

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2014

Public Authority: Chief Constable of West Yorkshire Police
Address: West Yorkshire Police HQ
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant requested information about an alleged attempt by police officers to gain entry to his property in 1999. West Yorkshire Police refused to confirm or deny if it held information falling within the scope of the request and cited the exemption provided by section 40(5)(a) (personal information) on the basis that, if it did hold information falling within the scope of the request, this information would constitute the personal data of the complainant.
2. The Information Commissioner (the 'Commissioner') finds that confirmation or denial would disclose personal data and that the disclosure of this personal data would be in breach of the first data protection principle. The exemption provided by section 40(5)(b)(i) is therefore engaged and the public authority is not required to take any steps.

Request and response

3. On 19 June 2013, the complainant wrote to West Yorkshire Police and requested information in the following terms; the complete request can be found in Annex A:

"Information relating to the above [incident] is now requested.
. Will you please supply:
(1) copies of **ALL** documents relating to the planning, execution **AND** **AFTERMATH** of the 'incident' described above.

- (2) Names of **ALL** the officers involved in the planning, execution **AND AFTERMATH.**
- (3) Full details of whatever complaint caused these 'police' (?) to mount this illegal operation.
- (4) Copies of all letters of complaint about the operation (*apart from the one from Councillor [name redacted], which we already have*).
- (5) Copies of all replies, including the one to Councillor [name redacted], but excluding the one to [name redacted] ([position redacted] *of the Royal Naval Association, which we already have*).
- (6) All information held on police records about me up till & including 20th July 2000."
4. West Yorkshire Police responded on 21 June 2013. It stated that it could neither confirm nor deny whether such information was held in accordance with section 40(5)(b)(i) of FOIA. It advised that the complainant's own personal information may be requested in accordance with the Data Protection Act (the 'DPA') and said that third party information may be accessible via other 'business as usual' routes, giving an example of civil proceedings information potentially being available through its Data Protection Office.
5. The complainant requested an internal review on 25 June 2013. West Yorkshire Police wrote to the complainant on 22 August 2013. It maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 20 August 2013 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether West Yorkshire Police properly applied section 40(5)(b)(i) to this this request.

Reasons for decision

8. Section 40(5)(b)(i) of FOIA provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
- constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act (DPA).

9. The Commissioner's analysis of whether the above criteria would be satisfied follows.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

10. The DPA defines personal information as:

"...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, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual."

11. In his guidance on the section 40 exemption¹, the Commissioner expanded on what constituted personal data:

"For data to constitute personal data, it must relate to a living individual, and that individual must be identifiable. In considering whether information requested under FOIA is personal data, the public authority must decide whether the information satisfies both parts of the definition."

12. The Commissioner considers that the way in which the request is worded clearly indicates that the complainant is seeking information which can be linked with a named individual. He considers that to comply with section 1(1)(a) of FOIA (ie to either confirm or deny holding the information) would inevitably put into the public domain information about the existence or otherwise of an incident at the complainant's address involving the complainant and the police, which would constitute the disclosure of information that would relate to the complainant.
13. The Commissioner has determined that, where this sort of information is linked to an individual, it will be that individual's 'personal data'.

¹

[http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf)

Therefore, the Commissioner considers that to confirm or deny whether the requested information is held would in itself constitute a disclosure of personal data.

Would disclosure of this personal data breach a data protection principle?

14. The first data protection principle requires that personal data is processed fairly and lawfully 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 also met.
15. The Commissioner's considerations here focus on the general issue of whether disclosure would be fair to the relevant individual.

Fairness

16. In establishing whether disclosure is fair, the Commissioner will look to balance the consequences of any release of personal data and the reasonable expectation of the data subject, with general principles of accountability and transparency.
17. The personal data that would potentially be disclosed here would relate to the complainant in a private capacity. This is significant in that previous decisions issued by the Commissioner have been guided by the principle that information about an individual's private life will deserve more protection than information about someone acting in an official or work capacity.
18. The Commissioner would therefore consider that any individual would have a legitimate expectation that information which may or may not confirm whether they were involved in an incident at their address involving the police would not be released. To disclose this information would be an unwarranted intrusion into the rights and freedoms of that data subject, given the distress that the release of the information could potentially cause.
19. In considering whether the exemption contained within section 40(5)(b)(i) should have been applied to this request the Commissioner has taken into account that FOIA is designed to be applicant blind and that disclosure should be considered in its widest sense, which is to the public at large. If the information were to be disclosed it would, in principle, be available to any member of the public. A confirmation or denial in the circumstances of this case would reveal to the public

information which is not already in the public domain and is not reasonably accessible to the general public, about whether or not the individual was involved in an incident at their address with the police.

Conclusion

20. As indicated, the Commissioner has taken a clear line that disclosure of personal data relating to an individual in a private capacity should be afforded a high degree of protection. This is based on the Commissioner's understanding that individuals would have a reasonable expectation that information of this kind would not be disclosed.
21. Leading on from these considerations, the Commissioner has determined that to confirm or deny whether the requested information is held would be unfair to the data subject. As disclosure would therefore breach the first data protection principle, section 40(5)(b)(i) is engaged and West Yorkshire Police applied the correct approach by neither confirming or denying whether it held the requested information.
22. The Commissioner's decision is that West Yorkshire Police did not have a duty to comply with section 1(1)(a) of FOIA on the basis of the exemption contained within section 40(5)(b)(i) of FOIA.
23. The Commissioner would remind applicants that any individual wishing to access their own personal data will still be able to pursue this right under the Data Protection Act. It is noted that West Yorkshire Police advised the complainant that he should consider making a request in accordance with the Data Protection Act.

Other matters

24. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. Whilst noting that West Yorkshire Police had recently recruited new staff who were being trained which it said had contributed to the delay, the Commissioner is concerned that in this case, it took over 43

working days for an internal review to be completed, despite the publication of his guidance on the matter.

25. Insofar as the requested information, if held, relates to the complainant's property, and should the complainant consider that there are any outstanding matters relating to his request, he should pursue them as a Subject Access Request in accordance with the Data Protection Act. Further information can be found on the ICO's website via the following link:

http://ico.org.uk/for_the_public/personal_information

In addition, more detail about FOIA requests and in which circumstances an applicant should make a Subject Access Request instead can be found at:

http://ico.org.uk/for_the_public/official_information

Right of appeal

26. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Annex A

The complainant's complete request made on 19 June 2013 is detailed below with the emphasis he had included:

"Requests for information under the Freedom of Information Act and the 1998 Data Protection Act (DPA 98).

PREFACE: In 1999 there was (& probably still is) a Statute which said, "It is an arrestable, imprisonable offence for ANYONE to use force or the threat of force in an attempt to gain entry to an occupied dwelling house." (*This applied even if the occupiers were squatters.*)

On 8th August 1999 at least nine men did use the threat of force in an attempt to gain entry to [address redacted], putting the 74 year old occupant, [complainant's name redacted] in fear of his life. Though the men were in police uniform, they were not acting in the course of their duties as police officers, but committing a seriously criminal, potentially lethal terror attack - acting as a private army! As such, it was NOT an 'Operational Decision' to deploy them for that purpose.

They hammered on the door, demanding entry. Though I was in great shock, my head bursting & my heart was pounding, I denied them & told them they were breaking the law, quoting the law to them. The response was "So What!" They radioed for a battering ram & riot shields - against one, solitary old man, doing no wrong in any shape or form!

Because concerned neighbours had gathered, they did not use the battering ram, but instead, laid siege to the house for three hours before [name and rank of police officer redacted] McGee admitted "**We have decided this is not a police matter**", adding the sinister threat, "**But we'll be back!**" (repeated several times for emphasis). (*Those words, & much more, are on tape. A transcript, as sent TWICE to the now defunct Police Complaints Authority is available.*)

Already in the hands of West Yorkshire Police FoI Dept. are copies of

(a) My desperate SOS message 'WILL **SOMEBODY HELP ME PLEASE?**', dated Sunday 8th August 1999 (*faxed to the Chief Constable, Home*

Secretary, Members of Parliament, The Press, & EVERY 'watchdog' in the country. Fax detail is shown at the top),

(b) letter to me from Inspector [name and rank redacted], dated 9th August 1999 (ref. CC/MM/MF), which says, inter alia, "... I have forwarded your letter to [name and rank redacted], at Chapelton. Hewill He will ensure that the matter is looked into and that it receives full consideration."

(c) letter from Leeds Councillor [name redacted] to Superintendent [name redacted],

(d) letter dated 17 August 1999 from [name and rank redacted] of that Division to [name redacted], Bournemouth. That letter says, inter alia, "I ... advise you that your assessment of the events is factually incorrect and only represents the views of [complainant's name redacted]. I can confirm that police officers did respond to a request for service to prevent a breach of the peace and that the issues are a civil matter which remains with Solicitors to seek a resolution. The police have no further involvement in these proceedings. [name and rank redacted]"

(Far from PREVENTING a 'Breach of the Peace', those men CAUSED a Breach of the Peace, disturbing the whole street on what, till then, had been a quiet Sunday afternoon.)

Information relating to the above is now requested.

. Will you please supply:

- (1) copies of **ALL** documents relating to the planning, execution **AND AFTERMATH** of the 'incident' described above.
- (2) Names of **ALL** the officers involved in the planning, execution **AND AFTERMATH**.
- (3) Full details of whatever complaint caused these 'police' (?) to mount this illegal operation.
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- (6) All information held on police records about me up till & including 20th July 2000."