

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 June 2014

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

#### Decision (including any steps ordered)

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1. The complainant has requested a specific report and appendices.
2. The Commissioner's decision is that West Yorkshire Police has applied section 40(5) appropriately.
3. The Commissioner does not require the public authority to take any further steps.

#### Background

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4. The complainant requested a report and appendices written by Devon and Cornwall Police, on behalf of West Yorkshire Police (WYP). The report and appendices were written as a result of complaints made by the complainant.
5. The complainant asked Devon and Cornwall Police for a copy of the report and appendices and was provided with a redacted copy of the report but this was not provided to him under the provisions of the FOIA.
6. The complainant then made a request under FOIA to WYP for an unredacted copy of the report and appendices.

## Request and response

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7. On 27 August 2013 the complainant wrote to West Yorkshire Police (WYP) and requested information in the following terms:

*"Again, in the interests of openness and transparency, I would invite WYP to provide me with an unredacted copy of the report and appendices."*

8. The WYP responded on 24 September 2013. It stated that it was withholding information under section 40(5).
9. Following an internal review the WYP wrote to the complainant on 10 December 2013. It upheld its original decision.

## Scope of the case

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10. The complainant contacted the Commissioner on 16 September 2013 to complain about the way his request for information had been handled. He complained about the application of section 40(5) because he had already been provided with a redacted copy of the report (but not of the appendices) albeit that it was not provided in response to a written request to WYP. The complainant also complained about the length of time taken to deal with his request.
11. The Commissioner will consider the length of time taken to deal with the request and the application of section 40(5)(a).

## Reasons for decision

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12. Section 40(5) of FOIA provides that a public authority does not have to confirm or deny whether requested information is held if to do so would:
- constitute a disclosure of personal data.

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

13. The Data Protection Act 1998 (the DPA) defines personal information as:
- " ... data which relate to a living individual who can be identified*
- a) from these data, or*

*b) from these 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."*

14. In his guidance on the section 40 exemption 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."*

15. 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 a report (and appendices) linked to the complainant, which would constitute the disclosure of information that would relate to the complainant.
16. The Commissioner considers that, where this sort of information is linked to an individual it will be that individual's 'personal data.' Therefore, the Commissioner considers that to confirm or deny whether the requested information is held would in itself constitute a disclosure of personal data.
17. In considering whether section 40(5)(a) should have been applied, the Commissioner has taken into account that FOIA is applicant blind and that any disclosure would be to the public at large. If the information were to be disclosed it would in principle be available to any member of the public. 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 the complainant. The Commissioner therefore considers that the exemption was correctly relied upon by WYP in this case.
18. 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 DPA. It is noted that WYP advised the complainant that he should consider making such a request.

## **Section 17 – refusal of request**

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19. Section 17 provides that if a public authority is relying upon the “neither confirm nor deny” provision, it must respond to an applicant within the time limit set out in section 10(1).
20. Section 10(1) of FOIA states that a public authority must comply with section 1(1) promptly and no later than 20 working days following receipt of the request.
21. In this case, WYP responded to the complainant on the twentieth working day, citing section 40(5) neither confirm nor deny. Therefore, it is necessary to investigate WYP’s actions in preparing its response, in order to determine whether the response was provided ‘promptly’.
22. The Commissioner asked WYP to explain why it had not responded to the complainant until the twentieth working day. WYP explained that the request had been received at a particularly busy time when it was dealing with various high level media cases. WYP also explained that staff were away on annual leave and it had been training staff to deal with requests at the time the request was made.
23. Taking all of these factors into account, the Commissioner considers WYPs initial response was provided ‘promptly’. He therefore considers that WYP has not breached section 17(1).

## Right of appeal

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24. 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)

25. 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.
26. 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**