

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 July 2023

Public Authority: The Office of the West Midlands Police & Crime Commissioner

Address: Lloyd House
Colmore Circus
Queensway
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant submitted an information request to the Office of the West Midlands Police and Crime Commissioner (WMPCC) for correspondence between the Police and Crime Commissioner/Assistant Commissioner and Green Lane Masjid.
2. The Commissioner's decision is that WMPCC was correct to withhold the information under section 40(2) of FOIA. However, in failing to respond to the request within the statutory timescale, the Commissioner has determined that WMPCC breached section 10(1) of FOIA.
3. The Commissioner does not require WMPCC to take any further steps as a result of this decision notice.

Request and response

4. On 28 December 2022, the complainant wrote to WMPCC and requested information in the following terms:

“Please would you let me know in writing if you hold information of the following description:

Communications between:

On the one hand, the Police and Crime Commissioner and/or and of the Assistant Police and Crime Commissioners; and

On the other hand, the Green Lane Masjid in Birmingham and/or its representatives.

To include meetings, visits, emails, phone calls and SMS messages.”
5. WMPCC responded on 7 February 2023. It disclosed correspondence, subject to some redactions under section 40(2) of FOIA.
6. Upon receiving this response, the complainant submitted an internal review on 7 February 2023 and on 27 April 2023, WMPCC provided its internal review response, in which it disclosed details of those in a senior position at WMPCC but maintained its reliance on section 40(2) regarding the personal data of people not in the public domain.

Reasons for decision

Section 40(2)-personal information

7. Section 40(2) of FOIA provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
8. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:

“any information relating to an identified or identifiable living individual.”
9. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

10. In this case, the complainant requested correspondence between WMPCC and Green Lane Masjid. WMPCC disclosed the held correspondence but redacted information that related to names and contact details. Therefore, the Commissioner is satisfied that it is personal data.
11. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focused here on principle (a) which states:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
12. 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 if to do so would be lawful, fair, and transparent.
13. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider if there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
14. The Commissioner considers that the complainant is pursuing a legitimate interest in seeking the requested information because it is important for WMPCC to be transparent regarding its relationships with third parties, and that disclosure of the requested information is necessary to meet that legitimate interest.
15. However, in balancing the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects involved, the Commissioner has not seen any evidence to suggest that the individuals involved would have a reasonable expectation that their personal data would be disclosed in response to an information request.
16. Furthermore, the Commissioner is aware that in its internal review, WMPCC disclosed the names of its senior members of staff and explained that it contacted Green Lane Masjid, who confirmed that it did not want the names and contact details of its staff to be released into the public domain.
17. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful. He therefore has not gone on to separately consider whether disclosure would be fair or transparent.

18. The Commissioner finds that section 40(2) of FOIA is engaged in respect of the withheld information.

Procedural matters

19. Under Section 10(1) of FOIA a public authority is obliged to respond to a FOIA request within twenty working days. In this case WMPCC failed to respond within the statutory time for compliance. It therefore breached section 10(1) of FOIA in the handling of this request.

Other matters

20. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
21. In this case the complainant requested an internal review on 7 February 2023 and WMPCC provided the outcome of its review on 27 April 2023. The Commissioner reminds WMPCC of the Code of Practice and urges it to respond in a timely manner.

Right of appeal

22. 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

23. 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.
24. 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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