

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

### **Decision notice**

**Date:** 4 January 2024

**Public Authority:** Chief Constable of Northamptonshire Police  
**Address:** Wootton Hall  
Wootton Hall Park  
Northampton  
NN4 0JQ

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

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1. The complainant has requested the outcome notices for two misconduct hearings from Northamptonshire Police. Northamptonshire Police refused to provide the requested information citing sections 38(1) (Health and safety) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that Northamptonshire Police was entitled to rely on section 40(2) of FOIA. No steps are required.

#### **Background**

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3. Northamptonshire Police has explained to the complainant:

"The outcomes of both hearings were published for the required 28 days on the Force website as per Police Conduct Regulations 2020 [Notification of outcome – paragraph 43]<sup>1</sup>:

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

(6) Subject to the harm test and to paragraph (10), the person chairing a misconduct hearing must require the appropriate authority or, as the case may be, the originating authority, to publish the report submitted under paragraph (1).

(7) Where the appropriate authority or, as the case may be, the originating authority is required to publish the report in accordance with paragraph (6), it must do so as soon as practicable after the officer has been notified of the outcome of the proceedings under paragraph (2).

(8) Where the appropriate authority or the originating authority publishes a report in accordance with paragraph (6), it must publish the report on its website for a period of not less than 28 days”.

4. The Commissioner understands that the requested outcome notices were made available as required by Police Conduct Regulations 2020 (the “Regulations”). However, having reached the specified time limit of being publicly available for 28 days, they have since been removed.

## **Request and response**

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5. On 16 August 2023, the complainant wrote to Northamptonshire Police and requested the outcome notices of misconduct proceedings for two of its ex-officers. The Commissioner has not included the full wording of the request to minimise the possibility of reidentification of those concerned.
6. On 13 September 2023, Northamptonshire Police responded. It refused to provide the requested information, citing section 40(2) of FOIA.
7. The complainant requested an internal review on 14 September 2023.
8. Northamptonshire Police provided an internal review on 12 October 2023 in which it revised its position, maintaining reliance on section 40(2) and adding reliance on sections 38(1)(a) and (b) of FOIA.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 16 October 2023 to complain about the way his request for information had been handled. He disagreed with Northamptonshire Police’s reliance on decision notice

IC-67112-T2X3<sup>2</sup>, saying that the decision was flawed, and provided his own rationale. He also considered that “the policing landscape has dramatically changed” since that notice was issued in July 2020.

10. The Commissioner notes that the decision notice referred to was appealed and partially overturned by the First-tier Tribunal<sup>3</sup>. However, the only matter that was over-turned in that case was that of the disclosure of the name of a Legally Qualified Chair. The Commissioner therefore considers it reasonable for Northamptonshire Police to have referred to that case in its rationale because, whilst in the complainant’s view the policing may have changed, the data protection legislation relied on has not. Nevertheless, the Commissioner will conduct his investigations on a case-by-case basis.
11. The complainant commented that “allegations classified as ‘sexual conduct’ continue to grow” and that women were “feeling more negative towards the police”. He said that confidence in the police to deal fairly with complaints is at a low point and that “more transparency and accountability are urgently required”. He also considered that there are “inconsistencies in decision-making around disciplinary action”.
12. To qualify his views the complainant referred to various publications<sup>4,5,6</sup>.
13. The Commissioner will consider whether or not Northamptonshire Police was entitled to rely on the exemptions cited to withhold the two outcome notices. He has taken into account the arguments offered by both parties, albeit they may not all be directly referred to in this notice.
14. The Commissioner has viewed the withheld information in this case.

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620290/ic-67112-t2x3.pdf>

<sup>3</sup> [https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i3017/Austin,%20Jon%20\(EA.2021.0214\)%20Allowed.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i3017/Austin,%20Jon%20(EA.2021.0214)%20Allowed.pdf)

<sup>4</sup> <https://www.policeconduct.gov.uk/publications/police-complaints-statistics-england-and-wales-report-202223>

<sup>5</sup> <https://www.policeconduct.gov.uk/publications/public-perceptions-tracker-summary-report-202223>

<sup>6</sup> <https://www.gov.uk/government/publications/police-officer-dismissals-home-office-review>

## Reasons for decision

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15. It must initially be borne in mind that, even though the requested information has previously been published under the Regulations, this was a distinct disclosure specifically provided for under that legislation. Once the required parameters had been met, then the information was removed from the public domain. The Commissioner is now considering whether or not that information should be disclosed under the provisions of FOIA, which is an entirely different legal gateway.
16. 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.
17. 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').
18. 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.
19. 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?

20. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
21. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
22. 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.
23. 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.

24. Clearly the requested information relates to two named individuals and the outcome of misconduct hearings they were subject to. Accordingly, it is their personal data.

**Would disclosure contravene principle (a)?**

25. Article 5(1)(a) of the UK GDPR states that: "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".
26. In the case of an 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.
27. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
28. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the UK GDPR.
29. Due to their differing circumstances, the Commissioner has considered the two officers separately.

**Officer receiving a suspended prison sentence**

**Is the information criminal offence data?**

30. Information relating to criminal convictions and offences is given special status in the UK GDPR.
31. 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.
32. Having considered the wording of the request, the Commissioner finds that information about one of the officers clearly includes criminal offence data. He has reached this conclusion on the basis that the officer received a suspended prison sentence so was clearly a proven criminal offence. Details regarding the other officer will be considered below.

33. 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 under FOIA, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.
34. 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).
35. Whilst it is noted that some details regarding the officers concerned 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 a FOIA request or that they have deliberately made this data public.
36. 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) and so this information is exempt under section 40(2) of the FOIA.

### **Officer guilty of gross misconduct**

#### **Lawful processing: Article 6(1)(f) UK GDPR.**

37. 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" lawful bases for processing listed in the Article applies.
38. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) 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"<sup>7</sup>.

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<sup>7</sup> Article 6(1) goes on to state that:- "Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks". However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:- "In determining for the purposes of

39. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
- i) Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
  - ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
40. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Legitimate interests**

41. In considering any legitimate interests in disclosure, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
42. Having considered his concerns, the Commissioner accepts that the complainant has a legitimate interest in seeking the requested information.
43. The Commissioner also acknowledges that there may be a wider legitimate interest in the transparency regarding the circumstances of the officer's gross misconduct.

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this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted".

44. The Commissioner therefore agrees that disclosure would go some way towards informing the public about Northamptonshire Police's accountability in its disciplinary procedures, and to increasing public confidence in the integrity and accountability of serving police officers.
45. Therefore, the Commissioner recognises there is a legitimate interest in disclosure in this case.

### **Is disclosure necessary?**

46. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so disclosure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
47. The Commissioner understands that the requested information was previously available to the public via the Regulations, however, as per those Regulations the requested notice is now no longer published. The complainant has made reference to the information being available via a third party on payment of a fee, however, as this is a private mechanism for obtaining the information the Commissioner has disregarded it. Therefore, the Commissioner can see no alternative option other than disclosure under FOIA for the legitimate aim to be met.

### **Balance between legitimate interests and the data subjects' interests or fundamental rights and freedoms**

48. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
49. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.



50. In the Commissioner's view, a key issue is whether the individual concerned would have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

51. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

52. Northamptonshire Police explained to the complainant:

"Once the misconduct report has been removed neither the individuals concerned, nor their families, would reasonably expect this information to be released again. The original Misconduct Outcome Notices that were previously disclosed were not made under the remit of the Freedom of Information Act, and therefore their continued availability cannot be expected.

The ICO has previously upheld the application of Section 40(2) where a request was made for details of officer misconduct hearings which have been published on the force's website and removed after 28 days - <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2620290/ic-67112-t2x3.pdf>

In addition, I would like to direct you to our website, where we publish our PSD Misconduct and Complaint Transparency Data on a quarterly basis. This information details the date, the alleged breach and the outcome:

<https://www.northants.police.uk/search?q=misconduct+outcome>".

53. Each request for information has to be considered on its own merits. The Commissioner considers that there is some legitimate interest in disclosing details of why a police officer was dismissed, to allow the public to scrutinise whether Northamptonshire Police undertook appropriate disciplinary action in the case, which stems from the interest in public authorities' accountability.

54. However, it is noted that the information was made available for a specific period of time as formally required under the relevant Regulations, this fully complying with any public interest in the matter. The public was able to view the outcome and rationale applied at the relevant time, but that window of availability has now elapsed.

55. The Commissioner notes that, in such circumstances, the named ex-officer would have no reasonable expectations that Northamptonshire Police would subsequently disclose the requested information under

FOIA. The legally required publication period has passed. The officer has been dismissed and would not expect to be subject to any further intrusion.

56. The Commissioner considers that disclosure of information concerning such matters could cause a significant invasion of privacy as the ex-officer will likely be endeavouring to make a new life for themselves and their family (if that is the case).
57. There is no presumption that openness and transparency should take priority over personal privacy in such circumstances.
58. On this occasion, the Commissioner is satisfied that the named ex-officer would have no reasonable expectation that Northamptonshire Police would make the information available again via disclosure under FOIA.
59. He has therefore weighed this against the legitimate interests in disclosure in this case, mindful that information released under FOIA is to the world at large and not just to the complainant.
60. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's 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.
61. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).
62. In view of these findings the Commissioner does not find it necessary to consider the other exemption cited.

## Right of appeal

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63. 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)

64. 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.
65. 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**