

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2024

Public Authority: Chief Constable of South Yorkshire Police
Address: South Yorkshire Police Headquarters
Carbrook House
Carbrook Hall Road
Sheffield
S9 2EH

Decision (including any steps ordered)

1. The complainant has requested information about the Drew Report and the public authority's handling of recent investigations into child sexual exploitation. The Chief Constable for South Yorkshire Police ("SYP") refused parts of the request under section 41 (information provided in confidence) and stated other information was not held.
2. The Commissioner's decision is that SYP was entitled to rely on section 41 to refuse parts of the request.
3. The Commissioner also finds some of the information requested represents the complainant's own personal data, and section 40(1) is engaged.
4. The Commissioner does not require further steps.

Request and response

5. On 24 March 2024, the complainant wrote to SYP and requested information in the following terms:

"a) Please provide the documents that give the names of those called, and those who gave evidence, and those who refused, to Professor Drew when he was working on what became known as The Drew Report. Please note that civil servants, such as officers of the law, are

not exempt from being identified, and have every expectation of being identified.

GDPR does not prevent evidence being disclosed, especially on a subject such as child sex exploitation.

b) Please provide the documents that led to the creation and use of a false identity in my name when creating this false email that was held in the PCC records as disclosed in a Subject Access Request.

Please provide all emails using my false identity.

c) Please require the chief constable to explain why SYP denied knowing about the publicity relating to [redacted] when ordered in 2008 to 'wind his neck in' and cease investigating child sex exploitation, when the request metadata included internal communications knowing that SYP did know, and then require the chief constable to provide the documents relating to the incident about which [redacted] whistleblaw.

d) This applies to Mr Billings personally: Please state who proposed you to be the PCC in the first instance, and who sponsored your campaign to be elected as PCC."

6. SYP responded on 12 April 2024. It stated that information in the scope of part a of the request was exempt under section 41 of the FOIA.
7. In responding to part b, SYP did not cite an exemption but stated FOIA does not give individuals access to their own personal data, and should make a subject access request to receive this.
8. In responding to part c, SYP stated FOIA covers recorded information and does not require public authorities to generate new information or answer questions.
9. In responding to part d, SYP stated it did not hold the information.
10. SYP maintained this position at internal review.

Scope of the case

11. The complainant contacted the Commissioner on 23 May 2024 to complain about the way their request for information had been handled.
12. The Commissioner considers that the scope of his investigation is:
 - to consider SYP's application of section 41 to part a of the request

- to consider if SYP was correct to refuse to supply this information under section 40(1) of the FOIA.

13. This decision notice will not consider SYP's response to parts c and d of the request. This is because these parts of the request ask for opinions and explanations, and 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. The Commissioner agrees these are not valid requests under FOIA.

Reasons for decision

14. Section 41(1) of the FOIA provides that information is exempt if, under subsection (a) the public authority obtained it from any other person and, under subsection (b), disclosure would constitute a breach of confidence actionable by that person or any other person.

Was the information obtained from another person?

15. The withheld information in this case is the names of those called to give evidence to Professor John Drew as part of his investigation into South Yorkshire Police. Professor John Drew's report was provided to SYP in 2016. The Commissioner is satisfied this information was obtained from a third party.

Would disclosure constitute an actionable breach of confidence?

16. In considering whether disclosing the information constitutes an actionable breach of confidence the Commissioner must consider the following:

- whether the information has the necessary quality of confidence
- whether the information was imparted in circumstances importing an obligation of confidence; and
- whether disclosure would be an unauthorised use of the information to the detriment of the confider.

Necessary quality of confidence

17. The Commissioner considers that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial.
18. SYP has explained the information was part of a review of SYP's handling of child sexual exploitation. Professor Drew carried out over 150 interviews with former police officers, staff members, victims and survivors of child sexual exploitation, and their family members.
19. SYP has confirmed the information is not otherwise accessible, such as in the final report. Given the nature of the information provided by the interviewees, the Commissioner is satisfied the information is not trivial.

Was the information imparted in circumstances importing an obligation of confidence?

20. SYP has confirmed that Professor Drew stated all interviewees were offered confidentiality, and "to the best of [his] recall", all chose to remain anonymous. SYP also referred to the Terms of Appointment given to Professor Drew, which laid out an expectation of confidentiality during his appointment.
21. The Commissioner is satisfied that the interviewees were offered confidentiality, and the circumstances imported an obligation of confidence.

Detriment to the confider

22. SYP has stated disclosure would be an infringement of interviewees' privacy, and an unauthorised use of their information. It has also stated disclosure could damage public trust in SYP's commitment to maintain confidentiality. In future, this could discourage other people and organisations from confiding in SYP.
23. Additionally, the Commissioner considers interviewees would not expect their information to be disclosed in this way, particularly in the case of victims and survivors of child sexual exploitation. The Commissioner has concerns that unwanted disclosure of the information would cause considerable distress to these individuals.
24. On this basis, the Commissioner is satisfied that disclosure would cause detriment to the confiders of the withheld information.
25. Given the sensitivity of the information, and the context in which it was given (interviews and statements from people who were assured of their

confidentiality), the Commissioner is satisfied that disclosure if it would allow for an actionable breach of confidence.

26. Section 41 is an absolute exemption. However, if there is an overriding public interest in disclosure, this could be used as a defence against a breach of confidentiality. Therefore, the Commissioner must balance the public interest in the information with the inherent public interest in preserving the principle of confidentiality.
27. The complainant has argued there is an overwhelming public interest in disclosure of the information, saying this would facilitate a pathway to closure and promote openness, honesty and transparency.
28. SYP has acknowledged disclosure would raise public awareness of the issues around child sexual exploitation, and could lead to more individuals coming forward to provide information. However, it has stated this interest is mitigated by the publishing of the full report in March of 2016, and the probability that future individuals will be reluctant to come forward if their confidentiality is not secure.
29. The Commissioner recognises that some weight should always be afforded to the general public interest in ensuring that public authorities remain transparent, accountable and open to scrutiny. However, the Commissioner is mindful that the public interest in maintaining a duty of confidence is inherently weighty.
30. Furthermore, the information requested in this case is of a deeply sensitive nature, and the Commissioner considers disclosure is likely to cause considerable distress to the confiders, as well as harming the public trust in the duty of confidence. The Commissioner does not believe disclosure of the interviewees' names would contribute to the public understanding of this matter in any substantial way.
31. He therefore finds SYP was entitled to rely on section 41 to refuse part a of the request.

Section 40(1) – the complainant's own personal data

32. Section 40(1) of FOIA provides that any information requested is exempt if it constitutes the requester's personal data.
33. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual"
34. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

35. 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.
36. Given the requester has asked for documents relating to their own name, the Commissioner is satisfied the information constitutes the requester's personal data.
37. SYP has also confirmed it handled this part of the request as a SAR and has provided a response to the complainant.
38. Section 40(1) is absolute; there is no access to the requestor's own personal data through FOIA because there is a separate piece of legislation for this purpose – the DPA.
39. It's for the public authority to determine, in the first instance, which information access regime(s) is most appropriate to deal with a request. In this case, SYP was correct to handle the request under the DPA and the requested information is exempt under section 40(1) of FOIA.

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.

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Water Lane
Wilmslow
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