

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

### **Decision notice**

**Date:** 2 April 2014

**Public Authority:** Chief Constable of Greater Manchester Police  
**Address:** Northampton Road  
Manchester  
M40 5BP

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

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1. The complainant requested information relating to a complaint he had made about a police officer. GMP refused to confirm or deny whether it held this information under the exemption provided by section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that section 40(5) does apply and so GMP was not obliged to confirm or deny whether it held this information.

#### **Background**

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3. GMP explained that the request related to a formal complaint made by the complainant against a serving police officer and the spouse of that officer. This complaint related to the complainant's daughter.

#### **Request and response**

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4. GMP received the following information request from the complainant on 2 July 2013:

*"i. The minutes of the meeting at which [named police officer] was confronted by my allegations.*

*ii. Records of the audit log of all communications, especially the phone call from [named police officer] to [named police officer] Monday 11 February 2013, your report pp3-p2.*

*iii. All other records that Greater Manchester Police hold regarding this matter."*

5. GMP responded to this request on 29 July 2013. It refused to confirm or deny whether it held the requested information under the exemption provided by section 40(5) of the FOIA. No explanation was given as to why this exemption was believed to be engaged.
6. The complainant responded on 16 August 2013 and requested an internal review. GMP responded with the outcome of the internal review on 17 September 2013 and stated that the refusal to confirm or deny under section 40(5) was upheld. Again no thorough explanation as to why this exemption was believed to apply was given.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 9 November 2013 to complain about the refusal of his information request. The complainant indicated that he did not agree that the exemption cited by GMP applied in this case.
8. As noted above GMP failed to provide anything other than the briefest of explanations for the citing of section 40(5). The Commissioner comments further on this in the '*Other matters*' section below.

### **Reasons for decision**

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#### **Section 40**

9. GMP has cited section 40(5), which provides an exemption from the duty to confirm or deny whether information is held where to do so would involve the disclosure of personal data and that disclosure would be in breach of any of the data protection principles. There are two stages when considering this exemption. First, whether disclosure of the confirmation or denial would involve the disclosure of personal data, and secondly, whether that disclosure would be in breach of any of the data protection principles.
10. The first question here is whether confirmation or denial as to whether the requested information is held would involve the disclosure of personal data. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

*"'Personal data' means data which relate to a living individual who can be identified-*

- (a) *from those data,*
  - (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."*
- 11. As recorded above at paragraph 3, the request followed a complaint made by the complainant concerning a police officer, the officer's spouse and the complainant's daughter. The reasoning given by GMP was that confirmation or denial would disclose the personal data of the complainant's daughter. The Commissioner, however, believes that it is more relevant to consider whether providing the confirmation or denial would disclose personal data relating to the police officer named in the request.
- 12. The overall effect of the request is that it covers any information held by GMP that relates to a complaint about the officer and their spouse. The Commissioner's view is that confirmation that this information is held would effectively also act as a confirmation that a complaint about the officer named in the request had been made and investigated. A denial in response to the request would suggest the opposite.
- 13. As to whether that information would constitute personal data in accordance with the definition given in section 1(1) of the DPA, the officer is named in the request so clearly would be identifiable. The information disclosed through a confirmation or denial would, therefore, be the personal data of the named officer.
- 14. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which states that personal data shall be processed fairly and lawfully, and in particular on whether disclosure would be fair to the individual named in the request. In forming a view on whether disclosure would be fair the Commissioner has taken into account the reasonable expectation of the data subject, the consequences of disclosure upon the data subject and whether there would be any legitimate public interest in disclosure of the confirmation or denial.
- 15. At this point the Commissioner would stress that the question here is whether the confirmation or denial should be disclosed into the public domain, rather than whether it should be disclosed only to the complainant. This analysis therefore considers whether it would be fair to disclose the personal data of the named police officer into the public domain, rather than only to the complainant.

16. Covering first what the reasonable expectation of the data subject would be, the Commissioner considers it significant that GMP has stated that no complaint made by the complainant about the named officer has been upheld. In relation to standards complaints that are not upheld, the view of the Commissioner is that the subject of such a complaint would hold a reasonable expectation that information relating to it would not be disclosed, including information that confirms whether or not such a complaint has been made. In this case, therefore, it would have been reasonable for the data subject to expect that GMP would not confirm or deny whether the requested information was held.
17. On the issue of the consequences of disclosure upon the data subject, the view of the Commissioner is that disclosure in contravention of the reasonable expectation referred to above could result in distress to the data subject. In addition, the Commissioner also recognises that disclosure of information relating to standards complaints, particularly relating to complaints that were not upheld, could harm the professional reputation of a police officer.
18. As to whether there would be a legitimate public interest in the disclosure of this information, whilst section 40(5) is an absolute exemption and not qualified by the public interest, it is necessary for there to be a legitimate public interest in order for disclosure to be compliant with the DPA. A sufficiently strong interest may outweigh the factors against disclosure described above.
19. The Commissioner believes that there are circumstances in which there would be a legitimate public interest in the disclosure of information relating to standards complaints about police officers. This could be where there had been an unusually high number of complaints made about the officers of a particular force, for example. In this case, however, the view of the Commissioner is that there is no such public interest. Any relevant information held by GMP would relate to a single complaint made about an individual officer and the Commissioner is aware of no evidence of concerns about the number of standards complaints made against either that officer or against GMP as a whole.
20. The Commissioner's view is that the data subject would hold a reasonable expectation that GMP would not state whether it held the information requested, that disclosure may cause distress to and impact negatively upon the professional reputation of the data subject, and that there is no legitimate public interest in the disclosure of this information. As a result he finds that confirmation or denial would be unfair and in breach of the first data protection principle.
21. Having found that confirmation or denial would disclose personal data of the individual named in the request and that disclosure of that personal

data would be in breach of the first data protection principle, the conclusion of the Commissioner is that the exemption provided by section 40(5) of the FOIA is engaged. GMP was not, therefore, obliged to confirm or deny whether it held the information requested by the complainant.

## **Other matters**

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22. The refusal notice set out the requirements of section 17(1), including that to explain why an exemption applies. The refusal notice did not, however, include any explanation as to why section 40(5) was believed to apply. The internal review response again set out the requirements of section 17(1), but made only the briefest of reference as to why section 40(5) was believed to apply.
23. GMP is clearly aware of the requirements of section 17(1); it should ensure that its refusal notices explain why an exemption is believed to apply. GMP may find that where it provides a thorough explanation for refusing requests, this may lead to fewer internal reviews and complaints to the ICO.

## Right of appeal

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24. 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: 0116 249 4253

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

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

25. 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.
26. 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**