

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2014

Public Authority: Chief Constable of Sussex Police
Address: Sussex Police HQ
Church Lane
Lewes
East Sussex
BN7 2DZ

Decision (including any steps ordered)

1. The complainant asked Sussex Police (the police) for the personal email addresses of all of its headquarters staff. The police said that the information was held but withheld it, initially relying on the section 40(2) FOIA exemption (personal information); they later relied additionally on the section 36(2) exemption (prejudice to the effective conduct of public affairs).
2. The Commissioner considered the application of the section 36(2)(c) exemption and decided that the police had acted correctly in relying on it and that the balance of the public interest favoured maintaining the exemption. He did not proceed to consider application of the section 40(2) FOIA exemption.
3. The Commissioner does not require the police to take any steps to ensure compliance with the legislation.

Request and response

4. On 26 February 2014, the complainant wrote to the police through the website '*whatdotheyknow*' and requested information in the following terms:

Please provide a list to my home address via Royal Mail of all headquarters personal emails as this information is unavailable on your website.

Please...No consolidation of my FOI's.

5. The police responded on 3 March 2014, and again on 13 March 2014 following internal review, refusing to provide the requested information and citing the section 40(2) FOIA exemption.

Scope of the case

6. On 8 August 2014, following protracted preliminary correspondence with the complainant, the Commissioner decided to investigate the complaint about the way the request for information had been handled.
7. The police confirmed that the information requested was held and relied upon the section 40(2) FOIA exemption in withholding it. During the course of the Commissioner's investigation the police decided to rely additionally on the section 36(2) FOIA exemption.
8. The Commissioner began by considering the application of the section 36(2) exemption and, in the light of his decision with respect to it, did not proceed to consider the application of the section 40(2) FOIA exemption.

Reasons for decision

9. Section 36(2)(c) provides that information is exempt from disclosure if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
10. When deciding if the exemption is engaged the Commissioner has to first establish that an opinion was given on the application of the exemption by a proper qualified person. In this case the Commissioner has established that the qualified person for Sussex Police, Chief Constable Giles York, gave his opinion on the application of the exemption on 9 October 2014 in response to a submission made to him on 8 October 2014.
11. In order to determine whether section 36(2)(c) is engaged the Commissioner must consider:

- whether the prejudice claimed relates to the specific subsection of section 36(2) that the police are relying upon, section 36(2)(c) in this matter;
 - the nature of the information and the timing of the request; and
 - the qualified person's knowledge of or involvement in the issue.
12. In this matter the Commissioner has seen that it is the qualified person's opinion that disclosure would be likely to prejudice the effective conduct of public affairs because it would seriously inhibit the ability of the police to mount an effective and appropriate response to contact from members of the public and to safeguard the wellbeing of police officers and staff.
13. In his response to the Commissioner the qualified person explained that there were over 900 relevant police officers and staff based at its headquarters and whose email addresses were within the scope of the request. These included persons of all police ranks and support grades, both public facing and internal workers. Whilst many were in support and administrative roles, many others were operational and in both overt and covert specialist roles.
14. The qualified person said that the police did not maintain a publicly available list of email addresses of its staff because of the personal information contained in the email addresses and the variety of roles they fulfilled. He added that the volume of changes, both with regard to joiners and leavers and also internal moves, would make problematic the updating and maintenance of such a list.
15. The qualified person said that police officers and staff were frequently at risk from attempts to compromise and corrupt them. Many police employees did not advertise their employment with their associates in order to avoid being 'targeted' by others to provide sensitive information unlawfully. He added that he was satisfied that constructing a public list of the names of police employees, whether of the whole force or just those based in a single location, would increase this risk.
16. The qualified person said that it was his view that disclosing the information would lead to the police receiving more "spam", unwanted emails, which would waste the time of staff members and adversely affect the smooth running of the police service. He provided evidence to show that this was a current concern and said that it would be made considerably worse should email addresses be published. The use of email had become one of the main methods for members of the public to contact the police and to access the services the police provided; it was imperative that this important and growing communication channel should be managed effectively.

17. The police said that shortly since giving his reasonable opinion, the qualified person had become aware of two further issues which he considered reinforced the opinion he had already expressed. These were the current terrorism threat level which had led to police employees being regarded as at heightened personal risk and being advised not to make generally known their police employment. It was also considered likely that disclosure could lead to 'phishing' attacks' or 'scam' emails, receipt of which would cause disruption to services.

18. The Commissioner has issued guidance on section 36 of the FOIA. With regard to what can be considered a 'reasonable opinion' it states the following:

"The most relevant definition of 'reasonable' in the Shorter Oxford English Dictionary is 'In accordance with reason; not irrational or absurd'. If the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable."

19. It is important to note that, when considering whether section 36(2)(c) is engaged, the Information Commissioner is making a decision, not on whether he agrees with the opinion of the qualified person, but whether it was reasonable for that person to reach that opinion.

20. Having reviewed the qualified person's opinion the Commissioner is satisfied that only relevant arguments were considered and that the qualified person was not influenced by irrelevant considerations. He is satisfied that it was reasonable to conclude that, since disclosure under FOIA is to the world at large, it would lead to the police receiving a greater number of unwanted emails which would be prejudicial to its ability to carry out its core functions.

21. The Commissioner found the opinion a reasonable one. In reaching his decision he took into account evidence including:

- an increase in spam and phishing activity into the police email system;
- police evidence that email is crucial to its core business as many of its key services depend on it. Disruption to its email service would be very difficult to manage at key times and would degrade police ability to respond to urgent communications from members of the public who would be at risk of not receiving an effective and appropriate response to their concerns;
- the police need to ensure that police officers and staff receive the correct emails to prevent both duplication and wastage of its limited resources.

22. The Commissioner is satisfied that section 36(2)(c) is engaged, a conclusion the complaint did not challenge, and proceeded to consider the public interest test, balancing the public interest in maintaining the exemption against that in disclosure.

Public interest test

23. The complainant said that he did not see why he had to justify the ICO taking what he regarded as the appropriate action. He claimed that what he had asked for was public information and could not see why the police had refused a simple request.
24. The police were concerned that disclosure of the email addresses of police officers and staff would enable many members of the police force to be identified when their police employment would not otherwise be generally known. This would negate the safety advice being given to police officers and staff not to identify themselves when off duty; this would breach the police duty of care to its officers and staff.
25. Furthermore the police were concerned that disclosing the relevant email addresses would leave the police communications systems vulnerable to malicious activity. The Commissioner was shown evidence that the danger of such activity is real, current and substantial and that such activity would be likely to make it impossible for members of the public with policing needs to contact the police urgently when they needed to.
26. The Commissioner has seen that disclosure would serve the public interest by giving greater transparency and accountability. There is too a need to ensure that the public can quickly and easily contact the police, including through the use of electronic channels of communication; the public interest in this latter need is, however, met by the police provision of relevant generic unit email addresses.
27. In considering the balance of the public interest, the Commissioner accepts that disclosure would serve the public interest in terms of greater transparency and accountability. However that was more than balanced by the very substantial weight that he gave to the heightened risk to police officers and staff and to the integrity of police systems. Accordingly he decided that the public interest favours maintaining the section 36(2)(c) exemption.

Right of appeal

28. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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