

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

### **Decision notice**

**Date:** 11 November 2013

**Public Authority:** Police & Crime Commissioner for West Yorkshire

**Address:** Ploughland House  
62 George Street  
Wakefield  
WF1 1DL

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

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1. The complainant requested information relating to an investigation by the Criminal Cases Review Commission following the conviction of 3 individuals. The investigation was initiated following allegations in relation to the conduct of officers of West Yorkshire Police. The public authority disclosed most of the information requested. It withheld the name of a former police officer on the basis of the exemption at section 40(2) FOIA.
2. The Commissioner's decision is that the public authority was entitled to withhold the name of the former police officer on the basis of section 40(2).
3. The Commissioner does not require the public authority to take any steps.

### **Background, request and response**

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4. In 2001, the Criminal Cases review Commission (CCRC) initiated an investigation of the conduct of officers of West Yorkshire Police leading up to the convictions in 1998 of 3 individuals. The investigation was known as *Operation Douglas*. In summary, Operation Douglas was initiated following allegations that officers of West Yorkshire Police had obtained the cooperation of the prosecution's star witness, Karl Chapman, through illegal means. Much later in 2010, the Supreme Court upheld the Court of Appeal's decision to order a re-trial rather than

simply quash the convictions.<sup>1</sup> The conduct of a number of West Yorkshire Police Officers involved in the investigation leading up to the prosecution and conviction of the 3 individuals was heavily criticised by the Supreme Court Judges.<sup>2</sup>

5. Following his appointment in 2002, the former Chief Constable of West Yorkshire Police (Mr Colin Cramphorn) invited Sir Dan Crompton, a former HM Inspector of Constabulary to review *Operation Douglas* in light of the length of time it was taking as well as the costs incurred.

6. Following a number of exchanges between the complainant and the public authority in a chain of emails from 29 November 2012 to 28 January 2013, the complainant requested information in the following terms:

*'...I would like both documents referred to in your email, i.e. the summary documents from the IPCC and the former chief constable's disciplinary review.'*

7. Following his complaint to the Commissioner, the complainant clarified that his request was for:

*'1. A disciplinary review commissioned by a Chief Constable (Operation Douglas). The public authority further clarified that the complainant was referring to 'Sir Dan Crompton's review of Operation Douglas.'*

*2. A summary of the IPCC review of Operation Douglas (known as Operation Waldhorn) which was presented to members of the Police Authority's Audit and Risk Committee on 2 November 2012.*

8. The public authority responded on 19 February 2013. It disclosed redacted copies of *Sir Dan Crompton's review of Operation Douglas* (the Crompton report) and *A Summary of Operation Waldhorn*. It withheld the information redacted from both reports on the basis of the exemptions at sections 40(2), 31(1) (a), (b) and (c) FOIA.

9. The complainant requested an internal review on 20 February 2013. On 22 April 2013 the public authority wrote back to the complainant with details of the outcome of its internal review. It revised its original

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<sup>1</sup> [2010] UKSC 48

<sup>2</sup> <http://www.bbc.co.uk/news/uk-england-leeds-14240774>

decision and disclosed a summary of Operation Waldhorn in full. It also disclosed additional information from the Crompton report. In addition to the exemptions at sections 38(1) (a) and (b) FOIA, the public authority continued to rely on the exemptions at sections 40(2) and 31(1) (a), (b) and (c) to withhold the remainder of the information not disclosed from the Crompton report.

## Scope of the case

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10. The complainant contacted the Commissioner on 22 April 2013 to complain about the way his request for information had been handled.
11. During the course of the Commissioner's investigation, the public authority agreed to disclose most of the information redacted from the Crompton report. The only information the public authority continues to withhold are the names of staff of the CCRC and that of a former police officer. It subsequently withdrew its reliance on the exemptions at sections 31(1) (a), (b) & (c) and 38(1) (a) & (b). It claimed that the names were exempt on the basis of section 40(2).
12. The complainant accepted the public authority's decision in respect of the name of the staff of the CCRC. He however challenged the decision to withhold the name of the former police officer.
13. The decision in this notice is therefore restricted to the public authority's claim that the name of the former police officer<sup>3</sup> mentioned in the Crompton report is exempt from disclosure on the basis of section 40(2).
14. The complainant submitted the following arguments in support of his position:<sup>4</sup>

*'The information relates to the handling of a 'supergrass' by West Yorkshire Police and in particular a catalogue of police misconduct which led to a murder conviction being quashed along with a number of other serious convictions against another defendant. The scale of the police misconduct drew severe criticism from the Supreme Court.'*

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<sup>3</sup> Referred to interchangeably as 'the withheld information'

<sup>4</sup> These arguments were made prior to the public authority's decision to disclose additional information during the course of the Commissioner's investigation.

*The aim of the FOI request was to secure information about why not a single officer had ever faced misconduct proceedings – a matter which vexed the Supreme Court.*

*The responses have unfortunately redacted key information, including who actually made decisions. These were senior people with very significant levels of responsibility.*

*In terms of any danger to any individuals.....one person is in prison, one has been free for nearly four years without any suggestion of any reprisals for spending 12 years in prison after being convicted on tainted evidence. Given the depth of Operation Douglas and the depth of the appeals process it is very unlikely either does not know from all the documentation disclosed to courts practically every officer, from top to bottom, involved in this case, along with all the main players involved in the decision-making process.*

*Given there has been no accountability for what the police did, it is of paramount importance there is absolute transparency on the decision-making involved.'*

## **Reasons for decision**

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### **Section 40(2)**

15. Information is exempt from disclosure on the basis of section 40(2) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

16. Personal data is defined in section 1 of the DPA as follows:

*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual.'*

### Is the withheld information personal data?

17. The name of the former police officer is clearly his/her personal data. It is information from which he/she can be identified.

### Would the disclosure of the withheld information contravene any of the data protection principles?

18. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

19. The first data protection principle states:

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

*At least one of the conditions in schedule 2 [DPA] is met....'*

#### *Public authority's arguments*

20. The public authority noted that the withheld information was redacted from paragraph 38(3) of the Crompton report which states:

*'[Withheld Information] faced disciplinary proceedings following the investigation of Operation Passport. Details of his recorded visits to Chapman in police custody are given and the direction requires explanations for those visits and any evidence, or reasons to believe, [withheld information] was supplying Chapman with drugs.'*

21. The public authority explained that the former police officer was the only police officer mentioned in the Crompton report and faced disciplinary action in relation to Operation Passport (not Operation Douglas), an entirely separate enquiry. The officer is now retired.

22. In considering whether disclosing the name of the former police officer would be fair, the public authority took into account his/her reasonable expectations, the consequences of disclosure and his/her rights and freedoms against the legitimate interests in disclosure. The Commissioner has decided not to reproduce details of the public authority's submissions in this notice in order not to reveal information which could be used to identify the former police officer in question.

#### *Commissioner's assessment*

23. In the circumstances of this case, notwithstanding the legitimate interests (identified by the complainant) in disclosing information relevant to Operation Douglas, the Commissioner accepts that the former police officer would have a reasonable expectation that his/her name will not be made public. He is satisfied that disclosure is not necessary in the circumstances. It could have unjustifiable adverse consequences for the former officer. For the same reasons already mentioned, the Commissioner has not revealed details of the reasons for his decision.

24. The Commissioner accepts that, in the circumstances, disclosing the name of the former police officer would be unfair. He therefore finds that the public authority was entitled to redact the name from the Crompton report on the basis of section 40(2).

## Right of appeal

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25. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**