

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2022

Public Authority: Police and Crime Commissioner for West Mercia
Address: Office of the Police and Crime Commissioner
West Mercia Police
Hindlip Hall
Worcester
WR3 8SP

Decision (including any steps ordered)

1. The complainant has requested, from the Office of the Police and Crime Commissioner for West Mercia (the "OPCC"), information about its data sharing practices with a company called Sancus. The OPCC refused to provide the requested information, citing the exemptions at sections 43(2) (Commercial interests) and 36(2)(c) (Prejudice to the effective conduct of public affairs) of FOIA. Although not cited, the Commissioner has also considered section 40(2) (Personal information) in respect of the names and email addresses of the parties concerned.
2. The Commissioner's decision is that section 43 is not engaged and that section 36 is only partially engaged. He also finds that section 40 is only partially engaged. He requires the OPCC to take the following steps to ensure compliance with the legislation:
 - disclose the information which the Commissioner has identified in a separate confidential annex.
3. The OPCC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

4. The Police (Complaints and Misconduct) Regulations 2020¹ came into force on 1 February 2020, introducing changes to the police complaint system. Part of the reforms concerned how reviews of police complaints are dealt with.
5. According to the OPCC's website²:

"The Home Office has reformed the way reviews of police complaints (formerly called appeals) are dealt with. From the beginning of February 2020, Police and Crime Commissioners (PCCs) have taken on extra responsibilities for reviewing how complaints were dealt with, where the complainant is not happy with the outcome. This change applies for complaints that were first recorded after February 1st 2020.

The reason for this change, is to make sure that reviews are completely impartial and carried out by an independent body, providing greater reassurance for the public. Previously, complaint reviews were carried out within the police force itself.

The change is also designed to ensure that complaints can be dealt with quickly, effectively and proportionately, not just for the benefit of the public but also for the police".

6. In respect of undertaking these reviews, the OPCC's website says:

"Your review form and supporting documents will be shared with an independent and qualified external body which assesses reviews on our behalf".
7. The external body referred to is Sancus Solutions Ltd. According to its website³:

"POLICE COMPLAINTS REVIEW SUPPORT

The 2020 Police Regulations and associated primary legislation bring new challenges for the Office of Police and Crime Commissioner (OPCC). There is now statutory oversight of the

¹ <https://www.legislation.gov.uk/ukxi/2020/2/made>

² <https://www.westmercia-pcc.gov.uk/key-information/police-complaint-reviews/>

³ <https://www.sancussolutions.co.uk/home/investigation-review/police-complaints-review-support/>

police complaints system for your force and also, a requirement to conduct reviews of police complaints.

In respect of the second new statutory responsibility, conducting reviews of police complaints, we know that OPCCs are considering how to best manage this. The new obligation brings challenges including managing unpredictable demand, having experienced and trained reviewers and maintaining service during periods of staff absence.

REVIEWS AND SUPPORT

Sancus are able to provide two levels of support. We can provide a contracted service undertaking all your reviews and preparing the necessary paperwork. This will include an assessment of whether the outcome was reasonable and proportionate and any recommendations for further response...

QUALITY AND EXPERIENCE

Reviewers engaged to complete Complaint Reviews on behalf of Police and Crime Commissioners are all experienced senior managers from a police professional standards background. They have been trained in the implementation of the new regulations to ensure consistency of service and are vetted to the required level for police information handling needs...

THE BENEFITS

The benefits of making use of the new service to Police and Crime Commissioners are considerable;

- Independence of decision making which will maintain public confidence in the review process
- Cost will be predictable and entirely linked to the level of demand.
- Cost effectiveness. There will be no need to create new staff posts to deal with the service
- Consistency of decision making both locally and nationally. We will seek to ensure the same reviewer deals with all of the cases from an individual PCC
- Quality management will be ongoing to again, maintain confidence in the process

- Resilience. Sancus will ensure that reviews are delivered within time scales agreed in advance with OPCC's, usually being within 21 days
- The important question is how much does this service cost? We have a structure which ensures a value for money service delivering a high level of quality and expertise. There are also savings built in for larger volumes of cases".

Request and response

8. On 11 March 2021, the complainant wrote to the OPCC and requested information in the following terms:

"... please provide all documentation regarding data sharing protocols with Sancus Solutions Ltd, detailing how members of the public information is shared and what audits and control measures are in place to ensure compliance".
9. On 9 April 2021, the OPCC responded. It refused to provide the requested information. It cited the following exemptions as its basis for doing so: section 43(2) (Commercial interests) and section 36(2)(c) (Prejudice to the effective conduct of public affairs) of FOIA.
10. The complainant requested an internal review on 10 April 2021.
11. The OPCC provided an internal review on 16 April 2021 in which it maintained its original position.

Scope of the case

12. The complainant contacted the Commissioner on 12 May 2021 to complain about the way his request for information had been handled. He explained that he wished to have sight of the requested information:

"... to understand and establish what relationship existed between the OPCC and Sancus, including their terms of reference. It was not made to examine the financial elements of the contract".
13. The Commissioner will consider the application of exemptions to the withheld information. It is noted that any monetary figures are not required so fall outside the scope of the investigation. It is also noted that the wording of the request only concerns "data sharing" rather than any "terms of reference" as stated in the grounds above.

14. The Commissioner has viewed the withheld information. There are two contracts, which differ only by date, that contain information relevant to the request. There are also four emails, three of which contain reference to the subject matter of the request. (The fourth refers to going to procurement and the Commissioner considers it to be out of scope.)
15. The Commissioner has identified the information which the OPCC is to disclose in a confidential annex to this decision notice. This has been disclosed to the public authority only.

Reasons for decision

Section 36 - Prejudice to the effective conduct of public affairs

16. Section 36(2)(c) of FOIA states that information is exempt from disclosure if, in the reasonable opinion of the Qualified Person (the "QP"), disclosure of the information would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
17. Section 36 is a unique exemption within FOIA in that it relies on a particular individual, the QP, within the public authority giving an opinion on the likelihood of prejudice occurring. It is not for the Commissioner to stand in the shoes of that individual and provide his own opinion. The Commissioner's role is to: establish that an opinion has been provided by the QP; to assure himself that that opinion is "reasonable" and; to make a determination as to whether there are public interest considerations which might outweigh any prejudice.

Who is the QP and have they given an opinion?

18. The QP in this instance is the Police and Crime Commissioner.
19. The Commissioner has seen an email and submission which was sent to the QP on 8 April 2021 seeking their view; the QP does not appear to have had sight of the actual withheld information. On the same day, the QP responded to say that he was satisfied that the exemption applied on the basis of the submission provided.
20. The Commissioner is therefore satisfied that the QP gave an opinion on 8 April 2021.

What was the opinion and was it reasonable?

21. It is not the role of the Commissioner to substitute his own opinion for that of the QP. The QP is best placed to know the circumstances of their organisation and the significance of the information concerned. It thus follows that the bar for finding that an opinion is "reasonable" is not a high one.

22. A "reasonable" opinion need not be the most reasonable opinion available. It need only be within the spectrum of opinions that a reasonable person might hold and must not be irrational or absurd.
23. However, the Commissioner considers that an opinion is likely to be unreasonable if it fails to make out the grounds for the exemption or if the information is already in the public domain.
24. In relation to section 36(2)(c), the case law on this particular limb of the exemption makes clear that the prejudice must be some form of harm not envisaged by any other limb.
25. The OPCC advised the Commissioner that a telephone briefing was initially provided to the QP before written authorisation was sought. The QP was given details about the request and potential impacts of disclosure. The resulting written opinion provided by the QP concludes that:

"... the publication of specific, detailed measures in respect of information security tactics and processes used by the OPCC (and by extension the wider police force), within police ICT systems, creates a genuine risk for both the OPCC and particularly the police. The publication of such information could quite feasibly be used inappropriately by others to seek to commit crime or attempt to compromise the security of police data.

The confidentiality of such information is of vital importance to policing, and keeping the public safe. It is therefore also in the greater public interest, far outweighing the benefits of disclosure in respect of transparency for the reassurance of the single person who has enquired about this matter.

Therefore I believe that disclosure of the requested information risks compromising sensitive information that is important to the continued effectiveness and confidential nature of many aspects of police business, as well as lawful OPCC functions.

For these reasons, disclosure **would be likely to prejudice the effective conduct of public affairs**".

26. In this regard, having read the contracts the Commissioner noted that neither contained any "detailed measures in respect of information security tactics and processes used by the OPCC (and by extension the wider police force), within police ICT systems". He therefore asked the OPCC to clarify which parts of these it considered to pose this prejudice. He was advised:

"... the contract itself does not set out all of these requirements specifically. Clause 6.3.3(d) sets out the general requirements

around secure data transfer. It is the separate emails that establish the specific, detailed measures used by both our staff and Sancus Solutions in respect of practical implementation of Clause 6.3.3(d) ... The emails form part of the contract and are inextricably linked in this request.

The emails confirm support ... for this solution, not only as an approved method of transferring sensitive personal and policing information, but also specifically confirm that it is actually the method used in this scenario. Police forces (and the OPCC) understandably do not disclose this information publicly, due to the threat of misuse in cyber-enabled crime”.

27. The Commissioner has viewed both contracts and he does not consider that either one contains any detailed measures in respect of information security tactics and processes, which is what the QP was asked to give an opinion on; this has been confirmed in the OPCC’s own response, above. As such, the Commissioner does not consider that the opinion given was reasonable in this regard. Therefore, neither contract falls within the remit of this exemption.
28. However, three of the four emails contain a small amount of information that relates to information security and the Commissioner agrees that they fall within the remit of the description that was provided to the QP.
29. The information contained in the emails concerns how the parties will share information and any security afforded to that process. Whilst the Commissioner accepts that the QP’s opinion is reasonable regarding this information, he has also noted that some of this information can be found on the internet.
30. For example, Sancus has a General Data Protection Regulation (“GDPR”) Privacy Notice on its website specifically covering OPCC police complaint reviews⁴. This notice has a section entitled: “How we get the personal information we use and why we have it” and it includes some information contained in the emails which the OPCC is seeking to withhold; the Commissioner notes that this point does not appear to have been relayed to the QP, and so it was not one of the factors taken into consideration when forming the opinion.
31. The Commissioner has also sourced a copy of an Information Sharing Agreement between Sancus and a different Police, Fire and Crime Commissioner which includes the type of information which this OPCC

⁴ <https://www.sancussolutions.co.uk/home/about-sancus/gdpr-privacy-notice/>

has withheld. He provided the OPCC with a link to this and asked for its views but no response was received.

32. Therefore, for some of the withheld information contained in the emails, the Commissioner finds that the OPCC's description of the likely detriment resulting from disclosure is not realistic. This is because such information is already publicly available. Where it falls within the scope of the request this information should be disclosed, as identified in the confidential annex provided with this decision notice.
33. However, the Commissioner agrees that this is not the case in respect of two non-personal email addresses which are referred to in the emails. The Commissioner considers that disclosure of this information would realistically have an outcome that would be likely to cause the detriment envisioned by the OPCC.
34. The Commissioner finds that the QP's opinion in respect of these email addresses is reasonable and therefore that section 36(2)(c) of FOIA is engaged in respect of this particular content.

Public interest test

35. Even where the QP has identified that disclosure of information would be likely to cause prejudice, a public authority must still disclose that information unless it can demonstrate that the public interest favours maintaining the exemption.
36. Given that the Commissioner has accepted the possibility that disclosure of two email addresses might cause prejudice, there will always be an inherent public interest in preventing that from occurring. However, the weight that should be attached to that public interest will be determined by the severity of the prejudice and the likelihood of it occurring.
37. The QP's submission has stated – and the Commissioner accepts as reasonable – that the lower bar of prejudice is engaged. This means that the chance of prejudice occurring doesn't have to be more likely than not, but there must still be more than a remote or hypothetical chance. Whilst it is easier to demonstrate that the lower bar of likelihood is met, the weight to be attached to that prejudice is also lower.
38. The Commissioner recognises that there will always be a public interest in ensuring that public bodies charged with spending taxpayers' money are doing so properly. Disclosure of the requested information would enhance the transparency of a new process whereby a private sector organisation has taken on some oversight of police complaint reviews and the associated sharing of police complaint information.
39. In this particular case, the Commissioner considers that the public interest is enhanced because of the nature of the contract being

awarded and the focus of the request being on arrangements regarding the sharing of personal information and the steps being taken to ensure its safety; some of the information being shared is likely to be criminal offence data as it concerns police complaints. Criminal offence data is afforded special status in the GDPR and it may only be processed, which includes sharing it with third parties as part of the complaint handling process, if certain stringent conditions under the Data Protection Act 2018 (the "DPA") can be met. Maintaining its integrity is therefore vital.

40. Counter to this, the Commissioner is unable to identify how disclosure of this information would actually serve the public interest, whereas knowledge of it could pose a genuine security threat to the parties concerned; it would reveal details which are not currently in the public domain.
41. The Commissioner considers that any general interest which would be served by the transparency of the processes concerned is heavily outweighed by the need to keep this information properly secure. He therefore finds that the OPCC was entitled to withhold the email addresses.

Section 43 – Commercial interests

42. This has been cited in respect of the contracts. None of their content has been deemed to fall within the scope of section 36, however, only some of their content actually falls within the scope of the request.
43. Section 43(2) of FOIA states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."
44. The Commissioner's guidance on section 43⁵ states that "a commercial interest relates to a legal person's ability to participate competitively in a commercial activity", for example the purchase and sale of equipment, goods or services.
45. In order for the exemption to be engaged, it must be shown that disclosure would, or would be likely to, cause prejudice to the interests that the exemption protects.
46. In the Commissioner's view, three criteria must be met in order to engage the exemption at section 43:

⁵ <https://ico.org.uk/for-organisations/section-43-commercial-interests/#432>

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the disclosure of the withheld information and the prejudice which the exemption is designed to avoid. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. whether disclosure 'would be likely' to result in prejudice or 'would' result in prejudice.

47. Consideration of the exemption is a two-stage process. Firstly the exemption must be properly engaged and meet the three criteria listed above. Then, the information should still be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

The applicable interests

48. The OPCC has specified that:

"The use of this exemption primarily relates to disclosure of the contract for the PCC's complaint review service with an external provider. The commercial interests in question are those of both the Office of the PCC in West Mercia, and Sancus Solutions Ltd. It does also however touch on the precise operating methods used by Sancus Solutions Ltd, as set out in the emails between the two organisations.

The specific information requested forms a significant basis of the contract in place at the time between the two organisations in respect of their complaint review service. The broad nature of the information requested meant that large sections of the contract would be relevant for potential disclosure.

The details of a confidential commercial contract are patently of significant commercial interest to the relevant signatory organisations. Disclosure would have revealed detailed, specific requirements of a commercial agreement".

49. It is again noted that the costs which are stated within the contracts are not being considered for disclosure, as the complainant has stated that he does not require them. He only requires information which relates to the sharing of personal information and any audit or control measures which are in place regarding this sharing.

50. The Commissioner considers that this information is contained in the following sections of the contracts: Terms and Conditions; Service Provider's Obligations parts 6.2, 6.3, 6.5 and 6.7; Confidentiality parts 9.1 and 9.2; and Appendix B. There is also a small amount of relevant information in the three emails referred to earlier. (The information which has been withheld under section 36 above has not been reconsidered.)
51. The Commissioner is satisfied that the arguments presented by the OPCC outline how disclosure would prejudice the applicable interests within the relevant exemption.

The nature of the prejudice

52. The Commissioner has gone on to consider if the OPCC has successfully demonstrated a causal relationship between disclosure and the prejudice which the exemption is designed to protect.
53. The Commissioner accepts that it will not be possible for the OPCC to provide concrete proof that the prejudice would be likely to occur as a result of disclosure. In order to do so, disclosure would be required, which would undermine the point of the exemption and FOIA. However, the Commissioner must be satisfied that this causal relationship is based on more than mere assertion or belief that disclosure would lead to prejudice. There must be a logical connection between the disclosure and the prejudice envisaged, in order to engage the exemption.
54. The OPCC explained to the Commissioner:

"The PCC's complaint review service is subject to external procurement processes. A procurement exercise for the function was due to commence within a matter of weeks of the FOI request being received (evidenced by the attached email to our Procurement Manager, which was sent before the FOI request was received) [the Commissioner considers this email to fall outside of the scope of this request]. That procurement exercise took place between May and November 2021, and involved engaging with multiple providers through an established process and framework, to ensure compliance with relevant legislation and guidelines. Part of that procurement process required suppliers to provide evidence and documentation of appropriate information security technology and protocol, suitable for the data being processed and transferred between the two organisations. To have published large sections of the existing provider's current contract could have led to accusations of the Office of the PCC creating an unfair or undermined procurement process, or created an unfair advantage for interested parties. This could have had financial implications for the parties concerned, including the Office of the PCC".

55. The Commissioner accepts that the procurement process was as described above. He also notes that the same wording from the earlier contract was used for the later contract after it was formalised, so it was of genuine importance to both parties. However, those parts of the contract which are being considered for this request are mostly text which the OPCC would necessarily have to include in order to demonstrate compliance with the GDPR. This is in line with the Commissioner's own guidance which stipulates what sort of information needs to be included in this type of contract⁶.
56. The OPCC has also not indicated the source of this wording, ie was it provided by Sancus or was it something which was drafted by the OPCC itself? If the latter, then it can be assumed that this would form a 'template' as a basis for all such contracts. If the former, then the Commissioner would have expected to be provided with more evidence demonstrating any objections raised by Sancus.
57. When a public authority is claiming that disclosure of requested information would prejudice the commercial interests of a third party the Commissioner follows the findings of the Information Tribunal decision in the case *Derry Council v Information Commissioner* [EA/2006/0014].
58. This confirmed that it is not appropriate to take into account speculative arguments which are advanced by public authorities about how prejudice may occur to third parties. Instead, the Commissioner expects that arguments advanced by a public authority should be based on its prior knowledge of the third party's concerns. The Commissioner explained this position to the OPCC and asked for evidence that any third party had been consulted about disclosure of the information requested in this case. No explanation or rationale was provided.
59. The Commissioner considers that the arguments submitted in support of the prejudice envisaged in this case are generic and somewhat limited. Despite being asked to do so, the OPCC has failed to explain exactly how disclosure would have the effect it is claiming.
60. Ultimately, it is up to the OPCC to convince the Commissioner that disclosure of the requested information would, or would be likely to, prejudice the commercial interests of any legal party. In order to establish a causal link the Commissioner must be satisfied that the prejudice claimed is at least possible. In light of the limited

⁶ <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/contracts-and-liabilities-between-controllers-and-processors-multi/>

representations submitted and the fact that the OPCC has failed to demonstrate that the prejudice it envisages to Sancus is based on prior knowledge or any consultation with it, the Commissioner has no alternative but to find that it has failed to demonstrate that the section 43 exemption is engaged in this case.

Conclusion

61. For this reason, the Commissioner finds that the second criterion necessary to engage section 43 is not met. That being the case, the Commissioner is not required to consider the remaining criterion. He concludes that the OPCC has not demonstrated that section 43 is engaged and now requires it to disclose the information as per the step in paragraph 2 of this notice.

Section 40 – Personal information

62. Although not cited by the OPCC, the Commissioner notes that there is some personal information within the withheld information which he has deemed suitable for disclosure above.
63. In addition to FOIA, the Commissioner is responsible for regulating data protection legislation. As such, he takes account of the need to protect personal data when considering whether such information may be disclosed under FOIA.
64. Section 40(2) of 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(3A)(3B) or 40(4A) is satisfied.
65. In this case the relevant condition is contained in section 40(3A)(a)⁷. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the GDPR.
66. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the DPA. If it is not personal data then section 40 of FOIA cannot apply.
67. 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 DP principles.

⁷ As amended by Schedule 19 Paragraph 58(3) DPA.

Is the information personal data?

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

“any information relating to an identified or identifiable living individual”.

69. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

70. 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.

71. 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.

72. The information under consideration here is the names and email addresses of some senior staff at the OPCC and Sancus, a telephone number and the signatures on the contracts. The complainant has advised that he does not require the email addresses of Sancus employees so these are not under consideration.

73. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information both relates to and identifies the individuals concerned. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.

74. 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 DP principles.

75. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

76. Article 5(1)(a) of the GDPR states that:

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

77. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

78. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

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

79. 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” lawful bases for processing listed in the Article applies.

80. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“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, in particular where the data subject is a child”⁸.

81. In considering the application of Article 6(1)(f) of the 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.

⁸ 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(8) 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”.

82. 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

83. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
84. The complainant has argued that the names and email addresses of the OPCC staff should be disclosed as the staff work for a public body and are decision makers who should be accountable for their work. In respect of Sancus employees, he said that their names were important as Sancus are working as data processors on behalf of the OPCC.
85. The Commissioner therefore accepts that a legitimate interest of transparency surrounding the processing of information about police complaints is being pursued in the request.

Is disclosure necessary?

86. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
87. The personal data identifies seven OPCC employees and four Sancus employees. They are all involved in the contract process and, in order to evidence that the contract was being overseen at a sufficiently senior level, the Commissioner is satisfied that disclosure of their details is necessary.
88. With regard to signatures, the parties who signed the contracts are included in those named and the Commissioner does not consider that any further benefit would flow from disclosing copies of their signatures. As such, he finds disclosure would not be necessary to meet the legitimate interests identified above. The Commissioner also does not consider that there is any benefit in disclosure of the private mobile telephone number of one Sancus employee so he concludes that this is

also not necessary. As disclosure of the signatures and the phone number are not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).

89. Regarding the named parties, and the email addresses of the OPCC staff, he has gone on to conduct the balancing test.

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

90. 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.
91. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
92. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to them in their professional role or to them as individuals, and the purpose for which they provided their personal data.
93. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
94. Of the named parties, the Commissioner has sourced information about four of the OPCC's employees and three Sancus employees. The Commissioner considers that these named parties are all public facing and details regarding their roles and employment are available in the public domain. As such, he does not consider that disclosure of their names, and, in the case of the OPCC employees, also their email addresses, would cause any unwarranted damage or distress to those individuals. They are involved with the process in a purely professional capacity and they are sufficiently senior within their organisations to have a reasonable expectation that their involvement could be disclosed.

95. However, in respect of the remaining four employees (three OPCC, one Sancus), the Commissioner has decided in this case that they would have no reasonable expectation that their details would be released as their association with the OPCC or Sancus is not already in the public domain. Consequently he finds that disclosure of their details would not be within their expectation and may have the potential to cause harm or distress.
96. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms in respect of the identifiable parties only (ie the four OPCC employees and three Sancus employees). The Commissioner therefore considers that there is an Article 6 basis for processing and so the disclosure of the information would be lawful.

Fairness and transparency

97. Even though it has been demonstrated that disclosure of the requested information under FOIA would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
98. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
99. The requirement for transparency is met because as a public authority, the OPCC is subject to FOIA.

The Commissioner's view

100. The Commissioner has therefore decided that, had it tried to do so, the OPCC would have failed to demonstrate that the exemption at section 40(2) was engaged in respect of information about these four OPCC employees and three Sancus employees.
101. The OPCC must disclose the information identified in the confidential annex he has provided to it, as per step 2 of this notice.

Right of appeal

102. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

103. 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.

104. 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