

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

### **Decision notice**

**Date:** 18 January 2024

**Public Authority:** Chief Constable of West Mercia Police  
**Address:** Hindlip Hall Police Headquarters  
Hindlip Hall  
Worcester  
WR3 8SP

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

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1. The complainant has requested information from West Mercia Police ("the public authority"), in relation to a specific court case. The public authority withheld the information, citing section 40(2) – personal information.
2. The Commissioner's decision is that the public authority has correctly applied section 40(2) of FOIA to withhold the information.
3. The Commissioner does not require any steps as a result of this decision notice.

#### **Request and response**

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4. On 8 September 2023, the complainant wrote to the public authority and requested information in the following terms:  
  
"Following the utter lack of information received in relation to the following case I hereby request information pertaining to the following Court Case:

Link provided

The case was heard at Worcester Crown Court, approx. Jan 2022. Defendants named:

[name redacted]  
[name redacted]  
[name redacted]  
[name redacted]  
[name redacted]  
[name redacted]

History: I have previously requested the information from [name redacted] MP, who in turn requested from [name redacted], MP [name redacted] replied that [name redacted] had confirmed that this case was subject to reporting restrictions however there were no reason(s) provided for this – was this to protect the victims or the perpetrators / pedophiles? Why the secrecy? What do they know, as a group, that means their punishment (or lack off) can be hidden from the public?

No information seems to be available (publicly). So at present, there is a gang of pedophile rapists loose within my hometown where myself and my family still live.

Furthermore, having searched the Worcester Crown Court list for the case it does seem to have been removed. The case number I previously had returned the incorrect case - that of a Man in Sunderland charged with assault. I'm certain that this is not yet another cover up, surely. Have we learned nothing from other similar cases?"

5. On 27 October 2023, the public authority asked the complainant to clarify what information they were asking for. The complainant responded on the same day explaining that they wanted to find out what sentence/punishment was given to each defendant in the case.
6. The public authority responded on 15 November 2023. It refused to provide the requested information, citing section 40(2) of FOIA – personal information.
7. Following an internal review the public authority wrote to the complainant on 23 November 2023. It stated that it maintained its original position.

## Scope of the case

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8. The complainant contacted the Commissioner on 23 November 2023, to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine if the public authority was entitled to withhold the information under section 40(2) of FOIA.

## Reasons for decision

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### Section 40 - personal information

10. Section 40(2) of 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.
11. 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').
12. 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.
13. 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?

14. Section 3(2) of the DPA defines personal data as:  
"any information relating to an identified or identifiable living individual".
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.

17. 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.
18. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does relate to the data subjects. This is because it would include their names and sentence they may have received. The names of the data subjects quite obviously is information that both relates to and identifies those concerned.
19. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
20. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
21. The most relevant DP principle in this case is principle (a).

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

22. 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".

23. 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.
24. 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.
25. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it also required that disclosure meets the requirements of Article 9 and Article 10 of the UK GDPR respectively.

### **Is the information criminal offence data?**

26. Information relating to criminal convictions and offences is given special status in the UK GDPR.

27. 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
28. Having considered the wording of the request and having viewed the withheld information, the Commissioner finds that the requested information does include criminal offence data. This is because it is asking for the outcome of a trial that has taken place.
29. The public authority has explained that the request is asking for the sentence/punishment of the defendants and, therefore, all of the information falls under criminal offence data. It added that the information is not currently disclosed in the public domain.
30. The public authority also advised that the individuals have not been approached to ask if they are willing to consent to disclosure of their personal information.
31. The public authority has also expressed its concerns that disclosure of the information could lead to a hate crime and, as the Police, it is their duty to protect individuals.
32. 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.
33. 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).
34. 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.
35. 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

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36. 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)

37. 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.
38. 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 .....**

**Michael Lea**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**