

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

### **Decision notice**

**Date:** 27 May 2014

**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 requested the names of police officers who were the subject of an investigation carried out by the Independent Police Complaints Commission (IPCC). The IPCC refused to disclose this information and cited the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the IPCC cited section 40(2) correctly and so it was not obliged to disclose this information.

### **Request and response**

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3. On 13 December 2013, the complainant wrote to the IPCC and requested information in the following terms:  
  
*"the officers' names involved in this fraudulent act".*
4. The incident that the request refers to was the dismissal for gross misconduct of four police officers in relation to what was described in the media as a "car-buying scam"<sup>1</sup>.

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<sup>1</sup> <http://www.lep.co.uk/news/local/police-sacked-in-car-selling-scam-1-6303692>

5. The IPCC responded on 15 January 2014. It stated that the request was refused and cited the exemptions provided by sections 31(1)(a) and (b) of the FOIA (prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders).
6. The complainant responded on 28 January 2014 and requested an internal review. The IPCC responded with the outcome of the internal review on 28 February 2014. The conclusion of this was that the refusal under sections 31(1)(a) and (b) was upheld.

## Scope of the case

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7. The complainant contacted the Commissioner initially on 15 January 2014 to complain about the refusal of his information request. At this stage he was advised that he should go through internal review prior to making his complaint to the ICO. Following the completion of the internal review, the complainant contacted the ICO again on 3 March 2014 and indicated at this stage that he did not agree with the reasoning given for the refusal of his request.
8. During the investigation of this case the IPCC advised that it was now also relying on the exemptions provided by sections 38(1)(a) and (b) (endangerment to health and safety) and 40(2) (personal information) of the FOIA. The following analysis focusses on section 40(2).

## Reasons for decision

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### Section 40

9. Section 40(2) of the FOIA provides an exemption in relation to information that constitutes the personal data of any individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process: first, whether the information requested constitutes personal data, and secondly whether disclosure of that personal data would be in breach of any of the data protection principles.
10. Covering first whether the information requested constitutes personal data, section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as follows:

*"'personal data' means data which relate to a living individual who can be identified:*

- a. from those data, or*
  - b. from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller”.*
- 11. The request is for names; clearly this information would both relate to and identify the police officers referred to in the request. This information is, therefore, personal data according to the definition given in section 1(1) of the DPA.
- 12. The next step is to address 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 principle, which requires that personal data is processed fairly and lawfully, and in particular on whether disclosure would be fair to the individuals referred to in the request. In forming a view on whether disclosure would be fair the Commissioner has taken into account the reasonable expectations of the data subjects, the consequences of disclosure upon the data subjects and whether there is legitimate public interest in the disclosure of this information.
- 13. Section 2 of the DPA lists what is to be considered sensitive personal data for the purposes of that Act. Included in this list is information concerning the commission or the alleged commission of an offence by the data subject.
- 14. During the investigation of this case the Commissioner asked the IPCC to comment on whether its view was that the requested information constituted sensitive personal data. The IPCC confirmed that the information in question relates to the alleged commission of an offence and so its view was that this is sensitive personal data.
- 15. The Commissioner agrees that this information is the sensitive personal data of the data subjects, as defined in section 2 of the DPA. That this information would be the sensitive personal data of those officers is relevant here when considering their expectations and the consequences of disclosure upon them. The view of the Commissioner is that it is highly likely to be the case that the data subjects would hold a strong expectation that this information would not be disclosed by the IPCC and that disclosure despite this expectation would result in distress to those individuals.
- 16. Sensitive personal data is, by its very nature, information that individuals regard as the most private information about themselves. As disclosure of this type of information is likely to have a detrimental or distressing effect on the data subjects, the Commissioner considers that

it would be unfair and in breach of the first data protection principle to disclose the information in this case.

17. The Commissioner would stress that the former occupation of the data subjects as police officers is not relevant to this decision. The key factor here is that the information that has been requested is *sensitive* personal data. The view of the Commissioner is that cases where it would be considered fair to disclose into the public domain sensitive personal data are likely to be extremely rare.
18. In conclusion, the Commissioner finds that the information requested constitutes the sensitive personal data of individuals other than the complainant and that the disclosure of that personal data would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) of the FOIA is, therefore, engaged and the IPCC was not obliged to disclose the requested information.
19. In light of this conclusion it has not been necessary to go on to consider the other exemptions cited by the IPCC.

## Right of appeal

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20. 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>

21. 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.
22. 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**