

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 November 2024

Public Authority: Chief Constable of West Yorkshire Police
Address: PO BOX 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested information about an officer-conduct investigation from West Yorkshire Police ("WYP"). WYP denied holding some of the information and refused to provide the remainder, citing sections 30(1)(a) (Investigations and proceedings), 31(1)(g)(2)(a)(b) (Law Enforcement) and 40(2) (Personal information) of FOIA; it subsequently withdrew reliance on section 31. During the Commissioner's investigation, WYP disclosed further information but maintained reliance on sections 30(1) and 40(2) of FOIA for the remainder.
2. The Commissioner's decision is that WYP handled the request appropriately. He does not require any steps.

Background

3. The Independent Office for Police Conduct ("IOPC") carried out an investigation into a particular officer's conduct. Its findings are available online¹.
4. The investigation was as a result of WYP's interactions with a girl and her subsequent arrest. This resulted in a complaint being received and an investigation into the officer.
5. The request relates to that investigation.

Request and response

6. On 17 January 2024, the complainant wrote to WYP and requested the following information:

"Now a significant length of time has passed, I trust that the investigation process has been completed.

Relating to the incident previously described here [WYP link no longer online], please could you provide the following:

- 1) Any statements or documents provided to the professional standards directorate
- 2) Communications to/from the professional standards directorate
- 3) Any report(s) produced by the professional standards directorate
- 4) The outcome of the professional standards directorate investigation

Further, could you clarify why the press release has now been taken down?"

7. On 14 March 2024, following an extension to the time limit in which it considered the public interest, WYP responded. It refused to provide the information requested at parts (1) and (2) of the request, citing sections 30(1)(a), 31(1)(g) (by virtue of (2)(a)(b)) and 40(2)(a) of FOIA. In

¹ <https://www.policeconduct.gov.uk/news/west-yorkshire-police-officer-undergo-reflective-practice-following-arrest-girl-leeds>

respect of parts (3) and (4) it advised that this had been an IOPC-led investigation, therefore no information was held.

8. Regarding the removal of the press release, WYP advised: "West Yorkshire Police can set time frames for all news articles and appeals on our website and after an allotted time the statements and appeals automatically come off the website. The statement was also shared on social media and is still live on Twitter/X now"; it provided a relevant link.
9. The complainant requested an internal review on 15 March 2024. He said:

"In your public interest test, you have stated multiple times that 'To prematurely release information pertaining to an ongoing investigation into the conduct of an officer would undermine the investigation process'. However, the investigation has been completed by the IOPC and as such, I believe that this public interest test is incorrectly executed".
10. WYP provided an internal review on 18 April 2024, in which it maintained its position.

Scope of the case

11. The complainant contacted the Commissioner on 18 April 2024 to complain about the way his request for information had been handled. His grounds of complaint were as follows:

"I believe there is significant public interest in disclosing the information requested. The authority initially stated that the investigation was ongoing. This is not the case. During the internal review, they claim that releasing the information 'could in turn diminish public trust in how complaints are handled'. This is exactly what the FOI is designed for and if their handling of a complaint would diminish public trust, this should not be hidden behind closed doors".
12. The complainant did not refer to parts (3) and (4) of the request so these have not been further considered. The Commissioner will consider the application of exemptions to parts (1) and (2) of the request below.
13. The Commissioner has been given full access to the withheld material. He has also been given an index of all the withheld information to evidence where the exemptions have been cited.

14. During the Commissioner's investigation, WYP removed reliance on section 31 of FOIA. It also disclosed further information in line with the Commissioner's recommendations.
15. Following this disclosure, the Commissioner contacted the complainant for his views. The complainant referred particularly to the public interest in disclosure and also some of the redactions as follows:
 - redacted information in relation to body worn video footage (BWV);
 - some redacted information which he thinks may not be an incident report and therefore redacted in error; and
 - a disclosed letter from the IOPC indicating that WYP would have a copy of the report, although there is no reference to this.
16. The Commissioner asked for copies of the related information to be forwarded for his consideration (he was previously given online access to the material). This was provided and he can confirm that the redactions in respect of the BWV are a transcript of what the footage contains. This relates to events covering what the published IOPC report describes as: "officers were called to Leeds city centre to a disturbance involving a teenage girl and officers made the decision to take her back home, rather than make an arrest". It is therefore focussed on the girl and is considered in the section 40(2) analysis below.
17. The information which the complainant thought might not be an incident report is actually two related incident reports which were circulated in an email. These parts of the email are withheld under sections 40(2) and 30(1) and are considered below.
18. WYP also located a copy of the report, as had been suggested by the complainant. This was subsequently partially disclosed, with redactions under sections 40(2) and 30(1) of FOIA.
19. WYP has advised the Commissioner that, at the time of the request, the investigation remained on-going. The Commissioner has commented on this in "Other matters" at the end of this notice as this rationale is of no relevance to the remaining exemptions being relied on.

Reasons for decision

Section 40 - Personal information

20. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

21. In this case the relevant condition is contained in section 40(3A)(a)². This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
22. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
23. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

24. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
25. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
26. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
27. 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.
28. This has been cited in respect of those involved with the incident, namely police officers, staff, members of the public and the arrested party, all of whom are named, as well as the party who made the complaint to the police. All of the withheld information includes an element of personal information such as the incident report, custody record, witness statements, training records, emails and grounds of complaint against the officer.
29. The Commissioner is satisfied that, where relied on, the information is personal information. Furthermore, whilst it may be argued that the

² As amended by Schedule 19 Paragraph 58(3) DPA.

information could be anonymised by simply redacting the names of all the parties, anyone connected with the incident will be able to identify those connected to the events, including the parties themselves. Therefore, the Commissioner does not consider that simple removal of names in these circumstances provides adequate anonymisation.

30. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that, where cited, the information both relates to and identifies those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
31. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
32. In addition, if the requested data is special category data, in order for disclosure to be lawful and compliant with principle (a), it also requires an Article 9 condition for processing. Furthermore, if it is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the UK GDPR.

Is any of the information special category data?

33. Information relating to special category data is given special status in the UK GDPR.
34. Article 9 of the UK GDPR defines 'special category' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
35. Having considered the wording of the request, and viewed the withheld information, the Commissioner finds that some of the requested information does include special category data. He has reached this conclusion on the basis that it concerns the health of the party/parties concerned.
36. Special category data is particularly sensitive and therefore warrants special protection. As stated above, it can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.
37. The Commissioner considers that the only conditions that could be relevant to a disclosure under FOIA are conditions (a) (explicit consent

from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.

38. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to FOIA request or that they have deliberately made this data public.
39. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this special category data would therefore breach principle (a) and so this information is exempt under section 40(2) of the FOIA.

Is any of the information criminal offence data?

40. Information relating to criminal convictions and offences is given special status in the UK GDPR.
41. 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 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 or the disposal of such proceedings including sentencing.
42. Having considered the wording of the request, and viewed the related withheld information, the Commissioner finds that the requested information does include criminal offence data. He has reached this conclusion on the basis that the information relates to an arrest so in that respect is the girl's criminal offence data. Furthermore, having seen the terms of reference for the IOPC investigation, this clearly states that the IOPC will: "...identify whether any subject of the investigation may have committed a criminal offence and, if appropriate, make early contact with the Director of Public Prosecutions", therefore making information about the officer under investigation also their criminal offence data.
43. Like special category data, criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.
44. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure 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).

45. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to this FOIA request or that they have deliberately made this data public.
46. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data would therefore breach principle (a) and so this information is exempt from disclosure under section 40(2) of FOIA.

The remaining personal information

47. Not all of the personal information is either special category or criminal offence data, such as the names of those dealing with email / written correspondence about the case or the names of those officers who were not investigated. Nevertheless, their names clearly make them identifiable, so the Commissioner will consider their disclosure.

Would disclosure contravene principle (a)?

48. 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".
49. 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 if to do so would be lawful, fair and transparent.
50. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

51. 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" lawful bases for processing listed in the Article applies.
52. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"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"³.

53. In 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;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
54. 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

55. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, 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 interest(s) 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

³ 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 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".

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.

56. The complainant believes that disclosure of the requested information would demonstrate how the complaint was handled which would, in turn, improve public trust.
57. The Commissioner notes that WYP did not itself handle the complaint and that the remaining information that is being considered here is mostly the names of parties associated with the investigation process.

Is disclosure necessary?

58. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
59. It is not known why the complainant is interested in the subject matter. Therefore, the Commissioner accepts that disclosure via FOIA is likely to be the only route available to him.

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

60. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
61. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
62. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information

relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

63. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
64. The remaining personal information, after discounting the special care and criminal offence data, is limited. It consists generally of names, email addresses and contact details of officers and identifying details provided by the person/s who made the complaint. In the Commissioner's view, disclosure of the officer's details will add no tangible value to the general public, as knowing who has been involved in the initial investigation and subsequent complaint would be of no particular public benefit, whereas those concerned would have no expectation that their details would be disclosed. Similarly, the person or persons making the complaint would not expect the police to disclose any information which would result in their identification.
65. It is further noted that the IOPC has disclosed a summary of its findings, with appropriate consideration for those involved which, in the Commissioner's view, serves to satisfy the public interest. There is nothing he has viewed in the withheld information which would suggest anything to the contrary.
66. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the remaining personal information would not be lawful.
67. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

The Commissioner's view

68. The Commissioner has therefore decided that WYP was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Section 30 – Investigations and proceedings

69. Section 30(1)(a) provides that information held by a public authority is exempt information if it has, at any time, been held by the authority for the purposes of:
 - (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—

- (i) whether a person should be charged with an offence, or
- (ii) whether a person charged with an offence is guilty of it.

70. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.
71. Consideration of section 30(1) is a two-stage process. Firstly, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test.

Is the exemption engaged?

72. The first step is to address whether the requested information falls within the class specified in section 30(1)(a) of FOIA.
73. The Commissioner has published guidance on section 30⁴ which states that section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence.
74. The Commissioner's guidance describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the guidance says:

"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged. Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence...".

75. This exemption has been cited in respect of any information held connected to its dealings with the girl concerned (ie not to the investigation of the complaint against its officer), such as airwave radio recordings and the live incident log (which were items required by the IOPC and were therefore caught within the scope of the request). It should also be noted that much of the content of these items, and the report, has already been considered and found to be exempt by virtue of section 40.

⁴ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

76. The Commissioner is satisfied that the remaining withheld information relates to a specific investigation being undertaken by WYP and, therefore, that the exemption at section 30(1)(a) is engaged.

The public interest test

77. Section 30(1)(a) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

78. When considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.

79. The purpose of section 30 of FOIA is to protect the police's (and other applicable public authorities') function of carrying out effective investigations.

Public interest arguments in favour of disclosure

80. The complainant did not provide any arguments specific to this exemption, his arguments focusing on the IOPC investigation into the officer.
81. WYP has argued: "Providing this information would adhere to the general principle of open and transparency and provide a better awareness to the general public".

Public interest arguments in favour of maintaining the exemption

82. WYP has argued:

"Disclosing investigative information under the Freedom of Information Act, would undermine the existing procedures governing the disclosure of information specific to the crime. Such disclosure could act as a deterrent to those providing information to the police and act as a disincentive to victims and potential witnesses coming forward. To make public the specific details obtained during the course of an investigation would undermine this".

The Commissioner's decision

83. When balancing the opposing public interests in a case, the Commissioner will decide whether it serves the public interest better to disclose the requested information or to withhold it because of the interests protected by the relevant exemption.

84. In reaching a view on where the balance of the public interest lies in this case, the Commissioner has taken into account the nature of the requested information as well as the views of both the complainant and WYP.
85. He considers that there is a presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest. He also recognises the general need for transparency and accountability on the part of public authorities which are tasked with enforcing the law.
86. However, in carrying out this exercise, appropriate weight must be afforded to the public interest inherent in the exemption. In broad terms, the exemption at section 30(1)(a) exists to ensure the effective investigation of offences. It recognises the need to prevent disclosures that would prejudice either a particular investigation, or investigatory processes generally, including any prejudice to future investigations.
87. The Commissioner recognises the very strong public interest in protecting the investigative capabilities of the police. He accepts that, in general, disclosure of this type of information is prejudicial to the police's investigative capabilities, as it can assist potential offenders to evade apprehension – and also possibly put those who reported the matter at risk of some sort of retaliation.
88. Even with redaction of names, the Commissioner also has serious concerns that disclosing information which may render individuals identifiable to one another could create a perception among the wider public that sensitive information obtained during policing work will not be held in confidence and may be disclosed to the world at large. He considers that there is a real chance this would deter people (particularly complainants and witnesses) from coming forward and cooperating with the police. There is a very significant public interest in avoiding damage to public confidence in crime reporting and it is a factor of considerable weight in favour of maintaining the exemption in this case.
89. The Commissioner further notes that a summary of the event has been published by the IOPC. He considers that this information goes a long way towards satisfying any public interest in transparency in respect of the officer concerned. Regarding the initial incident itself, the Commissioner also notes that the request has not sought to specifically obtain this, rather it is only under consideration for disclosure because it was part of the evidence required by the IOPC for its investigation.
90. On balance, the Commissioner considers that the disclosure of information that could adversely affect policing capabilities, or which could deter people from reporting matters to the police, is not justified

by the limited benefit which would flow from its disclosure. For this reason, the Commissioner accepts that the public interest in maintaining the exemption is stronger than that in disclosing the withheld information.

91. Accordingly, the Commissioner is satisfied that WYP was entitled to rely on section 30(1)(a) of FOIA to refuse to disclose the remaining information.

Other matters

92. Although it does not form part of this notice the Commissioner wishes to highlight the following matter.

Timing of request

93. WYP advised the complainant that the IOPC investigation was still ongoing at the time of his request and some of the arguments which it originally relied on in respect of section 31 and the on-going IOPC investigation reflected this. These are no longer relevant as this exemption is no longer being relied on, however, the timing is a point of interest.
94. The Commissioner notes that the date on the published IOPC report is 23 February 2024, which WYP has agreed is the date around which it was completed.
95. The request was made on 17 January 2024, prior to completion of the investigation, but WYP did not actually issue a refusal notice until 14 March 2024, ie **after** the investigation was completed. However, it is noted that the 20 working day statutory timeline for responding was extended whilst WYP considered the public interest, as it is entitled to do.
96. The Commissioner assesses how matters stood at either the **actual** date of a public authority's response to a request **or** the statutory date by which it was required to respond.
97. Therefore, as in this case, if the public authority issued its response outside of the statutory time limit, the time for assessing if it dealt with the request in accordance with Part I is the date by which it **should have** responded, ie 20 working days.
98. In this case, the 20 working day maximum response date should ordinarily have been 14 February 2024, albeit this was extended. Therefore, at the time of the request the IOPC investigation was indeed still 'live'.

Right of appeal

99. 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

100. 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.

101. 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
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