer(s), or solicitor(s), involved in instructing Weightmans.

3. Rationale for instructing the senior partner of a Leeds-based Top 45 law firm to deal with a low value money claim. Copies of all documents supporting that rationale.

4. Budget allocated to defending the claim. Copies of all documents that refer to, and justify, that sum".

3. The PCC responded on 5 September 2016. It refused to confirm or deny whether any information was held citing section 40(5)(b) of the FOIA.
4. Following an internal review the PCC wrote to the complainant on 6 October 2016. It maintained its position.
5. During the Commissioner's investigation the PCC revised its position. In doing so it wrote to the complainant on 13 February 2017 and said it was now relying on section 40(5)(a) rather than 40(5)(b) of the FOIA. It advised the complainant of his subject access rights under the terms of the Data Protection Act 1998 (the "DPA").

Scope of the case

6. The complainant initially contacted the Commissioner on 24 October 2016 to complain about the way his request for information had been handled. He raised various issues and complaints about staff at the PCC which fall outside the Commissioner's jurisdiction. He also complained about the PCC's internal review process and the Commissioner has commented on internal reviews in "Other matters" at the end of this notice.
7. Following the PCC's revised position, as explained in paragraph 5 above, the Commissioner asked the complainant for his views. He again expressed dissatisfaction with PCC staff which is not something the Commissioner can consider. He also added:

"The requested information is not personal information at all. It is information that forms part of court proceedings. It is a fundamental principle of open justice in England and Wales that court hearings are public and pleadings (documents) in the claims are available to the public on request.

Cost schedules are filed with the court for the benefit of the judge and the party filing them (in the instant cases, the respective data controllers). They are also served on other parties to the action as a requirement of Civil Court Procedure Rules (often referred to as CPR).

Therefore, neither section 40 (5) (b) or (a) can apply in the present circumstances”.

8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
9. The Commissioner will consider the citing of section 40(5)(a) below.

Reasons for decision

Section 40 – personal information

10. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
11. Section 40(1) of FOIA states that:

“Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject”.
12. The 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 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 person and that the person must be identifiable. 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 or has them as its main focus.
14. Having considered the wording of the request in this case, the Commissioner is satisfied that the complainant is, or would be, the subject of this requested information. This is because the information he has requested is, by its own definition, about or connected to himself and a court case which is listed under his own name.
15. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
16. In relation to such information, the provisions of section 40(5) mean that the PCC is not required to comply with the duty to confirm or deny whether it holds the information, as the duty to confirm or deny does not arise in relation to information which is (or, if it were held by the PCC, would be) exempt information by virtue of subsection (1).
17. For the PCC to provide even a response to section 1(1)(a) by confirming or denying that such requested information is held confirms that the personal data asked about in the request actually exists or does not exist. Either response amounts to a public disclosure of personal data in respect of the data subject of the request.
18. The Commissioner is satisfied that confirming or denying whether it holds any information under the terms of the FOIA means that the public authority would be confirming, to the world at large, whether it holds details of a court case involving the complainant. She therefore considers that the section 40(5)(a) exemption was relied upon correctly by the PCC in this case.

Other matters

19. The complainant has expressed dissatisfaction with the person who conducted his internal review in the case. In his view this person has shown an: *"unlawful, unethical, discriminatory approach to finalising my requests or reviews"*. The Commissioner has no specific authority to specify who should undertake an internal review within a public authority. However, it is her view that, ideally, it should be carried out

by someone senior to the person who dealt with the original request. Where this is not possible it should be undertaken by someone trained in, and who understands, the FOIA.

20. The person who provided the initial refusal notice in this case was a legal officer. The ensuing internal review was provided by a solicitor. In the Commissioner's opinion the person conducting the review is therefore appropriate as they are sufficiently senior and also familiar with both the background to the request and the FOIA.

Right of appeal

21. 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

22. 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.
23. 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

Carolyn Howes
Senior Case Officer
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Wycliffe House
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Wilmslow
Cheshire
SK9 5AF