

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 June 2017

**Public Authority:** Chief Constable of Cheshire Constabulary  
**Address:** Cheshire Constabulary HQ  
Oakmere Road  
Winsford  
Cheshire  
CW7 2UA

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the misconduct hearing of a police officer who has been dismissed from Cheshire Constabulary.
2. Cheshire Constabulary refused to provide the information citing section 40(2) (personal information) of the FOIA. The Commissioner's decision is that it was correct to do so

#### Request and response

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3. On 16 September 2016, the complainant wrote to Cheshire Constabulary and requested information in the following terms:

*"I would like to make a Freedom of Information Request relating to the following misconduct hearing.*

*June 2016*

*Honesty and Integrity by a Police officer [name redacted], the officer having been untruthful to his Supervisors in relation to activities whilst on sick leave*

*Dismissed without notice*

<https://www.cheshire.police.uk/contact/make-a-complaint/misconduct-hearings>

*Give that these hearings are held in public, I request the following information.*

- 1. A transcript or minutes of the hearing.*
- 2. A "notice of outcome", example has been attached."*
4. Cheshire Constabulary responded on 11 October 2016. It refused to provide the requested information citing section 40(2) of the FOIA.
5. Following an internal review Cheshire Constabulary wrote to the complainant on 8 November 2016. The complainant had supplied, by way of example, a Notice of Outcome issued by the Metropolitan Police Service (MPS). Cheshire Constabulary acknowledged that it was the MPS's practice to issue such Notices, and that they provide some detail about the misconduct considered and the decision making process. Cheshire Constabulary explained that it does provide information on the outcome of misconduct hearings, but in less detail. It stated that in asking it to provide a Notice of Outcome, the complainant was asking Cheshire Constabulary to create additional information which it did not already hold. It stated that it was not obliged to replicate the MPS's arrangements and that there is no requirement under the FOIA for it to create additional information, in order to answer requests.
6. Cheshire Constabulary went on to address the complainant's request for a '*transcript or minutes of the hearing*'; it stated that this information constitutes personal data about an ex Cheshire Constabulary employee. The transcript would reveal significantly more information about the individual than just their identity and would disclose information that is not currently in the public domain. It therefore refused to provide the '*transcript or minutes of the hearing*', citing section 40(2) of the FOIA.

## **Scope of the case**

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7. The complainant contacted the Commissioner on the 18 November 2016 to complain about the way his request for information had been handled.
8. During the Commissioner's investigation Cheshire Constabulary revised its position. It stated that it had established that it did not in fact hold a '*transcript or minutes of the hearing*' but that it did hold an audio recording of the public hearing. It also said that it had established that,

contrary to what it had told the complainant, it did in fact hold a 'Notice of Outcome' in respect of the hearing.

9. The Commissioner has considered Cheshire Constabulary's application of section 40(2) in respect of this information.

## Reasons for decision

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### ***Section 40 – personal information***

10. Section 40(2) of the FOIA provides that information is exempt from disclosure if it 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.

11. Personal data is defined in section 1(1) of the Data Protection Act 1998 (DPA) *as:*

*“data which relate to a living individual who can be identified –*

*(i) from those data, or*

*(ii) from those data and other information which is in the possession of, or is likely to come into 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.”*

### **Is the requested information personal data?**

12. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the DPA. If it is not personal data, then section 40 cannot apply. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decision affecting them, has them as its main focus or impacts on them in any way. The second part of the test is whether the withheld information identifies any individual.
13. The requested information in this case relates to a misconduct case in respect of a former employee of Cheshire Constabulary. In the Commissioner's view it is clear that the withheld information 'relates' to

a living person, that they are the focus of the request and it is therefore their 'personal data'.

### **Is any of the information sensitive personal data?**

14. During the Commissioner's investigation Cheshire Constabulary confirmed the following:

*"...the audio recording for the public hearing is the personal information of the Police Officer and contains sensitive personal data including detailed medical information, details of the officers Private and family life including information relating to his personal circumstances, financial situation, and vehicle details."*

15. Cheshire Constabulary also stated that the "Notice of Outcome" contains personal data including sensitive personal data, confirming:

*"The "Notice of Outcome" contains personal data of the individual, including sensitive personal data. In this case, medical information as well as details of the Officer's Private and family life were discussed."*

16. Section 2 of the DPA defines sensitive personal data as personal data which consists of information on, amongst other things:

*"(e) his physical or mental health or condition"*

17. The Commissioner is satisfied that medical information falls within the description of sensitive personal data at section 2(e) of the DPA.
18. In light of the above, the Commissioner is satisfied that personal data, including sensitive personal data, is contained within both the audio recording and the 'Notice of Outcome'.

### **Would disclosure breach the Data Protection Principles?**

19. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, and the most relevant in this case, states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
20. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

21. The Commissioner's guidance<sup>1</sup> states that if information constitutes sensitive personal data, as defined in section 2 of the DPA, disclosure is unlikely to be fair. This is because that data is likely to relate to the most personal aspects of individuals' lives, for example their health or sexual life, rather than their working life. Employees would have a reasonable expectation that this data would not be made public.
22. From the information provided by Cheshire Constabulary, the Commissioner considers that the type of information requested in this case (information about a misconduct hearing which resulted in the data subject losing their job, together with medical information about them) will carry a strong general expectation of privacy for the data subject concerned. They would be entitled to expect that the information would not be disclosed for purposes not connected with the hearing, and this expectation would be a reasonable one. As to the consequences of disclosure upon the data subject, the question in respect of fairness is whether disclosure would be likely to result in unwarranted damage or distress.
23. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. She will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions.
24. The Commissioner considers that disclosure in this case could lead to an intrusion into the private life of the data subject and the consequences of any disclosure could cause damage and distress to the party concerned.
25. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
26. In considering these 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
27. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to the 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

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

interest in disclosing personal data must outweigh the public interest in protecting the rights and freedoms of the data subject, if disclosing their personal data is to be considered fair.

28. The interest in disclosure must be a public interest, not the private interests of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.
29. The complainant has not specified why he is requesting the information so his motives are not known to the Commissioner. She is therefore unable to take them into consideration as a potential legitimate interest. She does, however, acknowledge that the integrity of police officers is a genuine public interest. Their actions need to be lawful and their individual conduct is of paramount importance to the maintenance of the public's trust in the police service as a whole. However, where the conduct of individual officers is brought into question, there are formal channels through which this may be investigated and addressed; disclosure of any such information to the world at large by way of a request under the FOIA, particularly where it is about an officer of junior rank and relates primarily to the abuse of their terms of employment, is very unlikely to be appropriate and the Commissioner is aware of no justification capable of overriding this principle in this case.
30. In light of the nature of the personal data and the reasonable expectations of the individual concerned, the Commissioner is satisfied that disclosing the requested information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subject; she considers these factors outweigh any legitimate interest in disclosure.
31. In conclusion therefore, the Commissioner is satisfied that Cheshire Constabulary was correct to rely on section 40(2) to refuse the request for information.

## Right of appeal

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32. 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)

33. 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.
34. 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**