

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 June 2023

Public Authority: Chief Constable of Northumbria Police
Address: Middle Engine Lane Police Station
Wallsend
Newcastle upon Tyne
NE28 9NT

Decision (including any steps ordered)

1. The complainant has requested details of police officer dismissals due to misconduct in 2021. The Chief Constable of Northumbria Police ("Northumbria Police") refused to confirm or deny whether such information was held under Section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that Northumbria Police were entitled to rely on Section 40(5) to neither confirm nor deny whether this information was held.
3. The Commissioner does not require further steps.

Request and response

4. On 17 February 2023, the complainant wrote to Northumbria Police and requested information in the following terms:

"Under the Data Protection Act or any other relevant Act please supply any information that you have in regards to any Police Constable posted to Tynedale RPT and have over 24 years of service that were asked to retire from Northumbria Police from April to May 2021 due to potential or actual misconduct including destroying evidence and what the officers identify as."

5. Northumbria Police responded on 22 March 2023. It stated that were such information to exist, it would consider it exempt under Section 40(5) of the FOIA.
6. Following an internal review, Northumbria Police upheld its original decision.

Reasons for decision

7. The following analysis explains why the Commissioner is satisfied that the public authority was entitled to neither confirm nor deny holding the information that had been requested.
8. Section 40(5A) of FOIA excludes a public authority from complying with the duty to confirm or deny in relation to information which, if held, would be exempt information by virtue of section 40(1) of FOIA – ie the applicant's own personal information.
9. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny does not arise in relation to other information – ie third party personal information - if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR') to provide that confirmation or denial.
10. The decision to use a 'neither confirm nor deny' response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point, and main focus for a 'neither confirm nor deny' response in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not particular information is held. The Commissioner's guidance explains that there may be circumstances in which merely confirming or denying whether or not a public authority holds information about an individual can itself reveal something about that individual.
11. The original wording of the request specifies a narrow time range and area, a length of service for any individuals within the scope of the request, a specific reason for dismissal, and what they may identify as. The Commissioner therefore considers it highly likely that if such information were held, it would identify individuals. If Northumbria Police were to confirm or deny whether it was held, this would therefore be tantamount to disclosing an individual's personal data.
12. The Commissioner has next considered whether confirming or denying that the information is held would contravene one of the data protection principles.

13. 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 – or as in this case the public authority can only confirm whether or not it holds the requested information - if to do so would be:

- lawful (ie it would meet one of the conditions of lawful processing listed in Article 6(1) UK GDPR);
- fair; and
- transparent.

14. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” conditions listed in the Article applies. The Commissioner considers that the condition most applicable in this case would be that contained in Article 6(1)(f) UK GDPR which states:-

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child” .

15. In considering any legitimate interest(s) in the disclosure of the requested information or in confirming or denying whether the requested information is held under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

16. In this case, the complainant has stated they believe Northumbria Police to have “covered up” evidence of misconduct. The Commissioner has not received any documentation that suggests this.

17. The Commissioner is satisfied that there may be a wider legitimate interest, ie transparency about Northumbria Police’s procedures when handling instances of misconduct. There is also a general legitimate interest in Northumbria Police being accountable for its officers.

18. The Commissioner also recognises that individuals have a clear and strong expectation that their personal data will be held in accordance with data protection laws. In this case, he is satisfied that any individual concerned would not reasonably expect Northumbria Police to confirm to

the world at large whether or not it held the requested information in response to a FOI request.

19. He has therefore determined that there is insufficient legitimate interest to outweigh any potential data subjects' fundamental rights and freedoms, and consequently confirming whether or not the requested information is held would not be lawful. The Commissioner's decision is that Northumbria Police were entitled to rely on section 40(5) to neither confirm nor deny it holds information falling within the scope of the request.

Procedural matters

20. Under section 10 of FOIA a public authority is obliged to respond to a FOIA request within twenty working days. In this case Northumbria Police failed to respond within the statutory time for compliance. It therefore breached section 10 FOIA in the handling of this request.

Right of appeal

21. 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

22. 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.
23. 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

Joanna Marshall
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