

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2025

Public Authority: Chief Constable of Cleveland Police
Address: St Mark's House
St Mark's Court
Thornaby
Stockton on Tees
TS17 6QW

Decision (including any steps ordered)

1. The complainant has requested information about the vetting status of officers working on a police operation, from Cleveland Police. Cleveland Police provided some information but refused to provide the remainder, citing section 40(2)(Personal information) of FOIA.
2. The complainant raised various matters for consideration. The Commissioner finds no breach of section 16(1) (Advice and assistance). However, he finds that Cleveland Police breached section 10(1) (Time for compliance) by failing to comply with section 1(1)(a) within the statutory time period, and section 17(1)(b) (Refusal of request) by issuing an inadequate refusal notice. The Commissioner also finds that section 40(2)(personal information) is not engaged and he requires Cleveland Police to take the following step to ensure compliance with the legislation:
 - Disclose the most recent approved vetting date of those working on Operation Magnolia at the time of the request.
3. Cleveland Police must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 18 June 2024, the complainant wrote to Cleveland Police and requested the following information:

"With regard to the 4-6 staff members currently working on operations [sic] magnolia, under the freedom of information act, please provide me with the number of staff members that have update [sic] vetting in place. Also provide the dates on which they were last vetted".

5. On 17 July 2024, Cleveland Police responded. It refused to provide the requested information saying it would be the personal information of the officers concerned.

6. It also advised the complainant that:

"...in January 2023, the National Police Chiefs' Council (NPCC) contacted all police forces to complete a historical data wash of all officers, staff and volunteers and they were to be checked against the Police National Database (PND). PND is a data store of operational policing information and intelligence provided by individual forces. It contains copies of locally held police records covering intelligence, crime, custody, child protection and domestic abuse investigations.

This data has been published therefore we consider the Freedom of information Act 2000 Exemption 21 (Information Accessible by other means) is engaged in relation to this request this is a class based and absolute exemption, requiring no prejudice or public interest to be considered.

Please use the below link to find results of the historical data wash.

Results published in policing's largest integrity screening project (npcc.police.uk)¹".

7. The complainant requested an internal review on the same day, disagreeing that he was requesting personal information.

¹ [Historic Data Wash of Police Workforce Nominal Records against the Police National Database](#)

8. On 7 August 2024, the complainant added:

“As part of this internal review please review all the additional information that I provided in a follow up request that I made after researching the subject matter further...This may save everyone concerned time and money”.

9. Cleveland Police provided an internal review on 15 August 2024 in which it revised its position. It advised the complainant that: “Cleveland Police are confident that ALL of our employees hold appropriate and up to date vetting status”. It refused to provide the dates that the vetting was authorised for the specified staff, maintaining reliance on section 40 of FOIA. It did not refer to the email of 7 August 2024.

Scope of the case

10. The complainant contacted the Commissioner on 16 August 2024 to complain about the way his request for information had been handled. Following notification that his complaint was under investigation, he provided the Commissioner with the following grounds of complaint, which have been summarised:

- Section 10 – late response
- Section 16 – lack of advice and assistance
- Section 17 - failure to cite an exemption in its original refusal notice
- Section 40 – the information not being personal information
- Section 77 – unlawfully concealing and blocking information

11. The complainant also referred to other information which he had requested and had wanted considering alongside the responses to this specific request. The Commissioner has not considered any further requests here and has disregarded any related comments made by the complainant. He is only considering the response to the specific request as cited at paragraph (4) above. If the complainant wishes the Commissioner to consider any further requests then, if he has not already done so, he should submit separate complaints for each of these.

12. As it is not a matter for consideration by way of a Decision Notice, the Commissioner has commented on section 77 in “Other matters” at the end of this notice.

13. The Commissioner will consider procedural matters and the citing of section 40 below. He has seen the withheld information.

Reasons for decision

Section 40 – Personal information

14. 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.
15. 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').
16. 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.
17. 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?

18. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
20. 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.
21. 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.

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

22. The request clearly does not seek to identify any of the staff working on Operation Magnolia. However, with such small numbers it may be possible for those concerned to learn something about each other, were the requested information to be disclosed. In such scenarios the Commissioner will consider whether or not the information is personal information using the following test.

Motivated intruder

23. A test used by both the Commissioner and the First-tier Tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of reidentification of an individual from information which, on the face of it, appears truly anonymised.
24. The ICO's [Code of Practice on Anonymisation](#) notes that:
- "The High Court in [R (on the application of the Department of Health) v Information Commissioner [201] EWHC 1430 (Admin)] stated that the risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA".
25. In summary, the motivated intruder test is that if the risk of identification is "reasonably likely" the information should be regarded as personal data.
26. Cleveland Police has argued:
- "It is clear ... that the dates of individuals vetting and their vetting status is personal data to them and that given the small number of individuals involved any response from the Force could be cross referenced with other information to reveal personal information".
27. The Commissioner understands that there are only a small number of staff working on the Operation and he accepts that disclosure of information about vetting has the potential to reveal something about them. However, it has already been stated that they are all vetted so he is only considering whether or not disclosure of the date they were last vetted would disclose further, attributable information about those concerned as individuals.
28. In the circumstances of this case, having considered the withheld information, it is not clear to the Commissioner how it would be possible to do this.

29. As already disclosed, the officers are all vetted so they already know this about each other – as indeed are all Cleveland Police employees, as verified above. Therefore the Commissioner is only considering whether provision of the dates when their latest vetting was granted would realistically further identify any of those individuals.
30. For example, hypothetically, were one of the dates 13 January 2022, the Commissioner cannot envisage how disclosure of that date would identify any individual. In fact, the Commissioner would be surprised to learn that any of those individuals were actually aware of the date their vetting was approved (although this is clearly something which they could request). Continuing with this hypothetical date, this may be the first approval of a new member of staff or a renewal of someone who has been working for the police for 30 years.
31. The vetting status has been disclosed, which is something that the Commissioner would generally expect the police to confirm about its officers. The Commissioner does not accept that disclosure of the latest vetting dates would be attributable to particular officers on this occasion, as any date could relate to any officer.
32. In light of the above, and having considered the withheld information, the Commissioner does not consider that any individual could be identified from the withheld dates.
33. Consequently, he has decided that the withheld information does not constitute personal data and that the exemption in section 40(2) is not engaged.
34. Cleveland Police should take the step at paragraph (3) of this notice.

Procedural matters

Section 1 – General right of access

Section 10 – Time for compliance

Section 17 – Refusal of request

35. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
36. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) requires a public authority in receipt of a request to confirm whether it holds the requested information.
37. The request was submitted on 18 June 2024 and the complainant did not receive a response confirming that the public authority held the

relevant information until 17 July 2024, ie 21 working days following receipt. The Commissioner therefore finds that Cleveland Police has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

38. Section 17(1)(b) also requires that a public authority specifies the exemption in question in any refusal notice.
39. The complainant has raised the following in respect of the initial refusal notice:

"In their initial response they stated

'We have looked at your request and must advise you the information requested is clearly personal information and would contravene the first principle of the General Data Protection Regulation (GDPR) - lawfulness, fairness, and transparency, which are the likely expectations of the data subjects. In that, would they expect Cleveland Police to release any details of their vetting to the world.'

However they fail to provide a FOIA exemption that they relied upon. I submit this breached the FOIA".

40. Whilst Cleveland Police did reference personal information, it did not state section 40, thereby breaching section 17(1)(b) of FOIA.

Section 16 – Advice and assistance

41. The complainant has raised the following in respect of section 16:

"...failed to provide a work link to the information given in initial response. The link provided in the internal review has nothing to do with vetting of officers that are working with victims of sexual abuse".

42. It is noted that this comment relates to a link which did not function properly once it was placed on the "What do they know" website. The link was subsequently provided again at internal review (the correct link has been inserted at the end of paragraph (6)).
43. Whilst this is unfortunate, the Commissioner does not consider this to be a breach, as it was the clear intention of Cleveland Police to be helpful. It is also noted that the links were only provided by way of background to assist the complainant, which the Commissioner considers to be good practice.

Other matters

44. Although they do not form part of this notice, the complainant has raised the following matters.

Section 77 - Offence of altering etc. records with intent to prevent disclosure

45. In his correspondence the complainant refers to Cleveland Police committing an offence under section 77 of FOIA. He said:

"This is a criminal complaint. Under section 77 FOIA it is a criminal offence for a public body to block and conceal information that is lawfully requested by a member of the public under the FOIA. I gave the Cleveland Police fair warning a number of months ago, and on numerous different occasions, that if they continued with their current pattern of behaviour of using exemptions (frivolously and vexatiously) with the intent to block and conceal information that had been lawfully requested, then I would be left with no other option but to submit a criminal complaint.

If you want me to I will also ring 101 and report this as a criminal offence under section 77 FOIA.

I believe that the evidence I now hold would be overwhelming to any fair minded person".

46. It might be helpful to explain that it is a criminal offence under section 77 of FOIA to deliberately destroy, deface, alter, conceal or block information in order to prevent its disclosure, if it has been requested.
47. The Commissioner has been presented with no evidence which suggests Cleveland Police has engaged in such actions; it has confirmed holding the information and the Commissioner has had sight of it. The complainant has not offered any evidence or even suggested that Cleveland Police has engaged in any of the actions described above when responding to his request. It appears simply that he disagrees with its previous refusals to disclose the information he has requested. The refusal of a request under FOIA is not the same as a deliberate, wilful act of destruction, defacement, alteration, concealment or blocking, which is what would need to be present for section 77 to be a consideration.
48. Clearly, any request that is refused under a valid exemption, as is the case here, would not fall within the realm of a section 77 offence. Whilst the complainant may be frustrated at not receiving the information that he is requesting, the issues he has raised fall to be considered by way of a decision notice.

Allegation of lying

49. The complainant has also stated that: "I also have evidence that the Cleveland police have wilfully lied to the ICO no [sic] a number of occasions now".
50. It is not clear what is meant by this and the Commissioner has seen no such evidence.
51. If the complainant intends to make such accusations, he should submit his 'evidence' along with the associated material when submitting a complaint to the Commissioner's office.
52. Alternatively, if his complaint has already been considered and a Decision Notice has been issued, then he is able to raise this as an issue with the First-tier Tribunal (unless the time limit for appealing has elapsed).
53. The Commissioner notes, however, that the Upper Tribunal has previously cautioned appellants against making criminal allegations "...without a prima facie or evidential basis on which to do so"³.

³ [Preston v ICO and West Yorkshire Police - UA-2022-000771-GIA, EA/2021/0062](#)

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.

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