

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 2023

Public Authority: Chief Constable of Northumbria Police
Address: Northumbria Police Headquarters
Middle Engine Lane
Wallsend
Tyne and Wear
NE28 9NT

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints made about police officers. Chief Constable of Northumbria Police ("the Police") disclosed some information and withheld the rest under section 40(2) (personal information) and section 30(1)(a) (investigations and proceedings).
2. The Commissioner's decision is that the Police was correct to withhold the outstanding information under section 40(2) and section 30(1)(a).
3. The Commissioner does not require further steps.

Request and response

4. On 15 February 2023 the complainant wrote to Police and requested:

"I would like details of official complaints in the following categories, made against serving police officers in the force under your remit in 2018/19, 2019/20, 2020/21, 2021/22 and 2022/23 so far:

Sexual harassment Rape Sexual assault Child sex offences Other sexual misconduct

Specifically, for each category, I would like you to disclose:

- 1) How many accusations were made against serving police officers
- 2) How many allegations were upheld
- 3) How many of these upheld charges resulted in formal disciplinary action, and what actions they were
- 4) I'm also requesting that you break this down by
 - a) the sex of the accused,
 - b) the seniority of the accused
- 5) Confirm whether the complaint was made by;
 - a) a member of the public
 - b) a police officer / member of police staff

I'm requesting the above in PDF format, separated out by year and to be sent by email."

5. The Police failed to respond within the statutory timeframe and this breach of section 10 (timescale for compliance) of FOIA was recorded by the Commissioner.¹
6. The Police provided a substantive response to the request on 31 May 2023. It disclosed the total number of complaints for each year and the types of complaint that were included within that total but withheld the full details of each complaint under section 40(2) (personal information).

¹ [rcag-2023-n3q7.pdf \(ico.org.uk\)](#)

It also withheld the details of any live complaints under section 30(1)(a) (investigations and proceedings.)

7. The complainant requested an internal review on 2 June 2023. They were concerned that 'You have not dealt with my request correctly, in full nor have you disclosed the information in the order which I requested it.'
8. The Police provided the outcome to its internal review on 15 September 2023, upholding its original position and introducing a reliance on section 31(3) (law enforcement).
9. During this investigation, the Police wrote to the complainant and confirmed the data for 2021/2022 had been omitted from its previous response; it disclosed this data and apologised for this error. It also provided clarity to the complainant on how many allegations had been upheld for each year and the details of any steps taken in upheld complaints. Once again the Police upheld its position in relation to section 40(2) and section 30(1)(a) but revoked its reliance on section 31(3).

Scope of the case

10. To address all of the complainant's concerns as per their internal review request: there is no requirement for a public authority to disclose information in response to a request in a specific order.
11. Furthermore, the complainant is concerned that they requested information relating to 'sexual harassment' and 'other sexual misconduct' but the Police has disclosed information relating to 'inappropriate contact social media, inappropriate sexual behaviour and inappropriate comments'.
12. FOIA requires a public authority to disclose information held at the time that the request was made (unless its exempt). However, it doesn't need to create information in response to a FOI request. The Police don't need to consider which of the categories listed in the request a specific complaint would fall under. It only needs to disclose the information held at the time of the request.
13. Therefore, the scope of the Commissioner's investigation is limited to considering the Police's application of section 40(2) and section 30(1)(a).

Reasons for decision

14. 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.
15. In this case the relevant condition is contained in section 40(3A)(a)². 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 UK General Data Protection Regulation ('UK GDPR').
16. 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's not personal data then section 40 can't apply.
17. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.
18. To reiterate, the Police has disclosed the total number of complaints for each year and the types of complaint that were included within that total. However, it's refused to breakdown these complaints into any further detail, citing section 40(2).

Is the information personal data?

19. The complainant wants the Police to match each allegation with the gender and rank of the accused, whether the accuser was a member of the public or another police officer, whether the complaint was upheld and what, if any, disciplinary action that was taken.
20. The Police is concerned that, if it breaks down the complaints data into any further detail, 'there is a real possibility that Officers who have been subject to misconduct and those who have been dismissed could be identified.'
21. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
22. The two main elements of personal data are that a person must be identifiable from that information and it must relate to them.

² 1 As amended by Schedule 19 Paragraph 58(3) DPA

23. The Commissioner is satisfied that the withheld information relates to a number of Police Officers, who are the data subjects in this instance. It relates to these individuals because it details a complaint raised about them; this information has biographical significance for them, is used to inform decisions affecting them and has them as its main focus.
24. An identifiable living individual is one who can be identified, directly or indirectly from the information.
25. The Police has explained how disclosure of the breakdown requested could lead to the identification of the data subject:

"I refer to simple google searches for dismissed officers from Northumbria Police which can be undertaken and which from press reports, the identity of the Officer can be ascertained. Perhaps more importantly, should the data be further broken down to per allegation within the data sets requested and including all the data required by the requestor, there is also a risk that these press reports are interrogated, matched to the data provided in linear format and the incorrect Officer is identified. The data has been provided in the format it has (not including the fact that the data is not held in the requestors data set format) so that there is no ability to either correctly or incorrectly "match" the allegations and officers to those whose identity is already in the public domain."

26. The Commissioner has seen the withheld information as part of his investigation. He's also replicated the google searches the Police has referred to.
27. The Commissioner's guidance 'the anonymisation code' states:

'The risk of re-identification posed by making anonymised data available to those with particular personal knowledge cannot be ruled out, particularly where someone might learn something 'sensitive' about another individual – if only by having an existing suspicion confirmed. However, the privacy risk posed could, in reality, be low where one individual would already require access to so much information about the other individual for re-identification to take place. Therefore a relevant factor is whether the other individual will learn anything new.'
28. Some information in the public domain doesn't name a specific officer, but details the officer's rank, the allegation, the complainant's relationship to the accused and the circumstances and result of the complaint. Other information in the public domain does name a specific officer.
29. When considering whether anonymised data can be turned back into personal data, the Commissioner recognises that certain types of data

will be more attractive to a motivated intruder than others – and more consequential for individuals if reidentification occurs.

30. The anonymisation code also states that the risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA.
31. The complainant may not wish to reidentify any of the Police Officers involved in any individual complaint; however disclosure under FOIA is disclosure to the world at large. The Commissioner has decided that the withheld breakdown would be likely to lead to the reidentification of the individuals involved and therefore is personal data.

Would disclosure contravene principle (a)?

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

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

33. In the case of a 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.
34. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
35. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the UK GDPR.

Is the information criminal offence data?

36. Information relating to criminal convictions and offences, including allegations, is given special status in the UK GDPR.

37. The Police has explained:

“Should any individual be able to be identified from the data if it were to be broken down as suggested by the applicant, then the data would constitute criminal offence data as it refers to allegations of a criminal nature which have been formally investigated by a Police Force and which in each case has resulted in a formal outcome.”

38. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.

39. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject) or Part 3 paragraph 32 (data made manifestly public by the data subject).
40. Even though the details of certain allegations might be in the public domain, this was either done by the Police or via press reporting, which the data subject wouldn't have any control over. The Commissioner has seen no evidence or indication that the individual(s) concerned have specifically consented to this data being disclosed to the world in response to the request or that they have deliberately made this data public.
41. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data would therefore breach principle (a) and so this information is exempt under section 40(2) of FOIA.
42. The Commissioner is satisfied that the Police, in disclosing the complaints data in the format it has, has complied with the request but to break down the complaints data any further would be a breach of the data protection principles.

Section 30(1)(a) – investigations and proceedings

43. Section 30(1) of FOIA states that information held by a public authority is exempt information if it has, at any time, been held by the authority for the purposes of
 - "- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it".
44. The phrase "at any time" means that information can be exempt under section 30(1)(a) if it relates to a specific, ongoing, closed or abandoned investigation. It's not necessary for the investigation to lead to someone being charged with, or being convicted of, an offence.
45. Section 30(1)(a) is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. Information must simply have been held for a specific or particular investigation.
46. Section 30(1)(a) can only be claimed by public authorities that have certain duties or powers to investigate offences and institute criminal proceedings.

47. The Police has explained:

"Police Forces each have a professional standards department. These specialist departments ensure that as a competent authority we uphold the duty to conduct investigations with a view to ascertaining whether a person ought to be charged with an offence, whether the person charged is guilty of it and whether during the investigating it is deemed that there is a need to instigate criminal proceedings in respect of the matter being investigated. Whilst there are numerous elements in respect of Professional Standards Guidance, specific legislation relating to their function is set out in the Police Conduct Regulations 2008."

48. Details relating to the 'live' investigations are clearly held for the purposes of ascertaining whether an officer is guilty of an offence and should be charged; the Commissioner is satisfied the exemption is engaged.

49. Since section 30 is a qualified exemption, it's subject to the public interest test.

The public interest test

Factors in favour of disclosure

- 50. There's always a general public interest in promoting transparency and accountability.
- 51. There's also a public interest in the Police disclosing information which sheds light on any illegal or inappropriate conduct of its officers, those who are tasked with upholding the law.

Factors in favour of maintaining the exemption

- 52. Section 30 exists to ensure the effective investigation and prosecution of offences. It recognises the need to prevent disclosure that would prejudice a particular investigation, or the investigatory and prosecution processes generally, including any prejudice to live investigations.

Balance of the public interest test

- 53. In this instance, the Commissioner has determined that the balance of the public interest lies in maintaining the exemption.
- 54. The Commissioner recognises the importance of the public having confidence in public authorities. Confidence will be increased by allowing scrutiny of their performance and this may involve scrutinising the conduct of individual officers and complaints.

55. He also acknowledges the public interest in promoting transparency, accountability and public understanding with regard to the conduct of Police Officers.
56. The purpose of section 30 is to protect the effective investigation and prosecution of offences. Clearly, it's not in the public interest to jeopardise the ability of the Police to investigate serious complaints and incidents involving its own officers effectively.
57. In this case the Commissioner considers the Police has met the public interest in the information that its disclosed in response to the request. It has met this public interest without disclosing information that could prejudice any live investigations.
58. Taking all the above into account, while the Commissioner accepts that disclosing the withheld information would be likely to promote transparency, he considers that the public interest in disclosure is outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined.

Other matters

59. Whilst not a statutory requirement under FOIA, it's always good practice for a public authority to provide an internal review. Furthermore, the Commissioner's guidance states that this internal review outcome should be provided within 20 working days of receipt of the internal review request.
60. This timeframe can be extended to 40 days in exceptional circumstances. The Police failed to provide its internal review outcome within this timeframe.

Right of appeal

61. 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

62. 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.
63. 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

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