

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 April 2014

**Public Authority:** The Chief Constable of Cumbria Constabulary  
**Address:** Carleton Hall  
Penrith  
CA10 2AU

### Decision (including any steps ordered)

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1. The complainant asked to see the letter of appointment for a named senior police officer. Cumbria Constabulary (the constabulary) withheld the information relying on the section 40 and section 42 FOIA exemptions.
2. During the Commissioner's investigation the constabulary disclosed the relevant parts of the appointment letter. The Commissioner's decision is that the letter comprises personal information and that, with this disclosure, the constabulary has now fulfilled the information request.
3. The Commissioner does not require the constabulary to take any steps.

### Request and response

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4. On 30 August 2013, the complainant wrote to the constabulary and requested information in the following terms:

*Please supply a copy of the letter appointing TCC [name] to his current position. Please feel able to redact any personal information including remuneration details. I recognise that this letter will have been issued by the Cumbria Police Authority which is now defunct but I was directed to the Cumbria Constabulary for this information by the CPA.*

5. The constabulary responded on 11 September 2013 saying that the information was held but was exempt from disclosure by virtue of the section 40(2)(b) (Personal information) and section 42(1) (Legal professional privilege) FOIA exemptions.

6. Following an internal review the constabulary wrote to the complainant on 10 October 2013 saying that it continued to rely on the exemptions.

## **Scope of the case**

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7. The complainant contacted the Information Commissioner on 10 October 2013 to complain about the way his request for information had been handled. He said that he wanted to see if the appointment had been made as 'Temporary Chief Constable' or as 'Chief Constable but on a temporary basis'. He added that he had asked that all personal information relating to the officer be redacted.
8. The withheld information consists of a letter dated 20 September 2012 from the then Cumbria Police Authority appointing the officer to his post (the withheld letter).
9. The Commissioner noted that the minutes of a meeting of the then Cumbria Police Authority, held on 13 September 2012, record that the Authority had appointed the senior officer 'as Temporary Chief Constable with immediate effect.' The complainant has access to these minutes.
10. During his investigation, the complainant provided the Commissioner with a letter he had obtained from another police force appointing its Chief Constable and which he said supported the case for disclosure. The Commissioner had regard for this other appointment letter and discussed its contents with the constabulary.
11. The Commissioner reviewed the withheld information and considered the detailed representations from both parties. He also considered the application of the section 40(2)FOIA exemption to the withheld information.

## **Reasons for decision**

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### **Section 40 – Personal information**

12. Section 40(2) provides that –

*"Any information to which a request for information relates is also exempt information if-*

*(a) it constitutes personal data which do not fall within subsection (1), and*

*(b) either the first or the second condition below is satisfied."*

Section 40(3) provides that –

*"The first condition is-*

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-*
  - (i) any of the data protection principles, or*
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) ...".*

13. Personal data is defined in the Data Protection Act 1998 (DPA) section 1 as:

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

14. From his inspection of the letter, the Commissioner saw that its text relates to an identifiable individual and so is personal information.

15. Section 40(2) of the FOIA provides an exemption to the disclosure of personal data as defined by the DPA where disclosure of that information would breach any of the data protection principles.

16. The first data protection principle requires that the processing of personal data must be fair and lawful and 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 is met ...".*

17. During the Commissioner's investigation, the constabulary decided, and the Commissioner agrees, that it would not be unfair or unlawful for it to provide the complainant with the first two paragraphs of the withheld letter, and it did so on 14 January 2014.

18. The Commissioner saw that the disclosed information (and only that information within the withheld letter) confirmed the appointment of the officer; that the title of the post offered was 'the post of Temporary Chief Constable of Cumbria Constabulary'; and the date of the appointment. The text of the letter was entirely consistent with the

minutes of the 13 September 2012 meeting of the then Cumbria Police Authority.

19. The Commissioner noted that the complainant had asked the constabulary for:

*"a copy of the letter appointing TCC [name] to his current position. Please feel able to redact any personal information including remuneration details".*

20. The Commissioner decided that, following disclosure of the relevant paragraphs from the letter, the constabulary had complied with the complainant's information request.

21. In the light of his conclusions regarding the information request itself and the section 40 exemption, the Commissioner did not consider application of the section 42(1) exemption.

### **Other matters**

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22. The Information Commissioner saw that the letter of 10 October 2013 to the complainant, following the internal review, had been signed by the officer who had signed the refusal notice of 11 September 2013. On 14 January 2014, the constabulary told the Commissioner, and he accepts, that its draft response to the complainant, relaying the outcome of its internal review, had been reviewed by one of its senior lawyers and so had received independent scrutiny before it had been issued.

## Right of appeal

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23. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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**