

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2016

Public Authority: Chief Constable of Norfolk Constabulary
Jubilee House
Falconers Chase
Wymondham
Norfolk
NR18 0WW

Decision (including any steps ordered)

1. The complainant requested information from Norfolk Constabulary (the "Constabulary") in connection to a complaint he had raised about alleged electoral malpractice. Having initially advised the complainant that it did not consider his request to be valid under the terms of the FOIA, the Constabulary subsequently refused to confirm or deny holding any information by virtue of section 40(5)(a) (personal information). The Commissioner's decision is that it was entitled to do so.

Request and response

2. On 4 April 2016 the complainant wrote to the Constabulary and requested information in the following terms:

"Under the requirements of the Freedom of Information Act I would like a full explanation from the Norfolk CID as to why they recorded a verdict of "no case to answer" regarding the Police instigated inquiry into possible electoral malpractice in a recent Council election. I would like a full explanation as to how this verdict was reached when not one of the individuals connected with this possible malpractice was questioned as to their conduct in this election. I would be particularly interested to learn why the Chief Executive and Monitoring Officer were not asked to explain why they allowed this election to proceed when they knew the question

of the legality of the Councillors had not been established following my Taxpayers challenge to their legal position as Councillors”.

3. The Constabulary responded on 29 April 2016. It advised the complainant that the FOIA did not require it to create information or respond to questions. It also provided him with an email which had previously been sent to him on 25 September 2015 and which explained its position as to why no criminal investigation was proceeded with (the initial complaint having been raised by him personally).
4. Following an internal review the Constabulary wrote to the complainant on 5 July 2016. It refused to confirm or deny holding any information, citing section 40(5) (personal information) of the FOIA.

Scope of the case

5. The complainant wrote to the Commissioner on 31 July 2016 to complain about the way his request for information had been handled. It was his belief that the Constabulary should have been able to provide him with the information he had requested, namely its reasons for not pursuing what was, in his opinion, a case of electoral malpractice.
6. The Commissioner will consider the citing of section 40(5)(a) below.
7. 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 FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

8. 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 – personal information

9. The exemption at section 40(5) of the 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.

10. Section 40(5)(a) provides that the duty to confirm or deny does not arise in relation to information that falls, or would fall if it were held, within the scope of section 40(1) of the FOIA. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because individuals may request their personal data under a separate legislative access regime, namely the right of subject access under section 7 of the Data Protection Act 1998 (DPA).
11. Section 40(1) is an absolute exemption, meaning that if it applies there is no requirement to go on to consider whether disclosure would nevertheless be in the public interest.

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

12. Section 1(1) of the DPA defines personal information as:

"...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 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".

13. In her 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 https://ico.org.uk/media/for-organisations/documents/1206/neither_confirm_nor_deny_in_relation_to_personal_data_and_regulation_foi_eir.pdf

14. The complainant's request is for information about a complaint he made to the Constabulary, about what he considered to be electoral malpractice. The Constabulary has explained to the Commissioner that:

"The background to this is that [the complainant] requested 'a full explanation from the Norfolk CID as to why they recorded a verdict of "no case to answer" regarding the Police instigated inquiry into possible electoral malpractice in a recent Council election' ".

15. The Commissioner considers that this is an approach for information which can be linked to a named, living individual - the complainant himself. It is therefore his personal data, and falls within the scope of section 40(1).
16. It follows from this that to comply with section 1(1)(a) of FOIA (that is, to either confirm or deny holding the requested information) would put into the public domain information about the existence or otherwise of an investigation linked to the complainant; this would constitute a disclosure of personal data that would relate to the complainant.
17. In considering whether the Constabulary should have applied section 40(5)(a), the Commissioner has taken into account that the 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, not just the complainant. Confirmation or denial in the circumstances of this case would reveal to the general public information about the complainant which is not already in the public domain and which is not reasonably accessible to it. The Commissioner therefore considers that the exemption was correctly relied upon by the Constabulary in this case.
18. The Commissioner would remind applicants that any individual wishing to access their own personal data should pursue this right under the subject access provisions of the DPA.

Right of appeal

19. 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

20. 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.
21. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF