

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **11 August 2025**

Public Authority: **Chief Constable of Cheshire Constabulary**

Address: **Police Headquarters**
Clemonds Hey
Winsford
Cheshire
CW7 2UA

Decision (including any steps ordered)

1. The complainant requested a copy of a briefing given to journalists on 3 October 2022 prior to the start of the trial of Lucy Letby. Cheshire Constabulary withheld the information requested under section 30 (investigations) of the FOIA.
2. The Commissioner's decision is that the information requested constitutes third party personal data and is exempt from disclosure by virtue of section 40(2) (personal data) of the FOIA. The Commissioner does not require any steps to be taken.

Request and response

3. On 27 November 2024, the complainant wrote to Cheshire Constabulary and requested information in the following terms:
4. "I would like to obtain a recording or transcript, or both, of the briefing given to journalists on Monday 3rd October 2022 the prosecution of Lucy Letby, by Cheshire Police and the CPS. The briefing took place at Manchester Magistrates Court and was given by Det Supt Blackwell, Det

Supt Hughes, and DCI Evans from the Cheshire Constabulary and by Pascale Jones and Clare Tripcony from the CPS".

5. Cheshire Police responded on 29 December 2024 and stated that the information requested was exempt under section 30 of the FOIA.
6. On 30 December 2024 the complainant requested an internal review of the refusal to provide the information requested.
7. Cheshire Police provided the outcome of its internal review on 29 January 2025 and upheld its position that section 30 of the FOIA applied to the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 19 February 2025 to complain about the way their request for information had been handled.
9. Having listened to a recording of the withheld information the Commissioner has determined that the information requested constitutes personal data. Given his dual role as the regulator of data protection legislation, the Commissioner has a responsibility to prevent personal data being inadvertently disclosed under the FOIA. He has therefore proactively considered whether section 40(2) of FOIA is engaged in relation to the withheld information, as covered in the following analysis.

Reasons for decision

Section 40 – personal information

10. 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.
11. 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

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

processing of personal data (the DP principles), as set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).

12. 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.
13. 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?

14. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
15. 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.
16. 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.
17. The withheld information in this case is a recording of a briefing given by Cheshire Constabulary and the Crown Prosecution Service to members of the Media prior to the trial of Lucy Letby which started in October 2022. Having listened to the recording the Commissioner is satisfied that the withheld information both relates to and identifies Lucy Letby. This is because it relates to Lucy Letby's trial and facts and circumstances surrounding the case. The withheld information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
18. 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. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

19. 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".

20. 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.
21. 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.
22. In addition, if the requested data 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 the information criminal offence data?

23. Information relating to criminal convictions and offences is given special status in the UK GDPR.
24. 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.
25. Having considered the wording of the request, and listened to the withheld information, the Commissioner finds that the withheld information is criminal offence data. This is because it falls within the definitions at section 11(2) of the DPA.
26. 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.
27. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under the 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).
28. The Commissioner has seen no evidence or indication that the individual concerned has specifically consented to this data being disclosed to the world in response to the FOIA request or that the specific details contained in the withheld information have been made manifestly public by the data subject.

29. 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 under section 40(2) of the FOIA. Cheshire Constabulary was therefore not obliged to disclose the requested information.
30. As the Commissioner has concluded that the information requested is exempt under section 40(2) of the FOIA, he has not gone on to consider Cheshire Constabulary's application of section 30 to the withheld information.

Right of appeal

31. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanne Edwards
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Information Commissioner's Office
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