

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2017

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

Decision (including any steps ordered)

1. The complainant has requested information about the duties, remuneration and responsibilities of an individual employed by the Independent Police Complaints Commission (IPCC). The IPCC disclosed some information but withheld the remainder, citing the exemption at section 40(2) (personal information) of the FOIA.
2. The Information Commissioner's decision is that the IPCC was entitled to rely upon section 40(2) to withhold the information. However, by failing to issue a response within the statutory 20 working day timescale, the IPCC breached section 10(1). The Commissioner does not require any steps to be taken.

Request and response

3. On 6 May 2016, the complainant wrote to the IPCC and made a detailed, multi part request for information about the employment of a named member of staff ("the employee").
4. At part 7 of the request, the complainant asked:
"Please provide full details of sums paid to [employee's name], including

- (a) Salary
- (b) All, any bonus payments
- (c) Telephone / Mobile phone allowance
- (d) Rent/housing allowance, payments (including
- (e) Overtime, car, food allowance
- (f) Any other payments or allowances"

5. The IPCC responded on 22 June 2016 and disclosed the majority of the information requested in the multi part request. However, it withheld the information requested at points 3 and 7 of the request, stating that it was exempt from disclosure under section 40(2) of the FOIA
6. The complainant requested an internal review of the decision on 7 July 2016. The IPCC wrote to the complainant with the outcome of the review on 30 September 2016. It withdrew its reliance on section 40(2) in respect of point 3 of the request, and disclosed that information to the complainant. However, it maintained its position that the information requested at point 7 was exempt from disclosure under section 40(2).

Scope of the case

7. The complainant contacted the Commissioner on 11 October 2016 to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the IPCC was entitled to rely on section 40(2) to withhold the remaining information. He also asked the Commissioner to consider the time it had taken the IPCC to deal with his request.
8. The Commissioner has considered in this decision notice the application of section 40(2) of the FOIA to withhold information requested in point 7 of the request. She has also considered the IPCC's compliance with the statutory timescale set out under section 10 of the FOIA.

Reasons for decision

Section 40 - personal information

9. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its

disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ("the DPA").

10. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

"'personal data' means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."

11. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

Is the withheld information personal data?

12. The information requested here is the salary and other remuneration of a named employee of the IPCC. The Commissioner is satisfied that this is information about a living individual, who can be identified from that information. She is therefore satisfied that the information constitutes personal data in accordance with section 1 of the DPA.

Would the disclosure of this personal data contravene any of the data protection principles?

13. The Commissioner notes in this case that the IPCC said that disclosure would breach the first data protection principle. It has argued that disclosure of the requested information, which asks for detailed information about the salary and allowances paid to the employee, would breach the first data protection principle in that it would be unfair.

14. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
15. The Commissioner's guidance on requests for personal data about employees¹ states that there are a number of factors which may determine whether disclosure would be fair. These include the employee's reasonable expectations, the consequences for them of disclosure, and the balance between their rights and any legitimate public interest in disclosure.

Reasonable expectations of the data subject

16. A key issue to consider in assessing fairness is whether employees have a reasonable expectation that their information will not be disclosed. This will depend on a number of factors.

Whether the information relates to the employee in their professional role or to them as individuals

17. Information about an employee's actions or decisions in carrying out their job is still personal data about that employee, but given the need for accountability and transparency about public authorities, there may be some expectation of disclosure. The complainant considered this to be the case here, as the requested information relates to the role of the employee in their capacity as a member of staff who holds decision making powers.
18. The IPCC has acknowledged that the requested information relates to the employee's professional life, insofar as it is information about monies paid to them in the execution of their duties as an employee in a public authority. However, it considers that the information is overwhelmingly 'personal' in nature; it relates to their private life by way of their personal financial circumstances. It is, essentially, detailed information about their personal income.
19. The Commissioner considers that information about personal income and particularly such detailed information as rent and food allowance payments, is information about someone's personal life and financial

¹ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

circumstances. She therefore considers that the requested information relates significantly to the personal life of the employee.

Seniority

20. It is reasonable to expect that a public authority would disclose more information relating to senior employees than it would in relation to junior employees.
21. The IPCC stated that the employee was a manager within the IPCC, but they were not a senior manager and did not meet the seniority level whereby their salary was routinely published in the IPCC annual report. The employee would therefore have no expectation that the IPCC would publish this information in response to an FOIA request.

Whether the employee has a public facing role

22. It may also be fair to release more information about employees who are not senior managers but who represent their authority to the outside world, as a spokesperson or at meetings with other bodies. This implies that the employee has some responsibility for explaining the policies or actions of their authority. However, while it may be fair in such circumstances to disclose the role of a public facing employee in certain decision making processes, the right to know about them is unlikely to extend to the disclosure of detailed personal information about their income without significant mitigating factors capable of rendering such a disclosure fair.
23. The IPCC did not comment on whether the employee has a public facing role. However, the Commissioner has conducted internet searches using the employee's name and has been able to find only one record of them representing the IPCC to the outside world. She therefore considers it reasonable to conclude that the employee does not occupy a public facing role to the extent that they would expect the requested information would be divulged about them as a matter of course.

Consequences of disclosure

24. The IPCC has asked the employee whether, on this occasion, they would be willing for the requested information to be disclosed to the complainant, and the employee has declined to give consent. The employee provided a submission to the Commissioner, explaining why the disclosure of the requested information would be unnecessarily intrusive and distressing to them.
25. Having had regard to the submission and the particular circumstances of the case, the Commissioner is satisfied that the employee would find the

consequent loss of privacy caused by disclosing the requested information to be distressing and unnecessarily intrusive.

Balancing rights and freedoms with legitimate interests

26. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake, along with specific interests.
27. However, the interest in disclosure must be a public interest, not the private interests of the individual requester. The requester's interests are only relevant in so far as they may reflect a wider public interest. This is because, when information is disclosed under the FOIA, it is effectively disclosed to the world at large, and not merely to the requester.
28. The complainant has not set out how or why the wider public interest would be served by the disclosure of the requested information.
29. The Commissioner accepts that, as a public authority, there is a legitimate interest in the IPCC being transparent and accountable with regard to staff remuneration. However, she considers that this public interest is served to a large degree by the information that the IPCC already publishes on its website and in its annual report about its pay bill as a whole, and specific salary and pension payments to senior staff.
30. Although the Commissioner can appreciate why the information might be of particular interest to the complainant, she is mindful of the fact that the FOIA is request and motive blind and has not seen any evidence to indicate that there is sufficient wider legitimate public interest in disclosure which would outweigh the rights and freedoms of the employee in this case.
31. Taking all of the above into account, the Commissioner concludes that it would be unfair to the employee to disclose the requested information, and would therefore breach the first data protection principle. She is satisfied that disclosure would not be within the employee's reasonable expectations; that it would have detrimental consequences for the employee; and that there are no wider legitimate interests to be served by disclosure which would be capable of outweighing the employee's strong expectation of, and right to, privacy.
32. The Commissioner has therefore decided that the IPCC was entitled to apply section 40(2) of the FOIA to withhold the information requested at point 7 of the request.

Section 10 – time for compliance

33. Section 1(1) of the FOIA provides that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

34. Section 10(1) of the FOIA provides that:

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

35. The request's date of receipt was 6 May 2016. The twentieth working day following this was 6 June 2016. However, the IPCC's response to the request was not sent until 22 June 2016.

36. Therefore, by failing to respond to the request within twenty working days, the Commissioner considers that the IPCC breached section 10(1) of the FOIA.

Other matters

Internal review

37. The approach of the Commissioner is that internal reviews should be completed within a maximum of 40 working days from the date the review was requested. In this case, the IPCC failed to keep to this timescale. A separate record has been made of this delay and this issue may be revisited should evidence from other cases suggest that this is necessary.

Right of appeal

38. 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

39. 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.
40. 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

Samantha Bracegirdle
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