

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 August 2024

Public Authority: Chief Constable of West Midlands Police
Address: Police Headquarters
Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant requested some email addresses from West Midlands Police ("WMP"). WMP provided the requested information other than for one address, which it withheld on the basis of section 31(1)(a) and (b) (Law enforcement) of FOIA. The Commissioner's decision is that it was entitled to do so. No steps are required.

Background

2. WMP explained to the Commissioner that, in respect of making complaints, police forces in England and Wales have information on their websites that explains why:

"...an online form approach is the preferred and promoted method by which to make a complaint as opposed to providing an email address".

3. It added:

"The IOPC [Independent Office for Police Conduct] document 'Guidance on capturing data about police complaints (Updated

February 2024)¹ is issued in support of the routine request for all police forces in England and Wales to supply complaints data to the IOPC. Section 1.1 of this publication explains the importance of maintaining accurate and consistent information about complaints, and Section 2.5 explains the requirement on forces to provide specific data to the IOPC. These are points which reinforce the use of the online form process:

1.1. It is necessary to capture all feedback about complaints made by members of the public about the police (including those not recorded under Schedule 3 of the Police Reform Act 2002). Maintaining accurate and consistent information about complaints plays a part in ensuring public confidence in the police complaints system, helping to identify opportunities for learning and improvement. This information can also be used to identify issues and trends, and it contributes to a sound evidence base that informs development of future policy and practice at local and national levels.

2.5. In accordance with the ADR for police complaints data, police forces and local policing bodies are required to provide data about complaints logged on their databases, at a frequency stipulated by the IOPC. The guidance in this document is also relevant to how the IOPC presents this data to the public. More information on how the IOPC analyses and presents this information is available on our website at www.policeconduct.gov.uk².

Request and response

4. On 20 February 2024, the complainant wrote to WMP and requested the following information:

"Please provide me with the following email addresses of your force.

¹ <https://www.policeconduct.gov.uk/publications/guidance-capturing-data-about-police-complaints>

² <https://www.policeconduct.gov.uk/>

1. Subject access request department (I.E data protection department)
2. Professional Standards department (complaints department)
3. Legal services department (department that deals with civil lawsuits)
4. Also, please confirm if this is the correct email address for FOI requests.

Please note, this is NOT a request for police hosted webforms or any links that may redirect me to the police's preferred method of communication. I specifically require the email addresses as stated above".

5. On 6 March 2024, WMP responded. It provided the requested addresses other than that for part (2) of the request, which it withheld citing section 31(1) of FOIA.
6. The complainant requested an internal review on 29 March 2024.
7. WMP provided an internal review on 3 April 2024 in which it maintained its position. It advised the complainant of the written address for correspondence and that it had a general contact email address for enquiries. It also said:

"Should you contact PSD directly using the address supplied or by calling 101 they will be better able to assist you with the provision of a direct e-mail address should you be unable to use the online form and/or your preferred method of contact is e-mail".

Scope of the case

8. The complainant contacted the Commissioner on 5 April 2024 to complain about the way his request for information had been handled.
9. His grounds were as follows:

"West Midlands Police's response to my review for request effectively states that the information cannot be accessed by FOI and only by telephone. An admission that the PSD email address is open to the public.

However, I contacted West Midlands Police by phone on the 5th April and recorded the conversation. They refused to provide the

PSD email address on the phone stating that it was their policy not to disclose the PSD email address”.

10. He also made reference to the grounds he provided when asking for an internal review. These were as follows:

“Complainants are under no obligation to use a pre-prepared webform. As long as the complaint is 'in writing' it must be treated as such as re Police Reform Act 2002 s12.

Police forces should not discourage complainants from making complaints via any method they desire.

IOPC, 'Statutory Guidance on the Police Complaints System' (2020) Chapter 2.4, specifies that it is not for the police to decide what format complaints must be made in and complainants may use any communication method they prefer, including of course, email.

Furthermore, Chapter 2.4 states: 'Forces and local policing bodies should recognise that for some complainants, social media may be the preferred method for raising complaints, and they should take steps to manage this.' Your reasons for refusing to provide an email address are at odds with IOPC Practice.

You stated:

'If the Professional Standards Department e-mail address were to be placed into the public domain, then a person wishing to make a complaint might come across this email address and use it to make a complaint direct into PSD without being aware of the eligibility criteria and or what important information we require. As described in the harm above, this would have a negative impact on the operational effectiveness and efficiency of PSD in dealing with complaints.'

It is not for West Midlands Police to decide for themselves the eligibility criteria of the police complaints process, nor to determine what information the complainant must provide. The Police Reform Act 2002 sets out the terms of the complaint process not individual police forces”.

11. The Commissioner is unable to comment on the methods that should be used when submitting police complaints and the covering rules. However, he does note that it is possible to email WMP via a published 'Contact Us' email address where emails can be dealt with/forwarded without the requirement for a specific PSD email address. There is also a postal address.

12. During the Commissioner's investigation, WMP tried to informally resolve the complaint by offering a discreet disclosure of the address to the complainant 'outside' of FOIA for his personal use. The complainant refused to accept this saying:

"No, it would not be an acceptable resolution. And this sounds like a deliberate, underhanded attempt to subvert the inevitable findings from the ICO.

I am fully entitled to that email address under FOI, as anyone is, and your department is deliberately refusing to provide it as a means to discourage complainants.

The web form you provide on your site for making complaints will not allow anyone to proceed unless they provide extensive and extremely personal information they are not required to submit. That in itself is grounds for further complaint to the ICO. It is also a breach of complaint regulations.

It is extremely important that you are compelled to issue the requested email address via FOI. If the ICO issue a compliance notice in respect of your unlawful practises, as it will hopefully discourage WMP and other forces from doing this to other people, who may not know their rights".

13. The Commissioner has commented on the complainant's concerns about providing "extensive and extremely personal information" in "Other matters" at the end of this notice.
14. WMP has clarified to the Commissioner that it is relying on sections 31(1)(a) and (b) of FOIA. The Commissioner will consider their application to the withheld email address below. He did not consider it necessary to view the address in order to reach a decision in this case.

Reasons for decision

Section 31 – Law enforcement

15. Sections 31(1)(a) and (b) of FOIA provide an exemption where disclosure of the relevant information would, or would be likely to, prejudice the prevention or detection of crime and the apprehension or prosecution of offenders.
16. For this exemption to be engaged, disclosure must be at least likely to prejudice these matters.

17. The exemptions are qualified by the public interest which means that, if the public interest in maintenance of the exemption does not outweigh the public interest in disclosure, the information must be disclosed.
18. The exemption applies where disclosure “would” or “would be likely” to cause prejudice. WMP did not specify the level of likelihood being relied on, so the Commissioner has considered the lower level of “would be likely to” prejudice.
19. The complainant’s views are included above in the “Scope of the case” section.
20. In engaging section 31, WMP has explained to the Commissioner:

“Section 31(1) is specifically designed to protect law enforcement activities, which is directly relevant to a Professional Standards Department, whose work often involves investigations and maintaining integrity within the police force.

The college of policing APP - Professional standards College of Policing³:

‘The principle of policing by consent relies on the trust and confidence that the public has in the police service and the wider law enforcement community. Professional standards departments (PSDs) can play an important role in the maintenance of that trust and confidence. Trust and confidence can be undermined by a failure to vet and manage misconduct and complaints or investigate counter-corruption activities effectively. It is, therefore, essential that such issues are dealt with openly and robustly in accordance with the Code of Ethics.’

The concern in this case is that releasing the email address of the PSD complaints mailbox into the public domain under FOI will have a detrimental effect on the ability of the department to function efficiently and effectively. Due to the role that PSD plays within forces (as described above), this means that anything that negatively impacts on the functioning ability of the PSD, by definition will be prejudicial to the law enforcement role of the force

³ <https://www.college.police.uk/app/professional-standards>

in the prevention or detection of crime and the apprehension or prosecution of offenders.

Furthermore, I believe that previous Decision Notice IC-115760-F1K4⁴ (ico.org.uk) supports the application of this exemption. Whilst the CPS relied on sub-section (c) I consider that the arguments equally apply in this case for (a)(b) in that, by placing the PSD email address into the public domain via the FOI process, it opens up the risk to individuals bombarding the address with nuisance email traffic, or allows members of the public to contact PSD with any manner of general grievance that could interfere with, or disrupt the flow of information into the mailbox. This could delay PSD working, and could also misdirect important PSD related business.

Whilst some corresponding with the public may take place from the PSD complaints mailbox, it primarily receives emails from the Independent Office for Police Conduct (IOPC) and the Office of the West Midlands Police and Crime Commissioner (WMPCC). **It is not a mailbox address that is released to the public on request.** Instead, should a person request an email address for PSD complaints, they would be directed to the online form on our website, else [sic] provided with the publicly available 'Contact Us' email address where emails can be triaged and dealt with/directed accordingly. This avoids the disruption to PSD that occurs when repeat complainants email the PSD mailbox directly, sometimes on a daily basis, and for extended periods at a time. This is a very real scenario that has not only happened to the department in the past, but is happening at this present point in time.

Once the email address is obtained by a member of the public, the force has no control over what happens to that information. However, **that is fundamentally different** to the process of the force placing the information into the public domain via an FOI disclosure. And as the above Decision Notice points out, 'The Commissioner cannot identify an overriding reason for the world at large, the majority of which will not be involved in criminal cases, to require knowledge of the requested direct email address.'

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022515/ic-115760-f1k4.pdf>

It is my view that the same can be said for the PSD complaints email address. There is already a route to contact the force and submit a complaint which is subject to the triage process and does not interfere with PSD email traffic otherwise. This allows PSD to perform their function which, as described above, has a direct connection to law enforcement”.

21. Based on the rationale provided, and his previous views in the Decision Notice cited, the Commissioner accepts that disclosure of the requested email address would be likely to interfere with WMP’s core business of law enforcement. He is therefore satisfied that sections 31(1)(a) and (b) of FOIA are engaged.

Public interest test

22. The section 31 FOIA exemption is qualified and the Commissioner must therefore consider whether or not the balance of the public interest favours maintaining the exemption.

Public interest arguments in favour of disclosure

23. WMP has argued:

“West Midlands Police want to be transparent and open as this helps us to gain and maintain the trust of the public. Releasing information under the Freedom of Information Act goes some way to helping the force demonstrate this commitment”.

Public interest arguments in favour of maintaining the exemption

24. WMP has argued:

“If the Professional Standards Department e-mail address were to be placed into the public domain, then a person wishing to make a complaint might come across this email address and use it to make a complaint direct into PSD without being aware of the eligibility criteria and or what important information we require. ...this would have a negative impact on the operational effectiveness and efficiency of PSD in dealing with complaints.

Release of the PSD email address could result in the mailbox being inundated with extra emails. Not only relating to complaints, but also spam/phising [sic] emails. All of these emails would need attention and as a result, extra work would be created for staff in dealing with the burden and disruption this would cause. It could also result in genuinely intended emails for the mailbox being delayed in being dealt with or overlooked completely”.

Balance of the public interest

25. In balancing the public interest, WMP said:

“The complaints webpage on our site has been set up specifically to explain the complaints procedure and enable the making of and handling of complaints a clear and smooth process. To release a PSD email address outside of this would only serve to circumnavigate this page, the information contained therein and therefore its purpose for existing.

West Midlands Police takes all complaints seriously and it is important that we deal with them efficiently and effectively so that if any wrongdoing is identified it can be dealt swiftly [sic]. It therefore cannot be in the public interest for us to release information that might stymie our ability to do this”.

26. The Commissioner has had regard for the complainant’s arguments that the provision of the requested email address under FOIA would not interfere with law enforcement.
27. Whilst noting the complainant’s views, the Commissioner is aware that there is a general ‘contact us’ address that can be used to access the force, as well as the standardised form, which is designed to ensure that the required information is provided in order to successfully progress a complaint. This means the complainant, and any others who need to do so, are not inconvenienced and are able to contact WMP by email, albeit this is not a direct contact to PSD itself. Furthermore, had the complainant been minded to accept a ‘personal’ discreet disclosure of the address then this also would have been given, again showing that he has not actually been denied contact with the PSD.
28. The Commissioner cannot identify an overriding reason for the world at large, the vast majority of which will not be involved in complaints against the police, to require knowledge of the requested direct email address. He considers that it can be disclosed on a ‘need to know basis’, outside of FOIA, where deemed necessary.
29. The Commissioner recognises that there is a very strong public interest in ensuring that WMP is able to protect its law enforcement capabilities without being hampered by having to review and administer additional non-relevant emails which would be generated if the requested email address was to be disclosed to the general public under FOIA. Furthermore, any general access to PSD via this route would be likely to result in inadequate submissions, lack of continuity and potential duplication if standardisation is lost. Such processes have been introduced to assist the public as well as the force, by ensuring that

adequate information is provided in order to allow for the speedier and more targeted investigation of complaints.

30. Furthermore, such a disclosure might serve to set a precedent which could affect all police forces which, as far as the Commissioner is aware, all maintain a similar complaints system to WMP.
31. The Commissioner has decided on balance that, since disclosure would be likely to compromise WMP's law enforcement abilities, disclosure would not be in the public interest. He is therefore satisfied that the public interest in maintaining the exemption from disclosure at sections 31(1)(a) and (b) outweighs that in disclosing the email address.

Other matters

32. Although it does not form part of this notice the Commissioner wishes to comment on the following matter.
33. The complainant has raised concerns regarding "extensive and extremely personal information" being required in order to submit a complaint via the online form. It is not clear what the complainant considers to constitute such information, but the Commissioner put his views to WMP and it advised:

"The only mandatory personal information that has to be provided is what would reasonably be expected to be required i.e. Title, First name, Surname and Contact details. None of which I would expect anybody in the process of making a complaint to describe as 'extremely' personal information.

This therefore leads me to think that the complainant might be referring to the section of the form that asks: 'Will you answer a few questions about yourself?' This section starts by explaining that 'knowing these things about you helps us to make sure our services are meeting the needs of all users and communities. We only use this information as part of our equality monitoring.'

However, it then says: "You don't have to answer any of these questions".

The first question asks for Age. However, this is NOT a mandatory field. The remaining categories (as follows) whilst mandatory, and under UK GDPR would be defined as 'Special Category Data', and which I think the complainant might therefore be referring to when they say 'extremely' personal information, all have a 'Prefer not to

say option' meaning that the complainant is not required to divulge any of this information in order to proceed:

Disability; Ethnicity; Sex and Gender; Sexual orientation; Marital status; Pregnancy/maternity leave; Religion or belief".

34. The Commissioner has viewed the form content and accepts the explanation provided by WMP. He does not agree that the provision of any "extensive and extremely personal information" is a necessary part of the complaint submission process.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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