

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 June 2018

Public Authority: Chief Constable West Midlands Police
Address: Police Headquarters
Lloyd house
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant requested information about an internal complaint regarding an investigation into a murder. West Midlands Police refused to either confirm or deny holding information within the scope of the request, citing section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that West Midlands Police was correct to neither confirm nor deny holding information within the scope of the request by virtue of section 40(5)(a) of the FOIA.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 23 February 2017, the complainant wrote to West Midlands Police and requested information in the following terms:

"I am writing to you with regards to a complaint made to the IPCC about the murder of [name redacted]. The incident happened in [place redacted] on [sic] [month redacted] 2010.

[The IPCC] ... decided this suitable to be sent back to West Mids Police for investigation. Therefore under the Freedom of Information Act 2000 (FOIA) could you please provide me with a copy of your investigation and report into this matter".

5. West Midlands Police responded on 7 March 2017. It refused to confirm or deny whether it held the requested information, citing sections 40(5) (personal information) and 30(3) (investigations and proceedings) of the FOIA.
6. Following an internal review West Midlands Police wrote to the complainant on 25 January 2018. In response to the reasons he gave for requesting a review, West Midlands Police confirmed its application of section 40(5) of the FOIA and advised the complainant with respect to the subject access provision under the Data Protection Act 1998 (DPA). No reference was made to section 30(3) of the FOIA.

Scope of the case

7. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation on 8 April 2018 to complain about the way his request for information had been handled.
8. The complainant acknowledged that the information may be held and released under the subject access provisions of the DPA. However, he told the Commissioner he considered that, as the requested information was about an internal complaint, it should be available to the general public and should be released under the FOIA.
9. He subsequently confirmed in correspondence with the Commissioner dated 21 April 2018 that he wished the matter to be progressed as a complaint under the FOIA.
10. During the course of the Commissioner's investigation, West Midlands Police clarified that it considered that the requested information, if held, was exempt by virtue of section 40(5)(a) of the FOIA.
11. The analysis below considers West Midlands Police's application of section 40(5)(a) of the FOIA to the requested information.

Reasons for decision

Section 40 personal information

12. Section 40(5) of the FOIA states:

"The duty to confirm or deny –

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)...".

13. Subsection (1) of section 40 of the FOIA states that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".

14. The definition of personal data is set out in section 1 of the DPA. Section 1 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."

15. 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.

16. In correspondence with the complainant, West Midlands Police told him:

"In this case your request is for your own information and, as such, if any information exists it would be exempt by virtue of section 40(5) of the Freedom of Information Act. Section 40(5) of the Act relieves us of the duty to confirm or deny that we hold any relevant data".

17. In correspondence with the Commissioner, West Midlands Police told her that the requested data, if held:

"... would be regarding a professional standards investigation into a criminal investigation which directly involves the requester".

18. It explained that a disciplinary complaint such as the one referred to in this case:

"...could not exist without the existence of the murder investigation".

19. It also told the Commissioner, that while a disciplinary investigation, if held, would contain information regarding the officers involved, it would also involve information about the requester.

20. In her guidance about how to deal with requests for information involving multiple data subjects, including the requester, the Commissioner states¹:

"Requested information may include the personal data of several data subjects.

Where 'mixed' personal data is so closely linked that it is not possible to separate it out, there is no requirement to assess the relative extent or significance of the different sets of personal data. A request from any of the data subjects should be refused under section 40(5)"

21. The Commissioner considers that context is important here. Having considered the wording of the request, and the further clarification the complainant provided, the Commissioner is satisfied that the complainant is, or would be, a data subject of the requested information for the purposes of section 40. This is because the requested information, if held, is about or connected to the complainant himself.
22. In relation to such information, and as set out in paragraphs 12 and 13 above, the provisions of section 40(5) of the FOIA mean that West Midlands Police is not required to comply with the duty imposed by section 1(1)(a) of the FOIA - to confirm or deny that the information is held - as the duty to confirm or deny does not arise in relation to information which is (or, if it were held by the public authority, would be) exempt information by virtue of subsection (1).
23. The Commissioner is satisfied that complying with section 1(1)(a) in this case would effectively confirm or deny whether the requested information is held in connection with the complainant.
24. She therefore considers that the section 40(5)(a) exemption was correctly relied upon by West Midlands Police in this case.

Other matters

25. In correspondence with the complainant, West Midlands Police told him:

"... the FOI Act is not the appropriate route for individuals to request information about themselves. ... should you wish to know

¹ <https://ico.org.uk/media/for-organisations/documents/1209/personal-data-of-both-the-requester-and-others-foi-eir.pdf>

what information, if any, West Midlands Police holds about you, please complete a subject access request form”.

26. In the Commissioner’s view, it is appropriate that any decision as to whether or not a data subject is entitled to be told if personal data about them is being processed should be made in accordance with the subject access provisions of the DPA.
27. If a data subject is dissatisfied with the outcome of a subject access request, they can raise their concern about how the organisation handled that request with the ICO.
28. The Commissioner is satisfied that West Midlands Police advised the complainant in this case with respect to making a subject access request.

Right of appeal

29. 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

30. 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.

31. 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**