

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 April 2012

Public Authority: Lancashire Police Authority
Address: PO Box 653
Preston
PR2 2WB

Decision (including any steps ordered)

1. The complainant requested information relating to five investigation reports. Lancashire Police Authority (the Authority) refused to disclose the requested information citing section 40(2) (personal information). The Information Commissioner's ('the Commissioner's') decision is that the Authority applied the exemption correctly to most, but not all, of the information. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation: disclose a limited amount of information from three of the investigation reports, as indicated in the confidential annex to this notice.
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information 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.

Request and response

3. The complainant wrote to the Authority on 2 July 2011 in relation to the outcome of five investigations. He requested information in the following terms:

"Thank you for your letter dated 30 June 2011. However each heading refers to a report that has been considered.Please provide the factual report at each heading in order to comply with fairness, natural justice and accepted conventions/precedents".

4. The Authority responded on 4 August 2011, confirming that a separate investigation had been undertaken in relation to each complaint. The Authority cited section 40(2) of FOIA (personal information) as its reason for refusing to disclose the "factual reports" the complainant had requested.
5. Following an internal review the Authority wrote to the complainant on 5 September 2011. It upheld its decision that the information was exempt from disclosure by virtue of section 40(2) of FOIA.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He told the Commissioner that he had made it clear:

"that I needed information to show that, 'the matter has been properly addressed'. However the response in the five cases in this complaint only assured me that the LPA is secretive, lacks transparency and openness and is also predisposed to contradict previous good messages in the area of transparency when it suits."

7. He also argued:

"I have no idea how the complaints were handled and/or how evidence was weighed or even whether it was at all.... I only required some modicum of transparency, openness and insight into the practices of the LPA as involved in the 5 cases".

8. The complainant told the Commissioner:

"I feel that it is inconceivable that the entire material related to five reports can be covered by section 40(2)".

9. The withheld information at issue in this case relates to allegations made by the complainant that were investigated by the Authority. The Commissioner recognises that information relating to complaints often consists of a mixture of information that is the complainant's personal data, is third party personal data and information that is not personal data at all.
10. Accordingly he considers it appropriate for him to consider whether section 40(1) (personal information) applies to some or all of the withheld information. Having identified any information that is exempt under section 40(1) the Commissioner has gone on to consider whether the Authority has correctly refused to disclose any of the remaining

material within the five reports on the basis that it is exempt under section 40(2) (personal information).

Reasons for decision

Section 40 Personal information

Is the requested information personal data?

11. In the Commissioner's view, the two main elements of personal data are that the information must 'relate to' a living individual and that person must be identifiable. Information will 'relate to' a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
12. In this case, the requested information relates to five investigation reports, each report documenting the investigation into a separate complaint made to the Authority by the complainant. The published minutes show that four of these complaints relate to an officer, or a member, of the Police Authority with one complaint being about the alleged misuse of public funds.

Section 40(1) – Personal data of which the applicant is the data subject

13. Under section 40(1), requested information that constitutes the personal data of the applicant (as defined in the Data Protection Act (DPA)), is exempt from disclosure under the FOIA. The effect of this is to remove all of the individual's personal information entirely from the regime of the FOIA, leaving it subject instead to the information access regime of the DPA.
14. Although this exemption was not referred to by the Authority, given his dual role as the regulator of the DPA, the Commissioner considers it is appropriate for him to consider the application of this exemption.
15. Having viewed the withheld information, the Commissioner considers that, given both the content and context of the withheld information, the complainant is clearly identifiable from some of that information and that it is of biographical significance. He therefore finds that that information is the personal data of the complainant and is therefore exempt from disclosure by virtue of section 40(1) of the FOIA.
16. Section 40(1) is an absolute exemption, and therefore requires no public interest test to be conducted.

17. In the Commissioner's view, this decision will not disadvantage the applicant. He considers that an applicant wishing to access their own personal data will still be able to pursue this right under the DPA.

Section 40(2) – Personal data of which the applicant is not the data subject

18. Section 40(2) of FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles.
19. In order to reach a view on the Authority's arguments in this case, the Commissioner has first considered whether the remaining withheld information is the personal data of one or more third parties.
20. Having viewed the remaining withheld information, the Commissioner is satisfied that the majority of the withheld information falls within the definition of personal data as set out in the DPA because it 'relates to' information about one or more identifiable living individuals who have been the subject of an investigation.
21. However, with respect to the remaining information, he is not satisfied that it constitutes personal information because, rather than identify or relate to a living individual, it details a policy or procedure followed in investigating the complaint.
22. In correspondence with the Commissioner, the Authority argued in relation to one report that:

"although there are some general paragraphs within this report, the amount of personal data which requires redaction before the full report could be disclosed would make the report unintelligible".
23. The Commissioner notes the Authority's acknowledgement of the existence of "some general paragraphs" within that report. He also recognises the argument that, in some circumstances, the disclosure of a redacted version of withheld information will render the information meaningless.
24. However, the Commissioner considers in this case that there is sufficient information in three of the reports that can be provided, in redacted form, without the disclosed information being meaningless to the reader.
25. He therefore orders disclosure of that information. For clarity, he has detailed the information to be disclosed in a confidential annex to this decision notice.

Is the requested information sensitive personal data?

26. The Authority told the complainant that it considers the third party personal data at issue to constitute sensitive personal data *"given the nature of the allegations"* which gave rise to the reports.
27. Sensitive personal data is defined in section 2 of the DPA. It is personal data which falls into one of the categories set out in section 2 of the DPA.
28. The Commissioner accepts that the withheld information comprises reports created in response to complaints made under the Authority's Fraud and Corruption Policy. In relation to the individuals who are the subjects of the reports, the Commissioner considers that the requested information satisfies the definition of sensitive personal data under section 2(g) of the DPA:

"the commission or alleged commission by him of any offence".

29. The fact that the information constitutes personal data, and in some cases sensitive personal data, does not automatically exclude it from disclosure. The second element of the test is to determine whether disclosure would contravene any of the data protection principles.
30. Having accepted that the requested information constitutes the personal data, and in some cases the sensitive personal data, of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles.

Would disclosure contravene a data protection principle?

31. The Authority has argued that the disclosure of the information in each report would contravene the first principle of the DPA which states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

Would it be fair to disclose the requested information?

32. In answering the question of fairness, the Commissioner recognises the importance of considering whether the data subjects have consented to the disclosure and/or whether the data subjects have actively put some or all of the requested information into the public domain.

33. Regarding consent, the Authority told the Commissioner that the individuals concerned have not been approached. In this respect, the Commissioner notes that, although he considers it good practice to do so, there is no obligation on a public authority to seek a data subject's consent to disclosure.
34. With respect to the data subjects having put information into the public domain, the Commissioner has seen no evidence of this.
35. When considering fairness, the Commissioner also considers it appropriate to consider the consequences of any disclosure and the reasonable expectations of the data subjects. In doing so, he has taken into account that disclosure of information under FOIA is disclosure to the public at large and not just to the complainant.

The reasonable expectations of the data subjects

36. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible data controller, will not disclose certain information and will respect confidentiality. For example, he considers that information relating to an internal investigation will carry a strong general expectation of privacy.
37. In this case, notwithstanding the fact that the information relates to the public life of the individuals who are the subject of the reports, the Commissioner is satisfied that they would have had a reasonable expectation that the full details of the investigation in the requested information would be kept confidential and not passed to third parties.

The consequences of disclosure

38. The Commissioner notes that the Minutes of the Sub-Committee meeting which considered the investigation reports are publicly available on the Authority's website. He therefore accepts that the outcome of the investigations can be considered to be in the public domain. However, as that information does not contain full details of the investigations, he considers it relevant to take into account the consequences of disclosure when reaching a decision about the Authority's application of section 40 to that additional detail.
39. In this case the Authority has argued that disclosure of the reports is unwarranted because of the potential disproportionate adverse effect on the individuals concerned.
40. In considering the opposing views in this case, and taking into account the fact that the information at issue relates to investigations involving allegations of fraud and/or corruption, the Commissioner accepts the

Authority's argument that disclosure may have an unjustified adverse effect on the individuals concerned.

The legitimate public interest in disclosure

41. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, depending on the circumstances of the case it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
42. In considering 'legitimate interests', the Commissioner's view is that such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
43. Arguing in favour of disclosure, the complainant said:

"I also feel that it is entirely not in the public interest for a public authority to investigate five matters of a serious public interest as to probity and then keep it all totally secret. The LPA has provided absolutely no material as to how they investigated the matters, which questions were asked, which evidence was considered or any other detail".

"I have no idea how the complaints were handled and/or how evidence was weighed or even whether it was at all.... I only required some modicum of transparency, openness and insight into the practices of the LPA as involved in the 5 cases".

44. The Commissioner acknowledges that, in some cases, how an investigation was or was not conducted may well provide strong factors that would mean disclosure of personal data is not unfair. However, having regard to the particular content of the information and its context, this is not such a case. The Commissioner therefore considers that disclosure of third party personal data in this case (ie the withheld information) would be unfair to the individuals concerned and would therefore contravene the first data protection principle.
45. As the Commissioner has determined that it would be unfair to disclose the requested information, he has not gone on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 or 3 of the DPA is met.

Right of appeal

46. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

47. 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.
48. 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

Jo Pedder
Group Manager - Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF