

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 November 2014

**Public Authority:** Chief Constable of Cheshire Constabulary  
**Address:** Cheshire Constabulary HQ  
Oakmere Road  
Winsford  
CW7 2UA

### Decision (including any steps ordered)

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1. The complainant has requested information in connection with police action he believes was taken against him. Cheshire Constabulary refused to deal with the request, citing section 14(2) of the FOIA. The Commissioner's decision is that the complainant has requested his own personal data and that Cheshire Constabulary should have neither confirmed nor denied holding any information by virtue of section 40(5)(a) of the FOIA. He does not require any steps to be taken.

### Request and response

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2. On 20 September 2014, the complainant made the following request for information via the What Do They Know website.

*"You recently informed me Cheshire Constabulary does not hold any recorded documents relating to that occasion in April 2013 when officers were ordered to, and went, door to door throughout the village of [redacted] asking residents, many my neighbours, to ignore the contents of a recently delivered publication they had received named [redacted] my own creation.*

*...*

*...I am not asking you provide me information relating to a crime but instead every day documentation the kind which without its existence would cause Cheshire Constabulary to cease being operational.*

*I look forward to receiving all that information you know me lawfully entitled."*

3. Cheshire Constabulary responded on 20 October 2014. It stated that the request was repeated and that it was therefore not obliged to deal with it by virtue of the provisions of section 14(2).

### **Scope of the case**

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4. The complainant contacted the Commissioner on 4 November 2014, stating that he wanted to complain about Cheshire Constabulary's response to the request.
5. The complainant had not obtained an internal review of the request. The Commissioner is aware that Cheshire Constabulary has refused a number of the complainant's other requests for information, citing the provisions of section 14. The Commissioner has therefore not required that the complainant request an internal review of its decision here. He has instead used his discretion and considered the complaint in the absence of an internal review.
6. The Commissioner has considered Cheshire Constabulary's handling of the request on the information before him. Since his primary consideration has been to establish whether the FOIA or the Data Protection Act 1998 ("the DPA") is the applicable access regime, and he considers this to be clear from the wording of the request itself, he has not needed to consult the complainant or Cheshire Constabulary in reaching his decision.

### **Reasons for decision**

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#### **Section 40 – personal information**

7. Under the FOIA, any individual can make a request for access to any information held by a public authority. However, an individual's own personal data is exempt from the FOIA's access right. It must instead be dealt with according to subject access rights established under the DPA.

8. Section 40(1) of the FOIA provides that:

*"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".*

9. Section 40(5) of the FOIA provides that:

*"The duty to confirm or deny –*

*(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)".*

**Is the requested information the complainant's personal data?**

10. The Commissioner has had particular regard to the wording of the request. He notes that its focus is the alleged police action taken in response to a publication that the complainant says he produced and distributed. He also notes that the complainant states in the request that he previously tried to obtain the requested information via a subject access request, which was apparently refused. The Commissioner has not received a complaint about that alleged refusal, which would be considered under the terms of the DPA, and so he is unable to verify whether this was the case. However, he takes this as the complainant's acknowledgement that this request, although being cited as made under the terms of the FOIA, is clearly made in relation to him and police action he believes has been taken in respect of him.
11. With all this in mind, the Commissioner is satisfied that any data covered by the request, if held by Cheshire Constabulary, would be held in connection with the complainant.
12. As such, the Commissioner considers that the information requested, if held, would be the personal data of the complainant as it relates specifically to him. All such information would accordingly be exempt from disclosure under section 40(1) and therefore, rather than citing section 14(2) to refuse to deal with the request, under section 40(5)(a) Cheshire Constabulary was not required to confirm or deny whether it held the requested information.

## **Other matters**

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13. The complainant states that he has already made a subject access request to Cheshire Constabulary and that it was refused. If he is unhappy with that response he may wish to consider submitting a request for assessment to the Information Commissioner.
14. It should be noted that requests for assessment made under the DPA are not dealt with by way of a decision notice, as the provisions of the DPA are different to those of the FOIA. If the complainant is dissatisfied with any assessment made then there is no access to the First-tier Tribunal; any redress should be made by him directly to the courts.

## Right of appeal

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15. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**