

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2023

Public Authority: Chief Constable of West Yorkshire Police
Address: PO BOX 9
Laburnum Road
Wakefield WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested information from West Yorkshire Police (the Police) relating to an alleged criminal offence. The Police stated that it could neither confirm nor deny that it holds the requested information.
2. The Commissioner's decision is that the Police correctly cited section 40(5A) of FOIA to neither confirm nor deny that it holds the requested information.
3. The Commissioner does not require the Police to take any further steps in relation to this matter.

Request and response

4. On 4 March 2023, the complainant wrote to the Police and requested information in the following terms:

"What is the current status of crime reference XXXX of XXXX?
I was told by the Mayor's office that it had been passed to the Metropolitan Police, but they say they have no record of it."
5. The Police responded on 22 March 2023. It stated that it could neither confirm nor deny that it held the requested information, citing section 30(3) (investigations and proceedings) and section 40(5)(personal information) of FOIA.
6. The complainant requested an internal review on 22 March 2023 and asked it to conduct an internal review, stating:

"...it is frankly farcical to refuse to confirm or deny the existence of the record of whether a crime is under active investigation, has been transferred to another force or decided on no further action, when this is information that you must have, given that the offence has been reported and recorded."

7. The Police issued an internal review response on 30 March 2023 upholding its position as regards sections 30(3) and 40(5) of FOIA.
8. Following the intervention of the Commissioner, the Police issued a fresh response explaining that the reference number quoted by the complainant was a contact log reference number and not a crime reference number and that they could neither confirm nor deny that the information requested is held by virtue of section 40(5) (personal information) of FOIA.

Reasons for decision

Section 40 – Personal information

9. Section 40(5A) of FOIA provides that the duty to confirm or deny whether information is held does not arise in relation to information which constitutes personal data of which the applicant is the data subject.
10. Therefore, for the Police to be entitled to rely on section 40(5A) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, confirmation or denial would need to constitute the disclosure of the complainant's own personal data.

Would the confirmation or denial that the requested information is held constitute the disclosure of the complainant's personal data or the information of other individuals?

11. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:-

"any information relating to an identified or identifiable living individual".

12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

14. In this case, the request refers to the status of a contact log reference number in respect of contact made by an individual with the Police in respect of an alleged crime. Confirming or denying that the information requested is held would clearly disclose personal information about a named individual – because it would reveal to the world at large whether that individual had been in contact with the Police.
15. In the circumstances of this case the Commissioner accepts that, if held, any information within the scope of the request would clearly be the personal information of the individual and other identified or identifiable individuals. Therefore, he is satisfied that if the Police were to confirm or deny whether it holds the requested information, this would in turn be disclosing personal information to the world at large.
16. The Commissioner recognises that the complainant has strong personal reasons for pursuing this matter. Whilst he sympathises with those reasons, he does not consider that they justify revealing personal information to the world at large – which is what FOIA requires a public authority to do. It is not a private transaction to the requester, and therefore not an appropriate avenue for revealing whether personal information is held. Should the complainant wish to know the status of a contact with the Police, they should contact the police privately and not via an FOI request.
17. The Commissioner is therefore of the view that the Police were entitled to rely on section 40(5A) of FOIA to neither confirm nor deny whether it holds the requested information in this case.

Right of appeal

18. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

Michael Lea
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Wycliffe House
Water Lane
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