

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 February 2018

Public Authority: Chief Constable Northamptonshire Police
Address: Force Headquarters
Wootton Hall
Northampton
Northamptonshire
NN4 0JQ

Decision (including any steps ordered)

1. The complainant requested information relating to Northamptonshire Police and a named individual.
2. Northamptonshire Police neither confirmed nor denied holding the requested information, citing section 40(5) of the FOIA (personal data).
3. The Commissioner's decision is that Northamptonshire Police was not obliged to confirm or deny if the requested information was held under section 40(5)(b)(i) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Background

5. By way of explanation about the police operation named in the request, Northamptonshire Police told the Commissioner:

"Operation Blackthorn is a regional approach for the policing response to hunting within Northamptonshire, Leicestershire, Nottinghamshire and Lincolnshire. The purpose of the operation is to promote engagement with both hunt saboteurs and hunt members with a purpose of developing relationships between the police, the hunting community and the hunt saboteurs. It is recognised that the majority of individuals present at the Hunt, either for or against it, are law-abiding citizens with legitimate

concerns. Where there is any likelihood of demonstrations, incidents, or crimes these will be identified as early as possible to ensure the correct operational, investigative and intelligence response”.

Request and response

6. On 27 March 2017 the complainant made the following request for information under the FOIA:

“- Copies of all correspondence between Operation Blackthorn staff employed by Northamptonshire Police & [name and position with the Countryside Alliance redacted].

- Dates of meetings with [redacted] & presentations/briefings given by [redacted], along with any notes & recordings made by officers present at these meetings & presentations/briefings”.

7. Northamptonshire Police responded on 2 May 2017. It refused to confirm or deny whether it held the requested information, citing section 40(5) of the FOIA (personal information).
8. Following an internal review, Northamptonshire Police wrote to the complainant on 23 May 2017 maintaining its original position.

Scope of the case

9. The complainant provided the Commissioner with the relevant documentation on 14 November 2017 to complain about the way his request for information had been handled.

10. He told the Commissioner that he thought that the requested information:

“...could be provided with personal information redacted”.

11. The analysis below considers Northamptonshire Police’s application of section 40(5) of the FOIA to the requested information.

12. Specifically, the Commissioner’s analysis considers section 40(5)(b)(i) of the FOIA. The consequence of section 40(5)(b)(i) is that where a public authority receives a request for information which, if it were held, would be the personal data of a third party (or parties), and the giving of confirmation or denial would itself breach the Data Protection Act 1998 (DPA), then it can rely on section 40(5)(b)(i), to refuse to confirm or deny whether or not it holds the requested information.

Reasons for decision

Section 40(5) personal information

13. Generally, the provisions of section 40(1) to (4) of the FOIA exempt 'personal data' from disclosure under the FOIA if to do so would breach the data protection principles of DPA.
14. Section 40(5) of the FOIA further excludes a public authority from complying with the duty imposed by section 1(1)(a) (that is, to either confirm or deny holding the information), if complying with that duty would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the DPA.
15. This exemption is absolute and therefore requires no consideration of the public interest.
16. Consideration of section 40(5) of the FOIA 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.

Is the information personal data?

17. Section 1(1) of 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 any other information which is in the possession of, or is likely to come into the possession of, the data controller".

18. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable.
19. 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.
20. The request in this case is for information relating to a named individual acting on behalf of the Countryside Alliance.

21. Northamptonshire Police told the Commissioner that it considered that the request in this case was asking for:

"...what [Northamptonshire Police] considered to be personal information if held and supplied from or to a named person..."

22. With due regard to the wording of the request, the Commissioner is satisfied that any information about the named individual either in a personal capacity or in respect of their Countryside Alliance role, would, if held, fall within the scope of the request. The Commissioner considers that such information would be significant to the named individual and, since it would be known who the information relates to, the individual would be identifiable from it.
23. The Commissioner is therefore satisfied that the information is their personal data.

Would confirmation or denial breach one of the data protection principles?

24. Having accepted that the request is for the personal data of a living individual other than the applicant, the Commissioner must go on to consider whether disclosure of the requested information - in this case the confirmation or denial that information is held - would contravene any of the data protection principles.
25. The data protection principles are set out in Schedule 1 of the DPA. The first principle states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focussed on the issue of fairness. In considering fairness, 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.
26. In its submission to the Commissioner, Northamptonshire Police told her that it considered that to disclose if any information was held would contravene the first data protection principle.
27. The Commissioner agrees that the first data protection principle is most relevant in this case.

Would confirmation or denial contravene the first data protection principle?

28. 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."

29. 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.
30. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the data subject(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(s) concerned); and
 - the balance between the rights and freedoms of the data subject(s) and the legitimate interests of the public.

Reasonable expectations

31. In the Commissioner's view, a key issue to consider in assessing fairness is whether the individual concerned has 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, whether the information relates to an employee in their professional role or to them as an individual and the purpose for which they provided their personal data.
32. In that respect, acknowledging that disclosure under the FOIA is disclosure to the world at large, Northamptonshire Police told the complainant that a FOIA request "*is not a private transaction*".
33. In correspondence with the Commissioner, Northamptonshire Police said that it considered that any person who communicated with the police would expect some privacy in relation to any communication they may have.
34. In this case, the Commissioner is satisfied that the data subject would have the reasonable expectation that their personal data, if held, would not be disclosed.

Consequences of disclosure

35. As to the consequences of disclosure upon a data subject, the question – in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to that individual.
36. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. She will also take into account the fact that disclosure under the FOIA is effectively an unlimited disclosure to the public at large, without conditions.
37. The Commissioner accepts that there is the potential for an individual to feel distressed if Northamptonshire Police confirmed whether or not information of the type requested was held, particularly as she has found that it would not be within their reasonable expectation.

General principles of accountability, transparency and legitimate public interest in disclosure

38. Notwithstanding a data subject's reasonable expectations or any damage or distress caused, it may still be fair to disclose information, or in this case confirm or deny if information is held, if there is a more compelling public interest in doing so.
39. The Commissioner appreciates that there is a general public interest in accountability and transparency. 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.

Conclusion

40. The Commissioner acknowledges that the complainant considers that the information could be provided with personal information redacted. However, the Commissioner is mindful of the wording of the request, in particular that a named individual is specifically mentioned in the request.
41. In considering whether the exemption contained within section 40(5)(b)(i) was correctly applied, the Commissioner has taken into account that disclosure under the FOIA should be considered in its widest sense – which is to the public at large.
42. With due regard to the reasonable expectations of the data subject, 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.

43. The Commissioner has therefore concluded that confirmation or denial as to whether the requested personal data is held would be in breach of the first data protection principle. She considers that the exemption provided by section 40(5)(b)(i) is engaged and that, in this case, the Northamptonshire Police was therefore not obliged to confirm or deny whether it held the information requested by the complainant.

Right of appeal

44. 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

45. 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.
46. 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

**Deborah Clark
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**