

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

### **Decision notice**

**Date:** 22 October 2013

**Public Authority:** Chief Constable of Nottinghamshire Police

**Address:** Nottinghamshire Police HQ

Sherwood Lodge

Arnold

Nottingham

NG5 8PP

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

---

1. The complainant requested details of payments made to Chief Police Officers outside the governing agreements and regulations from 2008 to 2013. Nottinghamshire Police provided the amounts paid, together with the nature of one of those payments, but refused to provide the remaining information on the basis that it was personal data and therefore exempt under section 40(2) of the FOIA.
2. The Information Commissioner's decision is that Nottinghamshire Police has properly applied section 40(2) to part of the request. In failing to provide its response within 20 working days, Nottinghamshire Police has breached section 10 of FOIA. The Commissioner does not require the public authority to take any steps.

### **Request and response**

---

3. On 5 June 2013 the complainant wrote to Nottinghamshire Police and requested information in the following terms:

*"I have previously sent this FOI request to the PCC but in some cases it has presented confusion, with PCCs believing the information is held only by the force. It is also possibly the case that chief constables may have approved some payments without reference to police authorities which were previously responsible for chief officer terms and conditions. I am therefore sending to [sic] the request additionally to the force.*

*Please provide specific details (names, rank, amounts and reasons) of all payments including payments in kind, gifts, bonuses, retention payments, recruitment payments, allowances, payment of fees, health insurance etc made to chief police officers (assistant chief constable and above) for each of the past five years (2008-9 to 2012//13) which were outside the national PNB agreements, the Police Regulations or other determinations or approvals of the Secretary of State."*

4. Nottinghamshire Police responded on 1 August 2013. It provided details of the amounts paid to two individuals in 2008 and 2011. Whilst it disclosed that one payment had been for pension tax advice, another tax on a benefit in kind, Nottinghamshire Police refused to provide the reason for the remaining payment by virtue of section 40(2). It also did not disclose the nature of the benefit in kind, applying section 40(2).
5. The complainant requested an internal review on 5 August 2013. Following an internal review Nottinghamshire Police wrote to the complainant on 3 September 2013. It stated that section 40(2) had been appropriately applied to the request as the withheld information relating to that individual is of a personal nature.
6. Nottinghamshire Police added that as the individual is now retired and is no longer in a public post, to put this information in the public domain would also contravene the first Data Protection Principle.

### **Scope of the case**

---

7. The complainant contacted the Commissioner on 9 September 2013 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the Council was entitled to rely upon section 40(2) to withhold part of the requested information.

### **Reasons for decision**

---

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

9. Section 40(2) of the FOIA provides an exemption to the disclosure of personal data as defined by the Data Protection Act 1998 ("the DPA") where a disclosure of that information would breach any of the data protection principles.
10. The first data protection principle requires that the processing of personal data is fair and lawful and that:

- at least one of the conditions in schedule 2 is met, and
  - in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.
11. In response to the Commissioner's investigation, Nottinghamshire Police provided an explanation as to the circumstances in which the payment and associated tax on that payment were made to one of the named individuals. The Commissioner has examined this evidence in a Confidential Annex to this document which is available to the public authority but not to the complainant.
  12. Having considered Nottinghamshire Police's evidence, the Commissioner is satisfied that section 40(2) was appropriately applied to part of the complainant's request.
  13. However, as Nottinghamshire Police took 42 working days to provide the complainant with a response to his request, it breached section 10 of FOIA.

### **Other matters**

---

14. As well as finding that Nottinghamshire Police is in breach of the FOIA, the Commissioner has also made a record of the delay in this case. Nottinghamshire Police must ensure that there is no repetition of this breach.

## Right of appeal

---

15. 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)

16. 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.
17. 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**