

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2018

Public Authority: Chief Constable of Cambridgeshire Constabulary
Address: Hinchingsbrooke Park
Huntingdon
Cambridgeshire
PE29 6NP

Decision (including any steps ordered)

1. The complainant requested the names of those persons who are currently accredited as Community Safety Accreditation Scheme members within the Cambridgeshire Constabulary policing area together with their delegated policing powers. Cambridgeshire Constabulary responded to the request after 25 May 2018 so the Commissioner has determined the matter under the General Data Protection Regulation (GDPR).
2. The Commissioner decided that Cambridgeshire Constabulary had applied the section 40(2) (Personal information) FOIA exemption correctly in refusing the request.
3. The Commissioner required no steps to be taken.

Request and response

4. On 12 May 2018, as part of a larger request, the complainant wrote to Cambridgeshire Constabulary (the police) via the WhatDoTheyKnow.com (WDTK) website and requested information in the following terms:

Please provide a list of all persons who are currently accredited Community safety accreditation scheme members. These mean individual names not companies etc. Provide powers for each person.

5. The police responded on 12 June 2018, and again on 9 July 2018 following an internal review, refusing to provide the requested information relying on the section 40(2) FOIA exemption.

Scope of the case

6. The complainant contacted the Commissioner on 11 July 2018 to complain about the way his request for information had been handled.
7. Since the police response of 12 June 2018 post-dated 25 May 2018, the Commissioner has determined the matter under the GDPR and Data Protection Act 2018 ('DPA') rather than the predecessor legislation.
8. The police said that the Community Safety Accreditation Scheme ('CSAS') is a voluntary scheme whereby individual volunteers, employed by their participating partner organisations, receive training and then have certain police powers delegated to them. The delegated powers include: dealing with anti-social behaviour, confiscating alcohol in appropriate situations, and directing traffic in particular circumstances.
9. The police said that they considered disclosing the requested information would cause harm and continued to withhold it. The Commissioner therefore considered the application of section 40(2) FOIA within the context of the GDPR and the DPA.

Reasons for decision

10. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3) or 40(4) is satisfied.
11. In this case the relevant condition is contained in section 40(3)(A)(a)¹. This applies where disclosure of information to any member of the public would contravene any of the principles relating to the processing of

¹ As amended by Schedule 19 Paragraph 58(3) of the Data Protection Act 2018

personal data set out in Article 5 of the General Data Protection Regulation EU2016/679 ('GDPR') ('the DP principles').

12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 FOIA cannot apply.
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the information personal data?

14. Section 3(2) of the DPA defines personal data as:-

"any information relating to an identified or identifiable living individual".

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
17. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
18. The Commissioner has viewed the withheld information. It comprises a list of the names and employing organisations of the CSAS accredited persons ('CSAS members'). She has also considered representations from the complainant and the police.
19. Having considered the withheld information, the Commissioner is satisfied that it comprises the names and employers of the CSAS members. The Commissioner regards this as their 'personal data' as set out in section 3 DPA. The withheld information does not include special category or criminal offence data.
20. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the data protection principles.

21. The Commissioner found that the first data protection principle is the most relevant in this case.

Would disclosure contravene the first data protection principle?

22. The first data protection principle under Article 5(1)(a) GDPR states that:-

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

23. Personal data is processed if it is disclosed in response to a FOIA request. This means that the information can only be disclosed if to do so would be lawful (i.e. would meet one of the conditions of lawful processing listed in Article 6(1) GDPR), fair, and transparent.

Lawful processing: Article 6(1)(f) GDPR

24. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the"* conditions listed in the Article applies. One of the conditions in Article 6(1) must therefore be met before disclosure of the information in response to the request would be considered lawful.

25. The Commissioner considers that the condition most applicable on the facts of this case would be that contained in Article 6(1)(f) GDPR which provides as follows:-

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, ...².

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(7) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

26. In considering the application of Article 6(1)(f) GDPR in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

27. The Commissioner considers that the test of “necessity” under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

28. In considering any legitimate interest(s) in the disclosure of the requested information to the public under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.

29. Legitimate interests may range widely. They can be the requester’s own interests or the interests of third parties, commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

30. The complainant told the Commissioner that he was seeking professional information rather than genuinely personal or sensitive information. He said that just as the public had a right to know who holds the office of magistrate or judge (information that he said was in the public domain) the public had a right to know who holds policing powers. He added that disclosure would not cause unwarranted harm to any individual and said that all members of the scheme must wear name badges when on duty.

31. The Commissioner accepts that it is legitimate for members of the public to be able easily to identify persons who are not uniformed police officers but who nevertheless have power to use delegated police powers and to be able easily to find out what those powers are.

32. In her investigation, the Commissioner has seen that uniformed police officers are identifiable to members of the public by reference to the collar numbers on their uniforms and, for Cambridgeshire Constabulary neighbourhood policing, by disclosure of their names on the police website. However other police officers and police staff, also police volunteers such as special constables, are not generally so listed nor are

their identities widely disclosed. She found that the names of volunteer magistrates are not generally made public.

33. The Commissioner found that all CSAS members wear the uniforms of their employing organisations, which identify them as members of those organisations; they also wear name badges which identify them as individuals. It follows that, at the point at which CSAS members are in contact with members of the public and deploying their delegated police powers, they can readily be identified by members of the public.

Is disclosure necessary?

34. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so disclosure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
35. The police said that the requestor did not have a legitimate interest in accessing the information. The police added that the personal data of the volunteers was not disclosed on the Cambridgeshire Constabulary website, however they did name the organisations currently taking part in CSAS. The police said that the individual CSAS members concerned were volunteers; they had not been asked to consent to the disclosure of their personal details. The police said that disclosure could have a detrimental impact on individual CSAS members and on the scheme as a whole. The role of CSAS members was to assist the wider community and the police; they were not police employees. When on duty, using their delegated powers, CSAS members were required to carry their CSAS identity card and produce it if requested by a member of the public.
36. The Commissioner agrees that it is necessary for a member of the public subjected to any police powers, such as those delegated to a CSAS member, to be able to identify: the CSAS member's personal identity; their employing organisation and, the powers delegated to them. She saw, in her investigation, that at all relevant times, CSAS members wear the uniforms of their employing organisations, wear name badges and carry explanatory identity cards. She has also seen that the delegated powers of the CSAS members are published on the police website.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

37. It is necessary to balance the legitimate interests in disclosure against the data subject(s)' interests or fundamental rights and freedoms. In

doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

38. The complainant has asked for the names of all of the CSAS members in the Cambridgeshire Constabulary policing area. A disclosure under FOIA is made in effect to 'the world' and can be published more widely. The Commissioner considered that such publication would be an intrusion on the rights and freedoms of the persons named.
39. The Commissioner believes that wanting to identify CSAS members when acting in an official capacity and exercising delegated police powers is a legitimate aim. The question for her then is whether publication to 'the world' would be a disproportionate intrusion on CSAS members' rights and freedoms. She has considered whether or not such publication would be necessary to achieve the legitimate aim of identifying CSAS members when they are when acting in an official capacity. She noted that CSAS members have not been asked to consent to publication of their names and have not done so. The issue for her to determine is whether it is necessary to disclose their names to the complainant to achieve the legitimate interest that she has recognised.
40. The Commissioner has seen that there are measures in place to safeguard members of the public from misuse of the delegated powers. The CSAS members wear the uniforms of their employing organisations and additionally carry identity cards giving their names which they are required to show to members of the public on request. The police have told her that there is a complaints process to be followed in the event of a complaint being raised.
41. The Commissioner has received evidence that no other police force currently discloses the requested information. She has also considered the working practices of other law enforcement bodies such as the police themselves, including the practice of this police force in the case of volunteer special constables whose names are not published. The police provided evidence that to list the names of CSAS members proactively under FOIA would be intrusive and could endanger them.
42. Based on the above factors, the Commissioner decided that the legitimate interest in disclosure, while real and of substance, is insufficient to outweigh the intrusion that disclosure would make on the CSAS members' fundamental rights and freedoms, and that the disclosure of the information would not therefore be lawful.

43. Given the conclusion the Commissioner has reached above on lawfulness, she considered that she did not need to go on to consider separately whether or not disclosure would be fair and transparent.
44. The Commissioner has therefore decided that the police were entitled to withhold the information under section 40(2) FOIA, by way of section 40(3)(A)(a) FOIA.

Right of appeal

45. 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

46. 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.
47. 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

Deborah Clark
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