

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 May 2024

Public Authority: Chief Constable of Greater Manchester Police
Address: GMP Headquarters
Central Park
Northampton Road
Manchester
M40 5BP

Decision (including any steps ordered)

1. The complainant has requested information about an incident in which the car of a high profile individual was reportedly stopped by police in error. Greater Manchester Police (GMP) would neither confirm nor deny that it held the requested information, citing section 40(5B)(a)(i) (Personal information) of FOIA.
2. The Commissioner's decision is that GMP was not entitled to apply section 40(5B)(a)(i) to refuse to confirm or deny whether it holds any information falling within the scope of the request.
3. The Commissioner requires GMP to take the following steps to ensure compliance with the legislation.
 - Confirm or deny that it holds information falling within the scope of the request. If it does hold information, either this information must be disclosed in accordance with section 1(1)(b) of FOIA, or GMP must explain the exemption(s) being relied upon to withhold it, in accordance with its obligations under section 17 of FOIA.
4. GMP must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 17 July 2023, the complainant wrote to GMP and requested information in the following terms:

“FOIQ1. The stopping of [name redacted] at [time and date redacted] appears to have been a highly coordinated event involving at least two following police vehicles and a stinger deployment prearranged on an anticipated route, therefore being so preplanned the detection of the suspected stolen vehicle must have occurred some time previously. Where and when did the target trigger the police ANPR system and how far was the target then trailed prior to stinger deployment.

FOI Q2. Did GMP really deploy the stinger on the M26 [sic] as stated or on the slip road or some other named sensible place? Considering that [name redacted] claimed he was driving perfectly normally why did the police only put on their blue lights a few seconds in advance of the stinger location giving no realistic chance of him stopping, despite his slowing to 20mph?

FOI Q3. Who was the senior officer who coordinated and authorised the stop and arranged deployment of the stinger, and were they advised that the target was driving normally and not suspiciously?

FOI Q4. Quote, the police said "that there had been 'a spate of burglaries in the area I was driving through' and then let him see information on a laptop which "showed that my car had originally been reported stolen to West Midlands Police". He said the document showed that in the original report, "the registration of the stolen car was just one letter different to mine", but someone had later changed the registration "to match the registration of my car and had written the car had been reported stolen by '[name redacted]'. This appears to be brazen corruption from someone within West Midlands police who has access to the database and has deliberately altered 2 key details to impact on [name redacted]. Please confirm the name of the spreadsheet/form on the laptop which contained the details of the alleged theft, please confirm the date on which the alleged vehicle theft occurred, please confirm how your officer could determine that the onfile numberplate had been one number different originally, please confirm if the originally recorded numberplate details also related to a [description of vehicle redacted], please confirm if the name / number of the person completing the entry is recorded anywhere.

FOIQ6. [sic] After destroying [name redacted]'s tyres in the middle of the night by use of the stinger, please confirm what support was given to [name redacted] to get home (if any), where was his vehicle

recovered to and repaired, what was the cost of the replacement tyres and who paid the costs?"

6. GMP responded on 10 August 2023. It would neither confirm nor deny that it held information falling in scope of the request, citing the exemption at section 40(5B)(a)(i) of FOIA.
7. The complainant requested an internal review on 14 August 2023. GMP provided the outcome on 26 January 2024. It maintained that section 40(5B)(a)(i) had been applied correctly.

Scope of the case

8. The complainant contacted the Commissioner on 29 January 2024 to complain about the way his request for information had been handled.
9. The issue for the Commissioner to consider is whether GMP was entitled to apply section 40(5B)(a)(i) of FOIA to neither confirm nor deny whether it holds the requested information. Whether or not the requested information (if held) is suitable for disclosure, is a different matter, and not one that is considered in this decision notice.
10. The Commissioner has considered the delay in providing the internal review in "Other matters".

Reasons for decision

Information in the public domain

11. The Commissioner is aware that at the time of the request, there was information in the public domain about the incident it discusses which identified the high profile individual involved.
12. Some of it was placed in the public domain by the individual himself, by way of comments he made on X (formerly Twitter) and statements he made to a journalist. GMP had publicly confirmed that it had attended a particular incident at a particular time and location, although it had not identified the individual involved. However, another police force had publicly stated that it had apologised to the individual for its own role in the chain of events which led to him being stopped.

Section 40 – Personal information

13. 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.

14. Therefore, for GMP to be entitled to rely on section 40(5B)(a)(i) 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 the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?

15. Section 3(2) of the Data Protection Act 2018 ('DPA') defines personal data as "any information relating to an identified or identifiable living individual".
16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable. 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.
17. Clearly, the request focuses on a named individual. Therefore, were GMP to confirm or deny holding **any** of the requested information, it would reveal whether it did, or it did not, stop that individual. This is a disclosure of personal data about a third party. The first criterion set out above is therefore met.
18. The Commissioner also considers it appropriate to consider whether confirming or denying would result in the disclosure of the 'criminal offence data' of a third party.
19. Between them, article 10 of the UK GDPR and section 11(2) of the DPA define 'criminal offence data' as being personal data relating to criminal convictions and offences (including the alleged commission of offences by a data subject).
20. Having considered the wording of the request, the Commissioner finds that the requested information does include criminal offence data. This is because it concerns the reported stopping of a named individual in connection with a report of a stolen car.

21. The Commissioner has accepted that confirming or denying whether any information is held would result in the disclosure of personal data. It follows that the personal data in question would be criminal offence data, as it relates to an alleged theft.
22. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying in response to an FOIA request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.
23. The Commissioner considers that the only Schedule 1 conditions that could provide grounds for confirming or denying under 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).
24. In this case, the data subject has not consented to the disclosure. However, he has made public comments confirming that he was stopped by the police in the circumstances described in the request. It appears these comments were made by him, voluntarily, and that he actively chose to make the information public. Therefore, in this case, the Commissioner considers that the condition at Part 3, paragraph 32 is satisfied.
25. There is, therefore, a Schedule 1 condition for processing this criminal offence data. However, the Commissioner must establish whether there is also an Article 6 basis for this processing. The fact that confirming or denying whether the requested information is held would reveal the personal data of a third party does not automatically prevent GMP from refusing to confirm whether or not it holds this information. The second element of the test is to determine whether such a confirmation or denial would contravene any of the data protection principles.
26. The Commissioner considers that the most relevant data protection principle is principal (a).

Would confirming whether or not the requested information is held contravene one of the data protection principles?

27. 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”.

28. 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 – or as in this case, the public authority can only confirm whether or not it holds the requested information - if to do so would be lawful (ie it would meet one of the conditions of lawful

processing listed in Article 6(1) of the UK GDPR), be fair, and be transparent.

Lawful processing: Article 6(1)(f) of the UK GDPR

29. 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” conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before confirming or denying in response to the request would be considered lawful.

30. The Commissioner considers that the condition most applicable on the facts of this case would be that contained in Article 6(1)(f) of the UK GDPR, which provides as follows:-

“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”¹.

31. When 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;

¹ 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 2018) and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

“In determining for the purposes of 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 (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

- (ii) **Necessity test:** Whether confirmation as to whether the requested information is held (or not) is necessary to meet the legitimate interest in question;
 - (iii) **Balancing test:** Whether the above interests override the legitimate interests or fundamental rights and freedoms of the data subject.
32. 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

33. When considering any legitimate interests in the disclosure of information under FOIA (or in confirmation or denial, as is the case here), 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 interests 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.
34. The complainant told the Commissioner that he made the request because the information in the public domain about the incident was “not consistent” and he wished to establish the facts of what had “really” happened.
35. The Commissioner accepts that there is a legitimate interest in the public ascertaining whether GMP did stop the individual named in the request, in view of some of the reported factors surrounding the incident.

Is confirming whether or not the requested information is held, necessary?

36. '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; confirming whether or not the requested information is held would not be necessary if the legitimate aim could be achieved by something less. Confirmation or denial under FOIA that the requested information is held must therefore be the least intrusive means of achieving the legitimate aim in question.

37. The Commissioner is unaware of any other avenue by which the complainant could obtain this information. Therefore, confirmation or denial under FOIA is the only viable option.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

38. It is necessary to balance the legitimate interests in confirming whether or not the requested information is held, against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact that confirming or denying would have. For example, if the data subject would not reasonably expect the public authority to confirm whether or not it holds the requested information in response to an FOIA request, or if confirming or denying would cause unjustified harm, their interests or rights are likely to override legitimate interests in confirming or denying whether information is held.
39. The Commissioner has firstly looked at whether confirming or denying would be within the reasonable expectation of the data subject in this case.
40. The Commissioner considers that, in general, individuals have a right to expect that police forces will process any personal data they hold about them in accordance with the DPA and will not disclose it without clear, compelling and lawful reasons. However, as explained in paragraphs 11 and 12, by the time of the request, the data subject had placed information about the incident with GMP in the public domain and there had been follow-up media coverage. The media coverage included a statement by another police force effectively confirming the data subject's involvement in the incident.
41. The Commissioner considers that by choosing to place information confirming his involvement in the incident, in the public domain, the data subject cannot have the same expectation of confidentiality regarding the incident as he would, had he not publicised it. Put simply, having placed information about it in the public domain (including speaking to the media), the Commissioner considers that the data subject would expect that GMP might publicly respond to certain questions about the incident, and that this would extend to confirming his involvement.
42. The Commissioner has then looked at whether GMP confirming or denying would cause harm to, or have an adverse impact on, the data subject. However, for the same reasons as given above (ie that the data subject had already chosen to publicise that he was stopped by the police) the Commissioner has concluded that any likely harm would be negligible.

43. Based on his assessment that confirming or denying would likely be within the data subject's reasonable expectations, and that its impact would be low, the Commissioner has determined that there **is** sufficient legitimate interest in confirming whether or not the requested information is held, to outweigh the data subject's fundamental rights and freedoms. He is satisfied that confirming whether or not the requested information is held would be lawful.

Fairness and transparency

44. Even though the Commissioner is satisfied that confirming or denying under FOIA would be lawful, it is still necessary to show that it would be fair and transparent under principle (a).

45. In relation to fairness, the Commissioner considers that if confirming or denying passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.

46. The requirement for transparency is met because as a public authority, GMP is subject to FOIA.

The Commissioner's view

47. In the very particular circumstances of this case, and largely due to the information the data subject has chosen to place in the public domain, the Commissioner has decided that the exemption to the duty to confirm or deny, at section 40(5B)(a)(i) of FOIA, is not engaged.

48. GMP must now take the steps at paragraph 3.

Other matters

49. Although they do not form part of this notice, the Commissioner wishes to highlight the following matters of concern.

Internal review

50. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the Code of Practice issued under section 45 of FOIA.

51. 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.

52. In this case, GMP took 115 working days to complete the internal review, which significantly exceeds the Commissioner's recommended 40 working day maximum.
53. The Commissioner has made a record of GMP's late provision of the internal review, for monitoring purposes.

Right of appeal

54. 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

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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