

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 January 2024

Public Authority: Chief Constable of Cleveland Police
Address: St Marks House
St Marks Court
Thornaby
Stockton-on-Tees
TS17 6QR

Decision (including any steps ordered)

1. The complainant requested information, from Cleveland Police, relating to an allegation of historic abuse which they believed had been made against a named individual associated with the former Cleveland Police Authority.
2. Cleveland Police neither confirmed nor denied holding the requested information, citing sections 40(5B) (personal information) and 31(3) (law enforcement) of FOIA.
3. The Commissioner's decision is that Cleveland Police is entitled to rely on section 40(5B) to neither confirm nor deny whether this information is held.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 2 August 2023, the complainant wrote to Cleveland Police and requested information in the following terms:

"In 2006 a claim was made by a woman who alleged that [name redacted] sexually abused her. [name redacted] was the [role redacted]. The Cleveland Police then buried the accusation until it came to light again in late 2014 as part of Operation Sacristy.

Under the freedom of information act could you please provide me with all official reports in relation to this matter along with all background information. If the information is already in the public domain could you please provide me with a working link(s)."

6. Cleveland Police responded on 22 August 2023. It neither confirmed nor denied holding the requested information, citing section 40(5) (personal information) and section 30(3) (investigations and proceedings conducted by public authorities). It also gave a section 14(1) (vexatious request) warning on the basis that future requests may be characterised as being part of a campaign.
7. The complainant told Cleveland Police that 'vast amounts of information with regards to this request' are available through internet searches.
8. Following an internal review, Cleveland Police wrote to the complainant on 31 August 2023, maintaining their position. Regarding the complainant's view that information is already in the public domain, Cleveland Police said that any such information is information generated by the media and does not constitute any official position from Cleveland Police.

Scope of the case

9. The complainant disputes the application of exemptions to refuse to confirm or deny whether the requested information is held.
10. The Commissioner understands that the police Operation named in the request relates to an investigation into allegations of misconduct by individuals linked to the former Cleveland Police Authority.
11. During the course of the Commissioner's investigation, Cleveland Police confirmed that, if held, both exemptions cited would apply equally to the requested information.
12. When considering a 'neither confirm nor deny' response, the single issue the Commissioner must determine is whether, at the time of the request, the public authority was correct to neither confirm nor deny whether it holds the requested information.
13. This notice therefore considers whether Cleveland Police is entitled to neither confirm nor deny holding the requested information. The Commissioner has not considered whether the information – if held – should be disclosed.

Reasons for decision

Section 40 - personal information

14. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise 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.
15. Therefore, for Cleveland Police to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, the following two criteria must be met:
 - confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - providing this confirmation or denial would contravene one of the data protection principles.

Would confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?

16. Section 3(2) of the Data Protection Act 2018 ('DPA') defines personal data as:-

"any information relating to an identified or identifiable living individual".
17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. 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.
19. In this case, the wording of the request refers to a third party who, while they are not named, their actions are described. It also specifically names a third party and their position within an organisation.
20. In the case of the named individual, the Commissioner is satisfied that they are clearly identifiable. He is therefore satisfied that confirming or denying whether the information is held would result in the disclosure of a third party's personal data to the world at large.
21. In the case of the third party whose action in 2006 is referred to in the request, the Commissioner accepts that they are not named. However, the Commissioner considers that context is important here. While the allegation relates to the individual named in the request, it also relates

to the person making the allegation. He considers that the requested information is inextricably linked and, if held, would be the personal data of more than one third party.

22. On that basis, the Commissioner considers that confirmation or denial that the requested information is held would result in the disclosure of more than one third party's personal data.
23. For the reasons set out above the Commissioner is satisfied that, if Cleveland Police confirmed whether or not it held the requested information, this would result in the disclosure of personal data. The first criterion set out above is therefore met.
24. In light of the wording of the request, the Commissioner considers it is appropriate to consider whether confirming or denying whether Cleveland Police holds the requested information would result in the disclosure of information relating to the criminal convictions and offences of a third party.
25. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA 2018, 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 of the disposal of such proceedings including sentencing.
26. Criminal offence data can also relate to allegations that are unproven. It is not necessary to prove that the data subject has committed a criminal offence, only that the information (if held) relates to a criminal offence of which they have been accused.
27. The request in this case specifies the timeframe and nature of an allegation about a third party. The request clearly states the name and role of the third party and specifies a named police Operation.
28. Cleveland Police confirmed that the requested information, if held, would be criminal offence data because it relates to allegations of a criminal offence.
29. Given the context and wording of the request, the Commissioner is satisfied that confirming or denying whether the requested information is held would result in the disclosure of information relating to criminal convictions and offences of a third party.

30. The complainant has claimed that there is information in the public domain about the matters referred to in their request, and this means that Cleveland Police should comply with this request without recourse to a neither confirm nor deny response.
31. However, criminal offence data is particularly sensitive and it warrants special protection. Regardless of information which may, or may not, be in the public domain, the Commissioner's guidance on personal data¹ is clear that criminal offence data may only be processed in response to a FOIA request if one of the stringent conditions of Schedule 1, Parts 1 to 3, of the DPA 2018 can be met.
32. Only two conditions will be relevant to allow a public authority to lawfully disclose criminal offence data under FOIA. These are:
 - consent from the data subject; or
 - the processing relates to personal data which has clearly been made public by the individual concerned.
33. If a relevant condition cannot be met, a public authority must not disclose the information, as disclosure would be unlawful and therefore in contravention of principle (a).
34. Having considered the information which has been requested, the Commissioner has determined that, were it held, it would be criminal offence data. He has not asked Cleveland Police for its representations on this point; he does not consider this to be necessary in light of his role as regulator for data protection matters.
35. As regards the conditions for processing set out above, the Commissioner has seen no evidence or indication that the data subject has specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
36. Having regard for the restrictive nature of the Schedule 1, Parts 1 to 3 conditions, the Commissioner does not consider that any of the conditions for processing can be met.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/section-40-and-regulation-13-personal-information/>

37. As none of the conditions required for processing criminal offence data are satisfied, there can be no legal basis for confirming whether or not the requested information is held. Providing such a confirmation or denial would breach principle (a) and therefore the second criterion of the test set out above, is met.
38. It follows that Cleveland Police is entitled to refuse to confirm or deny whether it holds the requested information on the basis of section 40(5B)(a)(i) of FOIA.
39. In light of that decision the Commissioner has not found it necessary to consider Cleveland Police's application of section 30(3) to the same information.

Right of appeal

40. 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

41. 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.

42. 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