

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2023

Public Authority: Chief Constable of Nottinghamshire Police
Address: Nottinghamshire Police Headquarters
Sherwood Lodge
Arnold
Nottingham
NG5 8PP

Decision (including any steps ordered)

1. The complainant has requested information relating to gross misconduct outcomes from Nottinghamshire Police ('the Police').
2. The Commissioner's decision is that the Police has correctly relied on section 40(2) of FOIA to withhold the information.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 16 August 2023, the complainant wrote to the Police and requested information in the following terms:

"Please provide a copy of the outcome notice of misconduct proceedings for Inspector [name redacted] who was jailed for sexually abusing a 13-year-old girl: [website redacted]

The above article refers to a hearing at which it was decided he would forfeit 60 per cent of his pension. If this is a different hearing to the one I seek information on, please also provide recorded information about this hearing.

Please also send me a copy of the outcome notice of misconduct proceedings for [name redacted] who was found guilty of a number of child-sex offences: [website redacted]."

5. The Police responded on 7 September 2023. It stated that no information was held in respect of the second part of the request, but directed the complainant to published information, advising that this information was reasonably accessible to the complainant and therefore exempt under section 21 of FOIA. It advised that the remaining information at the first and third part of the request was personal data and therefore exempt under section 40(2).
6. Following an internal review, the Police wrote to the complainant on 19 September 2023. It stated that it was maintaining its position.

Scope of the case

7. The complainant contacted the Commissioner on 29 September 2023 to complain about the way their request for information had been handled. He said:

"My view is that the notices are likely to be held on a website that harvests police misconduct notices – [website redacted] - and is therefore publicly available. Unfortunately, this website charges people to see the notices. I can't afford to pay so am therefore excluded from seeing them."
8. This comment is noted, but that access regime, if indeed it is genuine, is clearly not being provided either by Nottinghamshire Police or via FOIA so the Commissioner has not further considered it here.
9. The complainant also stated:

"Nottinghamshire Police appear to be arguing that information that was made publicly available by them should not be made available to me under FOIA (I'm not certain that both hearings were held in public)".
10. It should be noted that any previous disclosure of the misconduct outcomes that the force may have made will have been a requirement of the Police Conduct Regulations 2020¹, ie not under FOIA, although the

¹ <https://www.legislation.gov.uk/uksi/2020/4/made>

earlier case will have preceded these Regulations. This is a different legal access regime to FOIA and it is not something that the Commissioner has any jurisdiction over; he is only able to consider disclosure under FOIA.

11. The complainant made no reference to some of the information not being held, ie the second part of the request, so the Commissioner has not considered this point. He also made no reference to the information which Nottinghamshire Police said was exempt under section 21 of FOIA, so this has also not been considered.
12. The Commissioner considers that the scope of his investigation is to establish whether the Police is entitled to withhold the information requested at the first and third part of the request under section 40(2) of the FOIA.

Reasons for decision

Section 40 – personal information

13. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
14. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
15. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
16. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

17. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual.”

18. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
19. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
20. 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.
21. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information withheld in this case includes specific personal details about named individuals and their personal life in connection with criminal allegations. The personal data relates to the data subjects who can be identified as they are named within the request.
22. Having considered the nature of the withheld information, the Commissioner is satisfied that it both relates to and identifies the individuals concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

Is the information criminal offence data?

23. Information relating to criminal convictions and offences is given special status in the UK GDPR.
24. Article 10 of the UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA personal data relating to criminal convictions and offences includes personal data relating to:
 - (a) The alleged commission of offences by the data subject; or
 - (b) Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.
25. Having considered the wording of the request, the Commissioner finds that the requested information is criminal offence data. The misconduct proceedings clearly relate to the named individuals and, due to the nature of the offences, necessarily refer to criminal allegations.
26. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in

response to an information request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.

27. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under the FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject) or Part 3 paragraph 32 (data made manifestly public by the data subject).
28. When considering the disclosure of criminal offence data under FOIA, information can only be disclosed if either the individual whose data it is has given their explicit consent for the information to be disclosed or, if they have manifestly made the information public themselves.
29. Whilst it is noted that some details regarding both officers are still in the public domain by way of the media, the Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to an FOIA request or that they have deliberately made this data public.
30. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data in order to disclose it under the FOIA would therefore breach principle (a).
31. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data would therefore breach principle (a) and so this information is exempt under section 40(2) of the FOIA.

Right of appeal

32. 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

33. 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.
34. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF