

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2015

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 has requested information which relates to an alleged investigation into his late brother's death. West Yorkshire Police would neither confirm nor deny holding any of the requested information by virtue of sections 40(5) (personal information), 30(3) (investigations) and 41(2) (in confidence).
2. The Commissioner's decision is that the section 40(5)(a) exemption is engaged.
3. The Commissioner does not require West Yorkshire Police to take any steps as a result of this decision.

Request and response

4. On 19 January 2014, the complainant wrote to West Yorkshire Police (WYP) and requested information relating to an IPCC report into his late brother's death - please see appendix 1 for the whole request.
5. WYP responded on 27 January 2014. It made reference to the Data Protection Act 1998. The complainant wrote to WYP on 5 February and 5 March 2014 asking it to respond to his FOIA request. On 2 April 2014 WYP responded, informing him that he would receive a response within the 20 working day limit set out in the FOIA.

6. On 10 April 2014 WYP responded, explaining that it was neither confirming nor denying whether it held the requested information and applied s40(5) (personal information) of the FOIA.
7. Following an internal review WYP wrote to the complainant on 23 October 2014. It upheld its application of section 40(5) and also added sections 30(3) (investigations – neither confirm nor deny) and 41(2)(in confidence – neither confirm nor deny).

Scope of the case

8. The complainant contacted the Commissioner on 29 October 2014 to complain about the way his request for information had been handled.
9. The Commissioner has considered the exemptions applied. He considers that section 40(5) applies to the requested information and therefore will not be considering the application of sections 30(3) or 41(2) any further.
10. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The Commissioner is aware that whilst an individual may be aware that information does or does not exist because of their involvement in events, it does not mean that the general public is also aware of the existence of that information. He notes that disclosure under the FOIA is a disclosure to the world at large.
11. The Commissioner must decide whether confirmation or denial that the information is held, should be in the public domain. The Commissioner recognises that the complainant has personal reasons for making his request. However, neither the identity of the applicant nor any personal reasons or private interests for wanting the requested information are relevant to the consideration of a freedom of information request.
12. During the Commissioner's investigation, WYP confirmed that it considered that the requested information related to third party personal data. However, the Commissioner considers that the requested information relates to the complainant and therefore he consider that section 40(5)(a) applies.

Reasons for decision

13. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the “duty to confirm or deny”. However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.

Section 40(5)

14. 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?

15. The Data Protection Act 1998 (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 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.”

16. In his guidance on section 40¹ of the FOIA, the Commissioner expanded on what constitutes 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.”

¹[neither confirm nor deny in relation to personal data and regulation foi ei r.pdf](#)

17. The Commissioner considers that the way in which the request is worded ie asking questions linked to a report about a complaint the complainant made to the IPCC, clearly indicates that he is seeking information which can be linked to a named individual, in this case, himself. Furthermore, the Commissioner considers that to comply with section 1(1)(a) of FOIA (ie to either confirm or deny holding the information) would put into the public domain, information about the existence or otherwise of a report linked to the complainant, which would constitute the disclosure of personal information that would relate to the complainant.
18. 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.
19. 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 world at large. If the information were to be disclosed it would 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.
20. 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 the police advised the complainant that he should consider making such a request.

Other matters

21. The Commissioner notes that the complainant requested an internal review on 2 May 2014. WYP did not respond and the complainant submitted a second request for an internal review on 16 June 2014. There was some confusion regarding the complainant's address as he had provided two different postcodes. The complainant confirmed his address on 9 July 2014. However, WYP did not provide its internal review until 23 October 2014.
22. Part VI of the section 45 Code of Practice makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information. He considers that the procedure should encourage a prompt determination of the complaint.
23. 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 the 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.
24. The Commissioner is concerned that it took over 20 working days for the internal review to be completed.

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1

We wish to exercise our rights under the Data protection Act 1998 & Freedom of Information Act 2000 where applicable and respectfully request the following request the following information below in relation to the IPCC report CM 154/12.

Transcripts of the first assault both written and audio on the 25th Feb 2013.

Transcripts of the call logged to the Police both written and audio by the Ambulance service on the 25th Feb 2013.

Transcripts & Audio made by the divisional control room when they re-contacted [redacted] on the 25th Feb 2013.

Transcripts of the call logged by a member of the public who witnessed the assault both written and audio on the 2th Feb 2013.

CCTV footage in Idle Village on the evening of the 25th February 2013 & 4th March 2013.

Copy of [redacted] notebook showing [redacted]'s Signature and witness statement.

Copy of [redacted] internal disciplinary hearing.

Copy of all [redacted] records and dealings with [redacted] both written & audio.

Copy of the transcripts & Audio of the official complaint made by [redacted] on the 6th March.

Evidence of the time of [redacted]'s arrival & admittance to Hospital on the 25th February & the 18th March 2013.

We would like for the Police to give an appropriate response that a change over at shift times absolves them of any responsibility from responding to an emergency 999 call – would this of happened with any other member of the public?

A mobile phone belonging to [redacted] was taken by the Police officers who attended the scene on the evening of the 8th March 2013. The mobile phone was taken as evidence as it held a text sent by [redacted] evidencing he had been in an altercation with [redacted]. The mobile phone was not been logged or handed in as evidence in the correct manner. We would like the

police to return this mobile phone to us. In addition we would like to know why the Police feel the evidence held on the mobile phone does not clearly implicate [redacted] in an assault against [redacted].

Can have a copy of [redacted] & [redacted] entries on their note books in relation to statement made in paragraph 4 Page 3 of the IPCC report. Can we request what evidence both PCs had to believe that "[redacted] was under the influence of something", and why they felt that [redacted]'s condition was not attributed to the severe assault that [redacted] had just suffered had they requested bloods, urine sample, or had they just reached this conclusion based on their medical expertise?

Can you please identify who attempted to contact [redacted] on the 27th Feb 2013 and at what time and who made the appointment on the 28th Feb 2013 again at what time for the 1st of March at [redacted]'s parent's house. We would like the transcripts and audio here.

We would like copies of the transcripts & audio evidencing the content of the conversation had by [redacted] and the Police on the 6th & 7th & appointment details on the 8th March to evidence why the attending officer talked [redacted] out of making the complaint when he was aware that [redacted] may have had facial bruising, cut to his head, broken arm and broken ribs.

We would like any and all details in relation to the 3rd assault on the 4th March 2013 by [redacted] both audio & written.

We would like details of which officer/s spoke with the Clinical Site Controller & [redacted]

We would like details of which officers spoke with the Staff Nurse on Ward 4 – what details were logged by the officer/s? Again written & audio.

We would like a copy of all [redacted] records and dealings with [redacted] both written & audio.

We would like a copy of details of which officer interviewed both [redacted] on the 11th March 2013 and [redacted] on the 13th March 2013 written and audio.

We would like a copy of all details from both [redacted] & [redacted] both written & audio & all photographs taken by [redacted].

We would like details of the statements taken by officers from the 2 witnesses both written & audio. We would also like details of the officers who took the statements.

We would like a copy of all details from [redacted] both written & audio including the photos taken by [redacted] on the 25th February 2013.

We would like a copy of the Ambulance [redacted] both written and audio.

We would like details of the Divisional Control Room conversation both written & audio.

We would like a copy of details from [redacted] both written & audio.

In addition we will be requesting any and all transcripts of dialog through phone and e-mail from each of the following organisations and agencies.

West Yorkshire Ambulance Service
West Yorkshire Police
Mobile Phone Operator
Coroner's Office

In relation to an investigation to West Yorkshire Policies conduct and practice prior to [redacted]'s death and post [redacted]'s death.