

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 June 2023

**Public Authority:** Chief Constable Avon & Somerset Police  
**Address:** Valley Road  
Portishead  
Bristol  
BS20 8JJ

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Avon and Somerset Police (ASP) for the numbers of drivers involved in road traffic incidents with cyclists resulting in serious injury from 13 incident reports in 2021 and also the numbers of associated victim statements taken, fixed penalty notices (FPN) issued, or convictions obtained for dangerous or careless driving.
2. The Commissioner's decision is that ASP breached section 10(1) of FOIA by failing to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner does not require ASP to take any further action.

#### **Request and response**

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4. On 24 November 2022, the complainant wrote to the public authority and requested information in the following terms:

"In relation to the following road traffic incidents resulting in serious injury to cyclists (Avon and Somerset Police incident reference number):

212100114 on 05/01/21, 212101494 on 03/03/21,

212106120 on 08/04/21, 212103958 on 22/04/21  
212200213 on 02/08/21, 212200286 on 07/08/21  
212104444 on 09/09/21, 212104716 on 15/09/21  
212104932 on 16/09/21, 212104851 on 29/09/21  
212105073 on 11/10/21, 212105204 on 19/10/21  
212106228 on 23/12/21

Could you please tell me in how many cases statements were taken from the victims of the incidents.

Could you also please tell me how many investigations resulted in the driver of a motorised vehicle being prosecuted, in how many cases this was for dangerous driving, how many for careless driving and in how many cases a conviction was secured.

Could you also tell me how many of these incidents resulted in the police issuing a driver with a fixed penalty notice or any other enforcement action. I confirm that I do not require the name and address of any driver or the registration number of any vehicle."

5. ASP responded on 22 December 2022. It refused to provide the requested information, citing the following procedural sections of the FOIA exemptions:

"Your request has been considered and I am not obliged to provide the information requested as this would identify personal information.

The reference numbers provided relate to specific incidents involving identifiable individuals. To provide the information requested about those incidents would therefore reveal personal information about those involved. I have considered the possibility that personal information would be hidden by the fact that there are 13 incidents in total, meaning it would not be immediately clear which incident a particular piece of information related to. However, this does not take into account the possibility of additional prior knowledge, which when combined with the details requested here, could lead to information being identified about a particular case, and thereby about those involved.

The exemption applicable to this is;

Section 40(2), third party personal information."

6. On 22 December 2023 the complainant requested an internal review and stated

“In previous years I have requested and been supplied with like information . For example, request 1173/18.

In that case my question was:

In relation to the following road traffic incidents resulting in serious injury to cyclists (your refs from collision report form 629):

171700898, 171702228, 171702465, 171702485, 171704043, 171705238, 171707531, 171800286, 171708690

could you please tell me how many resulted in the driver of a motorised vehicle being prosecuted, in how many cases this was for dangerous driving, how many for careless driving and in how many cases a conviction was secured. Could you also tell me how many of these incidents resulted in the police issuing a driver with a fixed penalty notice or any other enforcement action.

Your answer was:

FOI ref.	Outcome
1173/18	2 x prosecutions (Due care and attention)
	2 x NFA (no lines of enquiry)
	2 x NFA
	1 x NFA following interview
	1 x education course (Due care and attention)

There is no way that I can think of to link the numbers above individually to your incident reference numbers. Nor is there any way that I could then work out the name or any other personal details of the driver or cyclist concerned. The section 40(2) exemption does not therefore apply. The fact that a response to my request was not made until the last permissible day reinforces my belief that your authority is seeking to evade rather than comply with your duties under the Act.”

7. Following an internal review the public authority wrote to the complainant on 17 March 2023. It stated that

"I have reviewed the case and have determined that there are grounds for the exemption under section 40 to be considered, especially if the consideration was taken that the information was sought in respect of each case.

Even so each reference you have cited relates to an identifiable individual therefore essentially you have requested this information specifically relating to 9 individuals.

The rights afforded under the data protection act are not superseded by the Freedom of information Act and any information that is personal should not be disclosed. Additional considerations should also be afforded given that you have requested prosecution details which constitute special characteristics under the data protection act.

I have also given consideration to the fact we have provided this information on previous occasions, so I can see how this inconsistency has given you cause to question our response.

Having given consideration to all the above, and having the advantage of being able to review the specific details sought, I am of the opinion the exemption was applied correctly, I am conscious that additional detail may also be available in the public domain that I am not privy to that would allow for the information to be associated to a specific case. Whilst it may appear to be a statistical response that is anonymised, for the reasons set out I feel this would enable personal information to be identified.

In that case I have decided to uphold the initial decision made on 22<sup>nd</sup> December 2022."

## **Scope of the case**

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8. The complainant contacted the Commissioner on 21 February 2023 to complain about the way his request for information had been handled. The complainant additionally informed the Commissioner that ASP had not responded to their request for an internal review.
9. The Commissioner contacted ASP on 6 March 2023 and requested they provide the complainant with an internal review within 10 working days. ASP responded to the complainant on the 17 March 2023.

10. On 2 June 2023 following contact from the Commissioner, ASP notified the Commissioner that they had reviewed their position to withhold information using section 40(2) of FOIA and had now provided the complainant with all the information within the scope of the request. The Commissioner has therefore only dealt with the timeliness issues in this notice.

## **Reasons for decision**

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11. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

12. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
13. From the evidence provided to the Commissioner in this case, it is clear that ASP did not deal with the request for information in accordance with FOIA. The Commissioner finds that ASP has breached section 10(1) by failing to provide the requested information within 20 working days.

## **Other matters**

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### **Internal review request**

14. Internal reviews are not a statutory requirement under FOIA, but the section 45 Code of Practice recommends that public authorities offer requesters the right to request a review should they be unhappy with a response to their information request.
15. The Commissioner notes that the complainant requested an internal review on 22 December 2022 and ASP did not provide a response until 17 March 2023 following contact from the Commissioner and this exceeded 40 working days.
16. Although there is no statutory time set out in FOIA within which public authorities must complete a review, the Commissioner takes the view

that a reasonable time for completing an internal review is 20 working days, following the receipt of the request, and that usually no more than 40 working days will be required. The Commissioner therefore recommends that ASP review the Section 45 code of practice<sup>1</sup>

17. The ICO also publishes a FOI module self-assessment toolkit on Timeliness for organisations to review their processes on its website and the link is provided below<sup>2</sup>

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-45-code-of-practice-request-handling/>

<sup>2</sup> <https://ico.org.uk/for-organisations/foi-self-assessment-toolkit/topic-1-timeliness/>

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Laura Tomkinson**  
**Group Manager – FOI Casework**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**