

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 January 2016

Public Authority: Independent Police Complaints Commission
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant has requested the name of an individual in relation to allegations made against himself.
2. The Independent Police Complaints Commission (IPCC) refused the request under section 14(1) (vexatious request) of the FOIA. However, the Commissioner considers the request to be for the complainant's personal data and it is therefore his decision that the IPCC should have neither confirmed nor denied holding the requested information by virtue of section 40(5)(personal information) of the FOIA.
3. The Commissioner requires the IPCC to take no steps.

Background

4. The request can be followed on the 'What do they know?' ('WDTK') website¹.

¹https://www.whatdotheyknow.com/request/name_of_a_complainant_employed_a#incoming-686224

Request and response

5. On 15 June 2015, the complainant wrote to the IPCC and requested the following:

"I require the Name of the individual employed at the IPCC, who made false allegations against me to the GMP, to which I was falsely arrested.

1) The IPCC have already sent me some information (NOT EVIDENCE) but not the name of the liable party.

And as I wish to pursue action against the individual for making such false claims, I require their name.

2) You will have to consider the data protection act. But as court action is going to take place, you are obliged to give the individuals identity. Pre-Court disclosure. Along with their statement and any evidence they wish to use as a defence.

3) The IPCC has stated that no evidence to support the claim made by said individual has ever been submitted, as the IPCC has no evidence to submit to GMP. As no threats have ever been made.

4) GMP claim that I was arrested for Harassment of EX-Partner. And the fact is,, I have no ex-partner working at the IPCC.??.

5) GMP refuse to accept a complaint in respect to this, and so do the IPCC. So I require the defence of the IPCC. For refusing to take a complaint for this offence.

I have chosen this means of communication because the IPCC refuse to enter into any complaints procedure.

I have initiated legal action, I am in the process of filing my information at court to start proceedings.

If you would like me to disclose the relevant laws concerning the role of the IPCC, GMP, HMCTS. I will gladly divulge.

As I deny all allegations made against me by the IPCC, I require your supporting evidence.

If you refuse, I SUE YOU. GMP made false arrest and falsely imprisoned me without evidence to support the claims made. And as it was a member of IPCC staff, you are aware of the need for such evidence before any action can be taken by the GMP.

I was arrested for allegations of threats against GMP, and then released without charge for harassment of Ex-Partner not threats against GMP..!

As I have been denied my inalienable rights, and the IPCC refuse to investigate this matter, I give notice of my intent to sue.

Date of offence 26th August 2010.

Date of Arrest 27th August 2010."

6. The IPCC responded on 16 July 2015. It stated that it was refusing the request under section 14(1) of the FOIA.
7. Following an internal review the IPCC wrote to the complainant on 29 July 2015. It stated that it was upholding its original decision to refuse the request under section 14(1).

Scope of the case

8. The complainant contacted the Commissioner on 30 July 2015 to complain about the way his request for information had been handled.
9. The Commissioner has responsibility for upholding rights under both the Data Protection Act 1998 (the DPA) and the FOIA. Although the request was refused on the grounds of section 14(1) of the FOIA, in the Commissioner's view the requested information clearly relates to the complainant personally and therefore, although not cited by the IPCC, he has firstly considered the application of section 40.

Reasons for decision

Section 40(5)(a) – personal data of the requester

10. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.
11. The exemption at section 40(5) of the FOIA provides that a public authority does not have to confirm or deny whether requested information is held if to do so would constitute a disclosure of personal data.
12. Section 40(5)(a) provides that the duty to confirm or deny does not arise in relation to information that falls, or would fall if it were held, within the scope of section 40(1) of the FOIA. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because individuals may request

their personal data under a separate legislative access regime, namely the right of subject access under section 7 of the Data Protection Act 1998 (DPA).

13. Section 40(1) is an absolute exemption, meaning that if it applies there is no requirement to go on to consider whether disclosure would nevertheless be in the public interest.
14. In this case, the Commissioner understands that the complainant is trying to ascertain information about a party who he believes has made allegations against him personally. As the complainant will necessarily be the focus of any information held it will clearly constitute his own personal data. Any information, if held, would also be the personal data of the other party concerned.

Would confirming or denying that the requested information is held breach a data protection principle?

15. Any authority must process (ie in this case confirm or deny if the information is held) information in line with the data protection principles in the DPA. The first data protection principle requires that data is processed fairly and lawfully, and in particular that one of the conditions in schedule 2 of the DPA is met.
16. The Commissioner must therefore consider whether confirming or denying that information is held would breach any of the data protection principles of the DPA.
17. The first data protection principle states that:
Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
18. It is clear in this case that the individual concerned would have a reasonable expectation that information relating to any allegations made against him, if held, would not be disclosed to the world in response to an information request made under the terms of the FOIA.
19. The Commissioner has also considered the public's legitimate interests in knowing if the requested information is held against any prejudice to the rights, freedoms and legitimate interests of the complainant. He has determined that there is no legitimate interest in confirming to the public whether the requested information is held.

20. Due to the matters considered above and in all of the circumstances of this case the Commissioner is satisfied that it would be unfair to confirm or deny whether the requested information is held. To do so would disclose information about the data subject which would represent an unwarranted infringement by the IPCC on the complainant's privacy. The absolute exemption provided by section 40(5)(a) is therefore engaged.
21. The Commissioner has therefore determined that the IPCC was incorrect to cite section 14(1) and should have instead cited section 40(5)(a). He has therefore not found it necessary to consider section 14(1).

Other matters

22. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concerns:

Correct access regime

23. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as a right of subject access. When the Commissioner viewed the request, it was apparent to him that it was a request for personal data relating to the complainant. As the information being sought was in fact the complainant's personal data the request should have been dealt with as a subject access request rather than a request under the FOIA.
24. Whilst he notes that the complainant made his request on WDTK which is used to make requests to public authorities under the FOIA, it is the Commissioner's opinion that the responsibility for determining whether a request should be considered under the FOIA or the DPA rests with the public authority and not the applicant. The Commissioner encourages public authorities to consider requests under the correct regime in the first instance. In this case the IPCC should have instigated its own procedures for handling subject access requests; ideally, this should have been done at the time the request was received by them.
25. The Commissioner therefore recommends and expects the IPCC to now consider whether the information requested, which is exempt from disclosure under section 40(1) of the FOIA, could be disclosed to the applicant in accordance with its obligations under section 7 of the DPA.

Right of appeal

26. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

27. 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.
28. 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

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