

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 September 2013

Public Authority: British Transport Police
Address: 3 Callaghan Square
Cardiff
CF10 5BT

Decision (including any steps ordered)

1. The complainant requested information concerning incidents where people had collapsed, passed out, been involved in drug activity or died on trains running between Newbury and Reading during 2012. British Transport Police (BTP) initially refused this request under the exemption provided by section 40(2) (personal information) of the FOIA. Following the intervention of the Commissioner, BTP disclosed some information and in relation to the information that continued to be withheld now also cited section 38(1)(a) (endangerment to health and safety).
2. The Commissioner's decision is that BTP cited section 38(1)(a) correctly and so it is not required to disclose the information covered by that exemption. Also, when disclosing information to the complainant it correctly withheld some of the content of those materials under section 40(2). However, the Commissioner also finds that section 40(2) was cited incorrectly elsewhere and that BTP also incorrectly withheld other information, apparently on the grounds that it was not within the scope of the request.
3. The Commissioner requires BTP to take the following steps to ensure compliance with the legislation.
 - Disclose the seven records of non-fatal incidents in an unredacted form, save the content from the record of 4 April 2013 that the Commissioner has found to be exempt under section 40(2).
4. 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 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

5. On 11 February 2013 the complainant wrote to BTP and requested information in the following terms:

"...I am seeking a Freedom of Information Act disclosure to include all incidents of people who have collapsed, passed out, been involved in drug activity or died on the trains running along the lines which includes the section from Newbury to Reading covering the period of the whole of last year (2012)...I will need as much detail on each incident as possible."

6. BTP responded on 6 March 2013. The request was refused, with the exemption provided by section 40(2) (personal information) of the FOIA cited.
7. The complainant responded on 6 March 2013 and requested an internal review. BTP responded with the outcome of the review on 21 March 2013 and stated that the refusal to disclose the information was upheld.

Scope of the case

8. The complainant contacted the Commissioner on 22 March 2013 to complain about the refusal of his information request. The complainant indicated at this stage that he did not accept the reasoning given by BTP for the refusal of his request.
9. During the investigation of this case the position of BTP changed. As covered further below, the information in question in this case consisted of records relating to eight incidents, one of which concerned a fatality on board a train. In a fresh response issued to the complainant during the investigation, BTP cited the exemption provided by section 38(1)(a) (endangerment to health and safety) of the FOIA, as well as section 40(2), in relation to the information about a fatality.
10. In relation to the information on the remaining seven, non-fatal incidents, the position of BTP was that this information was exempt under section 40(2) on the basis that it was the personal data of the individuals who were taken ill in those incidents. However, upon reviewing that information, the Commissioner noted that it did not identify those individuals and so was clearly not their personal data.

11. In response to this point being raised with it, BTP disclosed the seven records relating to non-fatal incidents to the complainant. These records were disclosed with some of the content redacted, but without explanation given for these redactions. An explanation for these redactions was subsequently provided to the ICO in response to this point being raised with it.
12. The analysis below covers the citing of section 38(1)(a) in relation to the record of a fatal incident. In relation to the seven records of non-fatal incidents, it covers the content redacted from the versions that were disclosed to the complainant and the explanations for those redactions provided to the ICO by BTP.

Reasons for decision

Records of non-fatal incidents

13. As covered above, records of seven non-fatal incidents were disclosed to the complainant, but with content from these redacted. When asked to explain these redactions, in relation to the majority of these BTP described the redacted content as "*Police Reference – Not Relevant to Incident details*". In relation to these redactions, the Commissioner has considered section 1. In relation to the other redactions, BTP cited the exemption provided by section 40(2), which is also covered below.

Section 1

14. Section 1(1) of the FOIA requires that, upon receipt of an information request, a public authority should identify all information that it holds that falls within the scope of the request. In this case the position of BTP appears to be that the information marked "*Police Reference – Not Relevant to Incident details*" does not fall within the scope of the request. The view of the Commissioner is that the scope of the request in this case is clear in that it is for all information held by BTP about the incidents referred to in the request. The information in question here is database entries recording the incidents in question.
15. As the scope of the request was for all information relating to these incidents, the view of the Commissioner is that the entirety of these database entries fall within the scope of the request; it is not the case that the information redacted by BTP is somehow excluded from this scope. In failing to either disclose this redacted information or to give valid grounds for why this information would not be disclosed, BTP failed

to comply with section 1(1)(b) of the FOIA. At paragraph 3 above, BTP is required to disclose this information.

16. Although the Commissioner has not discussed with BTP why it felt it necessary to carry out these redactions, it appears that this may have been on the basis that it did not believe that the redacted content would be understandable or useful to the complainant. If this was the intention of BTP, when dealing with future requests it should focus only on the scope of an objective reading of the request. It is neither appropriate nor necessary to redact information that it is not believed would be understandable or useful to the requester, but that is nonetheless within the scope of the request. (However, where it might be convenient to the requestor for irrelevant information to be excluded, BTP could consider discussing the issue with them in line with its advice and assistance obligations under section 16.)

Section 40

17. This section provides an exemption for information that is the personal data of an 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, the information must constitute the personal data of a third party; and secondly, disclosure of this personal data must be in breach of at least one of the data protection principles.
18. BTP has cited this exemption in relation to small redactions from three of the records. For the sake of clarity here the Commissioner will refer to these records by their date: 26 February 2012, 4 April 2012, 3 October 2012.
19. Covering first whether the requested information constitutes 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, or

(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".

20. Addressing each of the three records in turn, in relation to the record dated 3 October 2012, the withheld information consists of a first name. The view of the Commissioner is that this does not constitute personal data. Unless the name is highly unusual, mention of a first name would

not generally be considered sufficient to identify an individual and the Commissioner does not believe that an individual could be identified from this redacted content. As the redaction from the 3 October 2012 record is not personal data, the exemption provided by section 40(2) is not engaged and at paragraph 3 above BTP is required to disclose this information.

21. The content redacted from the record dated 26 February 2012 is the name of a police officer. The Commissioner accepts that this information both relates to and identifies that individual, hence it is personal data. The next step is to consider whether it would be unfair to disclose that information. Here, the Commissioner considers it significant that the name of this police officer was disclosed elsewhere in this document. The view of the Commissioner is that, without it being necessary to go into further detail, it clearly would not be unfair to this individual to disclose their name when this has already been disclosed. Again, at paragraph 3 above BTP is required to disclose this information.
22. As well as this conclusion, the Commissioner would note in general that it will be considerably less likely for the disclosure of personal data that relates to an individual in their professional capacity to be unfair than would be the case for personal data relating to an individual's private life. BTP should bear this in mind when considering future requests for information that includes personal data relating to a police officer in their professional capacity.
23. Covering finally the 4 April 2012 record, the redactions here are of the name and address of a member of the public who reported that incident to the police. First, this information clearly relates to and identifies that individual and so it is personal data.
24. Secondly, on the issue of whether the disclosure of this 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 requires that personal data be processed fairly and lawfully, and specifically whether disclosure would be in general fair to the data subject. In forming a conclusion here, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is any legitimate public interest in the disclosure of this information.
25. As to the expectations of the data subject, the view of the Commissioner is that this individual would be likely to hold a strong expectation that this information would not be disclosed. It is a well-established principle that information can be provided to the police in confidence and the subject of this information would hold a reasonable expectation that their personal data would not be disclosed into the public domain via the

FOIA. Disclosure despite this expectation would be likely to result in distress to this individual.

26. On the issue of whether there is any legitimate public interest in this information, the Commissioner's view is that there is not. Whilst there is legitimate public interest in disclosure of information about BTP, the name of an individual who provided information to BTP is not necessary to satisfy that interest.
27. For these reasons, the conclusion of the Commissioner is that disclosure of this information would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) is, therefore, engaged in relation to that information and BTP is not required to disclose it.

Record of fatal incident

Section 38

28. In relation to the one record of a fatal incident, BTP has cited the exemption provided by section 38(1)(a) of the FOIA. This provides that information is exempt if disclosure would, or would be likely to, endanger the physical or mental health of any individual. Consideration of this exemption is a two-stage process: first, endangerment to health must be likely to result. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
29. Turning first to whether the exemption is engaged, the argument of BTP is that disclosure would be likely to result in endangerment to the mental health of relatives of the deceased individual. BTP believed that this endangerment would be likely to occur as a result of extreme distress arising from disclosure of the content of the information in question.
30. The Commissioner has previously accepted an individual's mental wellbeing to fall within the scope of this exemption. In this he includes emotional and psychological wellbeing, including the likelihood of causing significant upset or distress. The proviso is that disclosure must be likely to be significantly distressing, rather than likely to result merely in stress or worry.
31. The key point here is the content of the information. The Commissioner notes that some information about this incident was in the public domain at the time of the request as a result of media coverage. He also

notes, however, that this coverage lacks much of the detail included within the withheld information.

32. This content includes descriptions of the circumstances of this incident, as well as actions taken by BTP following this incident. The Commissioner accepts that disclosure of this level of detail would be likely to result in significant upset or distress to the relatives of the deceased individual, which would compound the trauma they clearly would have experienced at the time of hearing of the death of their relative. The Commissioner also believes that the fact of this information being available in the public domain were it to be disclosed via the FOIA would itself also be likely to result in upset or distress to the relatives.
33. For these reasons, the Commissioner finds that disclosure would be likely to result in endangerment to mental health. The exemption provided by section 38(1)(a) of the FOIA is, therefore, engaged.
34. The next step is to consider the balance of the public interest. In forming a conclusion here, the Commissioner has taken into account the general public interest in the work of BTP, as well as any factors that apply in relation to the specific content of the information in question here.
35. Covering first factors in favour of disclosure of this information, the complainant has argued in favour of disclosure on the grounds that this would aid the work of his organisation, which assists homeless people. This, however, would represent a private, rather than public interest, and so cannot be taken into account here.
36. This information relates to a single case of what the coroner ruled to be death by misadventure. Given these circumstances, the Commissioner does not believe there to be any legitimate public interest in the circumstances surrounding this death that has not been satisfied by the coroner's inquest, which was underway at the time of the request. The Commissioner therefore sees little public interest in the disclosure of this information, beyond the general public interest in information about the work of BTP that is mentioned above.
37. Turning to those factors that favour maintenance of the exemption, the Commissioner regards the key factor here as being the public interest inherent in the exemption; that is the public interest in avoiding endangerment to health and safety. In view of the limited public interest in favour of disclosure of this information, the Commissioner finds that the public interest inherent to the exemption tips the balance in favour of non-disclosure. The conclusion here is, therefore, that the public interest in the maintenance of the exemption outweighs the public

interest in disclosure and so BTP is not required to disclose this information.

Right of appeal

38. 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

39. 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.
40. 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

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