

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 19 September 2017

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

### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding the previous work experience of a named individual employed by the Independent Police Complaints Commission.
2. The Independent Police Complaints Commission responded by refusing to confirm or deny whether it held the requested information under Section 40(5) of the FOIA.
3. The Commissioner's decision is that the Independent Police Complaints Commission has correctly applied Section 40(5) of the FOIA.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

### **Request and response**

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5. On 12 March 2017 the complainant wrote to the Independent Police Complaints Commission (IPCC) and requested information in the following terms:

*"This is a Freedom of Information request.*

*[Name redacted] works as a caseworker in IPCC. Please tell me if [redacted] has CID, Forensics or any Scientific Support departments experience before October 20 2016*

*Please look at ICO document "Requests for personal data about public authority employees".<sup>1</sup>*

6. The IPCC responded on 3 April 2017. It stated that it was refusing to confirm or deny whether it held any information falling within the terms of the request by virtue of Section 40(5)(b)(i) of the FOIA.
7. On 7 April 2017, the complainant requested an internal review.
8. Following an internal review the IPCC wrote to the complainant on 10 May 2017. It stated that it was upholding its original decision.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 12 May 2017 to complain about the way her request for information had been handled. In particular, she said she was unhappy with the IPCC's decision to apply Section 40(5) of the FOIA.

### **Reasons for decision**

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#### **Section 40(5)**

10. When a public authority receives a request for information under the FOIA, it normally has a duty under section 1(1)(a) to tell the requester whether it holds the information. This is called "the duty to confirm or deny". However, in certain circumstances, this duty does not apply and the public authority is not obliged to say whether or not it holds the information; instead, it can give a "neither confirm nor deny" response.
11. Section 40(5) of the FOIA sets out the conditions under which a public authority can give a "neither confirm nor deny" response where the information requested is, or would be, personal data. It includes provisions relating to both personal data about the requester and personal data about other people.

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<sup>1</sup>

[https://ico.org.uk/media/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/1187/section_40_requests_for_personal_data_about_employees.pdf)

12. If the information would constitute personal data relating to someone other than the requester, then the public authority does not have to confirm or deny whether it holds it if one of the conditions in Section 40(5)(b)(i) or (ii) applies.
13. There may be circumstances, for example requests for information about an individual's previous work experience, in which simply to confirm whether or not a public authority holds that personal data about an individual can, itself, reveal something about that individual. To either confirm or deny that the information is held could indicate that a person has or has not had the previous work experience specified in the request. If to do so would contravene data protection principles, for example because it would be unfair, then the public authority is not obliged to confirm or deny that it holds the information.

*If held, would the information be personal data?*

14. The Commissioner has first considered whether the requested information would be the personal data of any person.
15. The Data Protection Act 1998 (DPA) categorises personal data as data that relates to a living individual from which that individual can be identified. If held, the requested information would confirm whether or not the named individual referred to in the request had the previous work experience specified.
16. Therefore, the Commissioner is satisfied that the requested information would be personal data. If held, it would tell the public something about the individual, namely whether or not they had the previous work experience specified.

*Would confirming or denying the information is held breach any of the data protection principles?*

17. If confirming or denying whether the information is held would contravene the first data protection principle, that personal data should be processed fairly and lawfully, section 40(5)(b)(i) is applicable.
18. In assessing fairness, the Commissioner considers the reasonable expectations of the individuals concerned and what might be the likely consequences resulting from disclosure.
19. In this case confirming or denying whether the information is held would communicate whether or not the individual named in the request had the previous work experience specified.
20. The Commissioner notes here that there may be situations in which it could be argued that giving the confirmation or denial to a requester would not necessarily contravene data protection principles because the

requester already knows or suspects that the public authority holds or does not hold the information.

21. The FOIA is motive and applicant 'blind', and the test is whether the information can be disclosed to the public at large, not just to the requester. Therefore an authority can only disclose or confirm or deny it holds information under the FOIA if it could disclose it, or confirm or deny it holds the information, to any member of the public who requested it.
22. The Commissioner recognises that individuals have a reasonable expectation that a public authority, in its role as a responsible data controller, will respect confidentiality in this regard.
23. In an attempt to be helpful the IPCC has stated that whenever it receives a request for information regarding the training background of its staff it always neither confirms nor denies that the information is held, regardless of whether or not it is held.
24. The Constabulary also pointed out that its reliance on Section 40(5) of the FOIA should not be taken as conclusive evidence that the information requested by the complainant did or did not exist.
25. The Commissioner considers that the IPCC's staff will have a reasonable expectation that any information held about them regarding their previous work experience will remain confidential. Confirming or denying if a particular individual had such experience would be unfair as it may cause that person some distress given the confidential nature of this information and constitute an unwarranted intrusion into their personal circumstances.
26. In conclusion, the Commissioner is satisfied that confirming or denying that the requested information is held would be unfair and thus contravene the first data protection principle. Therefore the Commissioner finds that the IPCC is entitled to refuse the request on the basis of section 40(5)(i)(b) of the FOIA.
27. As the Commissioner has determined that it would be unfair to confirm or deny if the information is held, it has not been necessary to go on to consider whether this is lawful or whether one of the Schedule 2 conditions in the DPA is met.

## **Right of appeal**

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**