

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 training of some of its staff from Cleveland Police. Cleveland Police provided some information but refused to provide the remainder, citing section 40(2)(Personal information) of FOIA.
2. The Commissioner's decision is that section 40 is properly engaged. However, he finds that Cleveland Police breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period. The Commissioner does not require further steps.

Background

3. The request refers to the "Professionalising Investigations Programme", ie 'PIP' training. Further information can be found on the [College of Policing website](#).

Request and response

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

"In a PEEL 2020/2021 HMICFRS [HM Inspectorate of Constabulary and Fire & Rescue Services] report it stated:

'Cleveland Police has 413 PIP 2 investigator posts. As of 31 March 2022, only 23 per cent of these were filled with accredited investigators.'

Request.

Under FOIA please provide me with your current figures in relation to the number of post [sic] that requires [sic] PIP 2 investigators and how many are filled with accredited investigators.

The same request is made with regard to PIP 1, PIP 3 and PIP 4.

With regard to the 4-6 members of staff currently working on operation magnolia. Under the freedom of information act please provide the 799 victims with all the information that you hold in relation to whether [sic] or not any of these 4-6 staff members have achieved:

PIP 1 (priority and volume crime investigations);
PIP 2 (serious and complex investigations);
PIP 3 (major investigations); and
PIP 4 (strategic management of highly complex investigations)."

5. On 17 July 2024, Cleveland Police responded. It disclosed most of the requested information. However, in respect of the officers working on Operation Magnolia, it refused to provide this detail, citing section 40(2) of FOIA.
6. The complainant requested an internal review on the same day.
7. Cleveland Police provided an internal review on 15 August 2024 in which it maintained its position.

Scope of the case

8. The complainant contacted the Commissioner on 16 August 2024 to complain about the way his request for information had been handled. He disagreed with the citing of section 40 and provided the following grounds:

"I believe that the 800 victims of childhood abuse and/or other members of the public have a legitimate interest to know that the staff members currently conducting the investigation into that abuse have the correct training in place.

This information is necessary to meet the legitimate interest of the victims. It would also promote openness, honesty and transparency regarding staff members currently conducting the investigation.

I believe that on balance the victims legitimate interest overrides any concerns that the Cleveland police may have.

This information that I provided in my original request came directly from a HMICFRS report which has been published on their website for the world to see. The inspectors highlighted grave concerns with regard to correct training of staff members and made a number of recommendations.

The information that I provided in my original request adds weight to the victims legitimate interest that staff members currently investigating child abuse have the correct knowledge and training and proper procedures are now being followed by the Cleveland police”.

9. The complainant later asked the Commissioner to also consider timeliness.
10. The Commissioner will consider timeliness and the citing of section 40 below. He has seen the withheld information.

Reasons for decision

Section 40 – Personal information

11. 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.
12. In this case the relevant condition is contained in section 40(3A)(a)¹. 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').
13. 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.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

14. 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?

15. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. 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.
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 clearly does not seek to identify any of the 4-6 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

20. 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.
21. 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".

22. In summary, the motivated intruder test means that if the risk of identification is "reasonably likely", the information should be regarded as personal data.
23. Cleveland Police has argued:

"The small number of employees in this team means that it would be feasible for an individual to match any response with other available data and identify individuals and their accreditation status".
24. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to those working on Operation Magnolia. Consequently, were the information disclosed, colleagues or the wider public, may learn something about these officers. For example, hypothetically, if Cleveland Police was to disclose that no-one on the team had a PIP qualification, then disclosing this fact would reveal information to anyone who knows who is working on the team (which may be both force staff and external parties who are dealing with the team). The Commissioner is therefore satisfied that the risk of learning something about those concerned is "reasonably likely". The information both identifies, and relates to, those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
25. 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.
26. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

27. 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".
28. 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.
29. 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

30. 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"².

31. 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.

32. 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

33. In considering any legitimate interest 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

² 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".

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 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.

34. The complainant is requesting the qualifications of officers working on a police operation. The Commissioner accepts that there will always be a public interest in transparency regarding the work of the police and he accepts that there is a legitimate interest on this basis.
35. It is also clear to the Commissioner that there is a legitimate interest in providing this information to the public at large, ie it is not just of personal interest to the complainant.

Is disclosure necessary?

36. '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.
37. The Commissioner notes that the requested information is not available via any other channel.

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

38. 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.
39. 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 data subject expressed concern about the disclosure; and

- the reasonable expectations of the data subject.
40. In the Commissioner's view, a key issue is whether the data subjects concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as their general expectation of privacy, whether the information relates to them in their professional role or to them as individuals, and the purpose for which they provided their personal data.
 41. It is noted that the complainant considers that disclosure is necessary because it would provide assurances that those working on the team "have the correct training in place". However, Cleveland Police has explained to the Commissioner that, depending on what role they are conducting within the investigation, it would only be advisable that officers hold a PIP2 qualification. It further explained that the qualification is not necessary in order to undertake the role. Therefore, there is no requirement for any of the officers to be thus qualified.
 42. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to a data subject. In the Commissioner's view, officers would clearly not expect their personal training records to be disclosed to the public at large. Were Cleveland Police to do so, this could realistically cause them damage or distress.
 43. The law provides that there must be a pressing social need for any interference with privacy rights and that the interference must be proportionate.
 44. Were the PIP2 qualifications an essential requirement for the officers to undertake the work then the Commissioner may take a different view. However, this is not the case. He therefore finds that disclosure would be unnecessarily intrusive and that the officers concerned would have no expectation that their training records would be disclosed to the general public via FOIA.

The Commissioner's view

45. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest in disclosure 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 information would not be lawful.
46. It follows that Cleveland Police was entitled to rely on section 40(2) of FOIA to refuse to disclose the information.

Procedural matters

Section 1 – general right of access

Section 10 - time for compliance

47. 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.
48. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
49. The request was submitted on 18 June 2024 and the complainant did not receive a response, confirming that Cleveland Police 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.

Other matters

50. Although they do not form part of this notice, the complainant has asked the Commissioner to consider the length of time taken to conduct an internal review.

Internal review

51. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in the main body of a decision notice because such matters are not a formal requirement of FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
52. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer, but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.

53. In this case, the complainant requested an internal review on 17 July 2024 and one was provided on 15 August 2024, ie 21 working days. The Commissioner does not consider this request to be exceptional. The delay will be noted for monitoring purposes.

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.

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