

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2024

Public Authority: Chief Constable of Thames Valley Police
Address: Headquarters
Oxford Road
Kidlington
OX5 2MX

Decision (including any steps ordered)

1. The complainant has requested information concerning police activity at a specified address from Thames Valley Police ("TVP"). TVP would neither confirm nor deny ("NCND") holding any information, citing sections 30(3) (Investigations and proceedings) and 40(5) (Personal information) of FOIA.
2. The Commissioner's decision is that TVP was entitled to rely on section 40(5B)(a)(i) of FOIA. He does not require further steps.

Request and response

3. On 29 September 2023, the complainant wrote to TVP and requested the following information:

"Please provide to me the following under the freedom of information Act

Please show how many times since 2013 has [sic] the police been called out, to the area of Cherry grove, please give brief information on every instance, including if arrests were made, any special operations, also any publicity on any of those incidents [sic] please provide the information up to September 2023".

4. On 3 October 2023, TVP responded. It advised the complainant that it did not consider his request to comply with section 8(1)(c) of FOIA "[d]ue to the ambiguity of your request in nature of offence/and or incident and area/ address". It did confirm that various offence data is published online and provided a link to a website¹.

5. On 3 October 2023, the complainant responded. He said:

"For clarification please amend the dates to between Jan 2010 to Sep 2023

And amend the address to [specific address redacted]

Please show any incident [sic] any types of offence, calls, arrests reports. Also Please note I have no access to internet".

6. On 19 October 2023, TVP responded. It would NCND holding the requested information, citing sections 40(5) and 30(3) of FOIA.

7. The complainant responded saying:

"If any information is revealed about any individual or individuals which might breach the right to privacy, please if necessary remove names or identifying information about any person.

With regard [sic] the request to make amendment, you may have misread my spelling of the post code. Please correct '[postcode redacted]' to '[postcode redacted]'".

8. There was further correspondence regarding the postcode. However, this is not relevant to the actual information requested so the Commissioner has not reproduced it here.

Scope of the case

9. The complainant contacted the Commissioner on 23 May 2024 to complain about the way his request for information had been handled. His grounds were as follows:

"The request was to give info surrounding an address which was given.

¹ <http://www.police.uk/>

I believ [sic] TVP has acted negligently and attempted to manipulate procedure [sic] to evade responsibility.

The address was given along with the post code ...

I believe TVP had purposely misspelt the post code more than once. And in any case it does not take two minutes to verify a post code to an address if uncertain. Unfortunately they were not so helpful”.

10. The Commissioner will consider the application of section 40 to the request. Whether or not the postcode was correct has no bearing on his decision so has not been further considered.
11. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 40 - personal information

12. 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.
13. TVP has advised the Commissioner that the address given had been occupied by the complainant for at least some of the time period stated.
14. The Commissioner’s guidance² states:

² <https://ico.org.uk/for-organisations/foi/section-40-and-regulation-13-personal-information/part-two-can-you-confirm-or-deny-holding-the-requested-information/#requester>

“If the requested information is (or would be, if you held it) the personal data of someone who is not the requester, it is third-party personal data.

You should also treat the requested information as third-party personal data if:

- **it is (or it would be, if you held it) mixed personal information, ie the requester’s personal data combined with someone else’s personal data,** and
- you cannot separate the two.

You do not have to confirm or deny whether you hold the requested personal information to the extent that confirming or denying:

- would contravene one of the data protection principles (first condition); or
- would contravene an objection to processing (second condition); or
- is exempt from the right of access under data protection legislation (third condition)“.

15. Therefore, for TVP 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 if held constitute the disclosure of personal data?

16. Section 3(2) of the Data Protection Act 2018 (‘DPA 2018’) 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. The request relates to a private home address and disclosing whether or not the police had been in attendance at that address would reveal something about the occupant/s (ie whether or not they had been visited by the police). Therefore, the Commissioner is satisfied that, if TVP were to confirm or deny whether it held the requested information, this would result in the disclosure of their personal data. The first criterion set out above is therefore met.

If held, would the information be criminal offence data?

20. Although not referred to by TVP, in his role as regulator for data protection matters, the Commissioner has also considered whether confirming or denying it holds the requested information would result in the disclosure of information relating to the criminal convictions and/or offences of a third party.
21. Information relating to criminal convictions and offences is given special status in the UK GDPR. 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 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.
22. Clearly the wording of the request relates to police attendance at a private home address. Therefore, for TVP to confirm publicly whether or not it holds any information would result in the disclosure of information relating to possible criminal activities and/or offences of the occupants.
23. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held 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.
24. TVP has explained to the complainant that:
- "To confirm or deny whether personal information exists in response to your request could publicly reveal information about an individual or individuals, thereby breaching the right to privacy afforded to persons under the Data Protection Act 2018".
25. The Commissioner would like to explain to the complainant that any disclosure made under FOIA, which would be a confirmation or denial in this case, is not something which TVP can provide to him personally.

FOIA does not concern a private or discreet disclosure to an individual for their own purposes. Disclosure under FOIA must be suitable for the world at large, ie anyone would be entitled to be given the information.

26. The Commissioner has considered the conditions attached to Schedule 1, Parts 1 to 3 of the DPA 2018. Taking into account the circumstances and having regard to the restrictive nature of the conditions, he has concluded that none can be met.
27. 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 data principle (a) and therefore the second criterion of the test set out above is met. It follows that TVP 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.
28. In light of these findings, the Commissioner has not found it necessary to consider the application of section 30(3) to the request.

Right of appeal

29. 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

30. 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.
31. 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
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Cheshire
SK9 5AF