

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2015

Public Authority: Chief Constable of Staffordshire Police
Address: Staffordshire Police Headquarters
PO Box 3167
Stafford
ST16 9JZ

Decision (including any steps ordered)

1. The complainant requested information relating to police officers involved in a murder investigation. Staffordshire Police disclosed most of the requested information, but withheld a minority of it under the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that Staffordshire Police cited section 40(2) correctly and so it was not obliged to disclose the information that it withheld. The Commissioner has, however, found that Staffordshire Police breached sections 10(1) and 17(1) of the FOIA by failing to respond to the request within 20 working days of receipt, but that breach does not necessitate remedial action.

Request and response

3. On 24 January 2015 the complainant wrote to Staffordshire Police and requested information in the following terms:

"(i) Does Staffordshire Police have a written policy for the awarding of Commendations? If so what is the policy.

(ii) How many officers received commendations for their part in the Nunes investigation?

(iii) Please provide a breakdown of the commendations awarded to indicate whether those commendations were awarded by the Chief Constable or Divisional Commander.

(iv) Were any of the officers awarded a commendation subsequently issued notices as part of the IPCC investigation?

(v) If the answer to (iv) is yes, please provide the following details for each commendation award:

(a) The rank and name of the officer awarding the commendation.

(b) The rank of the officer receiving the commendation and their role in the enquiry (the name of the individual officer is not required).

(c) The date the commendation was given.

(d) Was the commendation publicised either in the internal staff newsletters or in the public media? If not why not.

(e) Is the officer still serving or retired."

4. After a delay, Staffordshire Police responded on 9 April 2015. Most of the requested information was disclosed, but the response failed to address some parts of the request.
5. The complainant responded on 10 April 2015 and requested an internal review. Staffordshire Police responded with the outcome of the review on 20 May 2015. The response now addressed the parts of the request that had been omitted from the refusal notice. This included request (v)(b), in response to which Staffordshire Police now cited the exemption provided by section 40(2) (personal information) of the FOIA for the request for details of individuals' roles in the investigation.

Scope of the case

6. The complainant contacted the Commissioner on 2 June 2015 to complain about the way his request for information had been handled. The complainant specified the delay in responding to his request and the citing of section 40(2) as his grounds for complaint.

Reasons for decision

Sections 10 and 17

7. Section 10(1) requires a public authority to respond to an information request within 20 working days of receipt. Section 17(1) requires that a response refusing a request should also be sent within 20 working days of receipt.

8. In failing to respond to the complainant's information request within 20 working days of receipt, Staffordshire Police breached sections 10(1) and 17(1) of the FOIA.

Section 40(2)

9. Staffordshire Police cited this section in response to request (v)(b). Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
10. The task for the Commissioner here is twofold. First it must be established whether the information requested by the complainant would constitute the personal data of any individual and, secondly, it must be considered whether disclosure of that personal data would be in breach of any of the data protection principles.
11. Covering first whether the requested information would constitute personal data, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

"personal data' means 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".

12. The information in question here – details of the role of individual officers in the investigation referred to in the request – would clearly not in isolation identify any individual. The question is, therefore, whether this information would constitute personal data under part (b) of DPA section 1(1), so whether it could be combined with other information to enable individuals to be identified. Where information is disclosed through the FOIA, it in effect becomes publicly available. This means that the question here is whether there is information available to *any* other person that could enable them to link the requested information to an identifiable individual.
13. In explanation for the citing of this exemption, Staffordshire Police stated that the complainant was formerly a police officer and that he had worked on the investigation referred to in the request. Its reasoning was, therefore, that the complainant would be able to link a description of a role with individual former colleagues. The view of the Commissioner is that it would be possible for the complainant to relate

the information in question with identified individuals by combining that information with his existing knowledge. That information is, therefore, personal data according to part (b) of section 1(1) of the DPA.

14. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first principle, which requires that personal data is processed fairly and lawfully and, in particular, on whether disclosure would be, in general, fair to the data subjects. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectation of the data subjects and what impact disclosure may have on them, as well as whether there is any legitimate public interest in the disclosure of this information.
15. As to the reasonable expectation of the data subjects, the nature of the information that has been requested is relevant here. The effect of request (iv) is that disclosure of the information in question would confirm to the complainant that these identified individuals had received notices as part of an IPCC investigation. The Commissioner believes that those individuals would hold a reasonable expectation that confirmation that they had been issued such notices would not be disclosed.
16. As to what the consequences of disclosure upon those individuals would be, the view of the Commissioner is that disclosure contrary to the reasonable expectation of privacy referred to above would be likely to be distressing to those individuals.
17. Turning to the issue of whether there would be any legitimate public interest in the disclosure of this information, whilst section 40(2) is not qualified by the public interest in the same way as some of the other exemptions in part II of the FOIA, it is necessary for there to be a public interest element in order for disclosure to comply with the first data protection principle. The question here is whether any legitimate public interest that exists in disclosure would outweigh the arguments against disclosure covered above.
18. The complainant would argue that there is a legitimate public interest in disclosure owing to the wider public interest in the events to which his request relates. This was a murder investigation in relation to which the convictions of several individuals were quashed on appeal and which has been the focus of media comment and controversy.
19. The Commissioner agrees that there is a legitimate public interest in information relating to this investigation, particularly information relating to how it was conducted and how it is that the murder remains unsolved. The Commissioner does not, however, believe that disclosure of the information in question here is necessary in order to satisfy that

public interest. Staffordshire Police disclosed much of the information that the complainant requested and the Commissioner does not believe that disclosure of the specific information in question here would add substantively to public understanding of how this investigation was conducted or the reasons why it remains the case that no one has since been convicted. For these reasons, the Commissioner does not believe that there is any legitimate public interest in disclosure of this information that would outweigh the factors against disclosure covered above.

20. The Commissioner has found that the information in question is the personal data of an individual other than the requester and that the disclosure of that personal data would be in breach of the first data protection principle. His overall conclusion is, therefore, that the exemption provided by section 40(2) is engaged and so Staffordshire Police was not obliged to disclose this.

Other matters

21. As well as the finding above that Staffordshire Police breached the FOIA by failing to respond to the complainant's information request within 20 working days of receipt, a separate record has also been made of this. This issue may be revisited should evidence from other Staffordshire Police cases suggest that this is necessary.

Right of appeal

22. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

23. 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.
24. 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
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Wycliffe House
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