

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 April 2018

Public Authority: Independent Office for Police Conduct
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant submitted a request for information asking whether staff working in the Independent Office for Police Conduct's internal investigations unit, were ex police officers or staff. The IOPC withheld the requested information, citing section 40(2) (3rd party personal information) of the FOIA.
2. The Commissioner's decision is that the Independent Office for Police Conduct has applied section 40(2) of the FOIA appropriately.
3. The Commissioner does not require the Independent Office for Police Conduct to take any steps as a result of this decision.

Request and response

4. Although the complainant made his request to the Independent Police Complaints Commission (IPCC) this was abolished on 8 January 2018 and replaced by the Independent Office for Police Conduct (IOPC). The Commissioner will refer to the IOPC in this decision notice.
5. On 15 August 2017, the complainant wrote to the IOPC and requested information in the following terms:
"I WRITE TO MAKE A FOI REQUEST HOW MANY IPCC STAFF IN THE IIIU HAVE BEEN EX POLICE OFFICERS OR STAFF."
6. The IOPC responded on 4 September 2017. It explained that it was withholding the requested information citing the section 40(2) (3rd party personal information) exemption of the FOIA. The IOPC also provided

the complainant with a link to information about how many former police officers and civilian staff were employed by it as a whole.

7. Following an internal review the IOPC wrote to the complainant on 27 December 2017, upholding its application of the section 40(2) exemption.

Scope of the case

8. Initially the complainant contacted the Commissioner on 11 September 2017 to complain about the way his request for information had been handled. However, the complainant had not requested an internal review. The Commissioner explained to him that he needed to do this first.
9. The complainant contacted the Commissioner on 27 December 2017 and confirmed that an internal review had been carried out and that he wished to continue with his complaint.
10. The Commissioner will consider the IOPC's application of section 40(2) and the length of time taken to deal with the request.

Reasons for decision

Section 40 – 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. The Commissioner notes that the information in this case does not directly identify individuals. However, because the name of an individual is not known, it does not mean that an individual cannot be identified. In her guidance on section 40¹ (the guidance) the Commissioner notes that:

"While in many cases it will be clear whether the information is personal data, there will be other cases, particularly where individuals are not directly referred to by name, where it is necessary to consider the terms of the definition carefully. Information is still personal data even if it does not refer to individuals by name, provided that it meets the definition of personal data in the DPA."
15. In this case, the IOPC explained that there are only 2 members of staff working in its IIU and that the complainant, amongst others, knows who they are, as he has had past dealings with the staff in question. The IOPC also explained that it considered that information relating to career backgrounds was the personal data of the individuals' concerned and that it would be unfair to disclose it.
16. The Commissioner has considered the withheld information. Given the above explanation, particularly the small number of staff working in the IOPC's IIU, the Commissioner considers that it is reasonably likely that the staff in question could be identified.
17. The Commissioner is therefore satisfied that the requested information 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 identifiable individuals.
18. The Commissioner will go on to consider whether disclosure of the individuals concerned would breach one of the data protection principles.

Would disclosure breach one of the data protection principles?

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

19. The IOPC 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. 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 any party 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 any of the data subjects have 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 Commissioner considers that employees of IOPC would have a reasonable expectation that information relating to their previous employment would not be disclosed by their current employer.

Consequences of disclosure

30. In looking at the consequences of disclosure on the data subjects, the Commissioner has considered what they might be.
31. The IOPC explained that it considered that disclosure of the information would have a significant impact on the individuals concerned. It pointed out that its staff make decisions in relation to people's complaints against the police and that members of the public do not always agree with these decisions and therefore seek information to undermine them. The IOPC also confirmed that in the past staff had been harassed via social media.
32. It explained that in one case, a caseworker was subject to verbal abuse and harassment via social media from a number of individuals. This led to the staff member having to seek an injunction, relating to the harassment, against the individuals involved. The effect of this on the member of staff was considerable in relation to their health and wellbeing.
33. IOPC also explained that it takes a careful approach in relation to its staff and their data.

34. The requested information, if disclosed, would reveal information about employees of the IOPC. 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 individuals involved or have an unfair impact on them.

Conclusion

35. The Commissioner considers that there is some legitimate public interest in the disclosure of the requested information, as it deals with whether ex police officers or staff work for the IOPC. She also accepts that legitimate interests include the broad general principles of accountability and transparency.
36. However, the Commissioner notes that the IOPC publishes figures about how many former police officers and civilian staff are employed by it overall. The Commissioner considers that this goes some way to satisfying the public interest.
37. Furthermore, the Commissioner also accepts that, taking everything into account, disclosure in this case could have an impact on the individuals concerned. She therefore considers that the legitimate public interest favours non-disclosure of the withheld information.
38. The Commissioner considers that the section 40(2) exemption is engaged.
39. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Other matters

40. The complainant requested an internal review on 20 November 2017. The IOPC sent the outcome of its internal review on 27 December 2017.
41. Part VI of the section 45 Code of Practice (the code) makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information.

42. While no explicit timescale is laid down in the code, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of receipt of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
43. The Commissioner is concerned that it took over 20 working days for the IOPC to complete the internal review.

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
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