

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 July 2016

**Public Authority:** Chief Constable of North Yorkshire Police

**Address:** Police Headquarters  
Newby Wiske Hall  
Newby Wiske  
Northallerton  
North Yorkshire  
DL17 9HA

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to an alleged assault. North Yorkshire Police withheld the information under section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that North Yorkshire Police should have neither confirmed nor denied holding the requested information by virtue of section 40(5) of the FOIA.
3. The Commissioner does not require North Yorkshire Police to take any further steps as a result of this decision.

#### Request and response

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4. On 9 September 2015 the complainant wrote to North Yorkshire Police (NYP) and requested information in the following terms:

*"On or about 4th March 2015 an assault took place at Simonstone Hall, Hawes, North Yorkshire, DL8 3LY. I have researched the open public data on the Police. UK website and I am unable to find any recorded crime reference for this location.*

*I have searched the data from May 2015 to July 2015, the 29 locations that share this postcode and also the surrounding roads. All with a negative result.*

*From previous correspondence that I have had from NYP Crime Register and other sources I have been assured that a section 47 Assault has been recorded for this incident at this location.*

*I have consulted with staff at Police. UK and they have suggested I ask NYP why there is an omission for this incident.*

*Can you please tell me*

*1. Why does this recorded assault not feature on The Police Data UK statistics?*

*2. Does the crime report feature on the NYP records?*

*3. If it does feature on NYP records why has Police Data UK not been supplied with the details?"*

5. NYP responded on 7 October 2015. It disclosed some information and withheld the rest under 40(2) (personal information).
6. Following an internal review the NYP wrote to the complainant on 22 October 2015 upholding its original decision.

### **Scope of the case**

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7. The complainant contacted the Commissioner 23 November 2015 to complain about the way his request for information had been handled. The complainant explained that NYP had confirmed that a section 47 assault had been recorded by it. However, the Commissioner understands that this confirmation was not provided to the complainant as a result of an FOIA request.
8. The Commissioner will consider whether NYP should have neither confirmed nor denied holding the requested information by virtue of section 40(5)(b)(i) (third party personal information).

### **Reasons for decision**

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#### **Section 40 – personal data**

9. Section 40(5)(b)(i) FOIA provides that if a public authority receives a request for information which, if held, would be the personal data of a third party, it can rely on section 40(5)(b)(i) to neither confirm or deny whether or not it holds the requested information.

10. Consideration of section 40(5) involves two steps: first, whether providing the confirmation or denial would involve the disclosure of personal data and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

***Is the information personal data?***

11. The definition of personal data is set out in section 1 of the DPA:

*"...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 intention of the data controller or any other person in respect of the individual."*

12. The two main elements of personal data are that the information must 'relate' to a living individual and the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
13. The Commissioner considers that, given that the requested information specifies a date and location, together with information already in the public domain, it is possible to identify a living individual. Therefore, the Commissioner accepts that the requested information, if held, is the personal data of an identifiable individual.
14. The Commissioner will go on to consider whether confirming or denying of the information is held would contravene any of the data protection principles.
15. The Commissioner considers that the first data protection principle is relevant in the circumstances of this case.

***Is the requested information sensitive personal information?***

16. Sensitive personal data is personal information which falls into one of the categories set out in section 2 of the DPA. Of relevance in this case is that section 2 relates to personal data consisting of information as to:

*"(g) the commission or alleged commission by him of any offence,"*

17. The Commissioner is satisfied that the withheld information in its entirety is sensitive personal data. This is because it relates to an

alleged offence, in this case an alleged assault in relation to a living individual.

18. Having accepted that the request is for sensitive personal data of a living individual, the Commissioner will go on to consider whether disclosure of this personal data would breach one of the data protection principles.
19. The Commissioner considers that the first data protection principle is relevant in the circumstances of this case.

***Would confirmation or denial breach the first data protection principle?***

20. The first data protection principle states –

*“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and  
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”*

21. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the disclosure, ie the confirmation or denial in this case, can only be given if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions and, in this case, one of the Schedule 3 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.
22. When considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
  - the individual’s reasonable expectations of what would happen to their information;
  - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned);
  - any legitimate interests in the public having access to the information; and,
  - the balance between these and the rights and freedoms of the individuals who are the data subjects.
23. The Commissioner recognises that people have an instinctive expectation that NYP, in its role as a responsible data controller, will not,

if held, disclose certain information about them and that it will respect their confidentiality. Accordingly, the Commissioner considers that the data subject would not reasonably expect NYP to place details of whether or not an alleged section 47 assault had taken place into the public domain. As to the consequences of disclosure upon a data subject, the question –in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to that individual.

24. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. He will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions.
25. Given the nature of the request and the sensitivity of the subject matter, the Commissioner considers that confirming or denying in this case could lead to an intrusion into the private life of the individual concerned and the consequences of any disclosure could cause him damage and distress.
26. Whilst the complainant has made reference to an alleged section 47 assault, the Commissioner can find no evidence that at the time of the request, there was anything in the public domain which refers to this. It is therefore the Commissioner's view that the data subject would have little – if any - expectation that such details would be put into the public domain by way of a request under the FOIA.
27. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose information, or in this case confirm or deny whether information is held, if there is a more compelling public interest in doing so. Therefore the Commissioner will carry out a balancing exercise, balancing the rights and freedoms of the data subject against the public interest in confirming or denying if the information is held.
28. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to exemptions listed under section 2(3) of the FOIA. Given the importance of protecting an individual's personal data the Commissioner's 'default position' is in favour of protecting the privacy of the individual. The public interest in confirming whether or not information is held must outweigh the public interest in protecting the rights and freedoms of the data subject if providing confirmation or denial is to be considered fair.

29. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.
30. The Commissioner understands that the complainant has concerns about the way in which the alleged assault was dealt with. He pointed to the fact that there had been several press releases made by NYP regarding the alleged incident. The Commissioner has considered the articles in question. He notes that although they refer to NYP making enquiries regarding an alleged incident, they do not refer to any alleged assault.
31. In light of the nature of the information and the reasonable expectations of the data subject, the Commissioner is satisfied that confirming or denying if the requested information is held would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subject. He considers that these arguments outweigh any legitimate interest in disclosure. He has concluded that confirmation or denial in this case would breach the first data protection principle. He therefore finds the exemption at section 40(5) is engaged and the duty to confirm or deny does not arise.

## **Section 10 – time for compliance**

32. 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.<sup>1</sup>
33. For the purposes of section 10(1), public authorities must respond 'promptly' to a request. In this case, NYP responded to the complainant on the twentieth working day. Therefore, it is necessary to investigate NYP's actions in preparing its response, in order to determine whether the response was provided 'promptly'.
34. The Commissioner asked NYP to explain why it had not responded to the complainant until the twentieth working day. NYP explained that at the time of the request it had approximately 90-100 outstanding FOIA requests to deal with. It also explained that it had allocated 4 members of staff to deal with the FOIA requests, but these members of staff were

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<sup>1</sup> Section 1(1) states that: ' Any person making a request for information to a public authority is entitled (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have the information communicated to him.'

also dealing with other areas of essential work, including subject access requests and court orders.

35. NYP also explained that this request had also necessitated an internal enquiry.
36. The Commissioner notes that NYP has only got a small team to deal with FOIA requests and that this team was also dealing with subject access requests, as well as other essential business including court orders. He also notes that at the time of the request, NYP had approximately 90-100 outstanding requests for information to deal with.
37. Taking all of these factors into account, the Commissioner considers NYP's initial response was provided 'promptly'. He therefore considers that NYP has not breached section 10(1).

## Right of appeal

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

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

39. 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.
40. 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**