

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2017

Public Authority: Chief Constable of Dyfed Powys Police
Address: Police Headquarters
PO Box 99
Llangunnor
Carmarthen
SA31 2PF

Decision (including any steps ordered)

1. The complainant requested the date that a named police officer was promoted. Dyfed Powys Police refused to confirm or deny whether it held the information requested by virtue of section 40(5) of the FOIA. The Commissioner's decision is that Dyfed Powys Police correctly applied section 40(5) to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 20 December 2016 the complainant wrote to Dyfed Powys Police and requested information in the following terms:

"i am seeking the information upon a retires [sic] [name & rank redacted] from dyfed powys police who is referred to in the psd report of [name redacted] who was over seeing as so stated in his report of my many complaints

the reason why i require this information. is im am [sic] doing a reports [sic] requested with evidence to the ipcc as this [name & rank redacted] DYP now retired"

..... i am requesting to what date and time was this new grade given making him [name & rank redacted]

3. Dyfed Powys Police sought clarification from the complainant as to the information being sought and he confirmed that he was seeking the date that the named officer was promoted.
4. Dyfed Powys Police responded on 12 January 2017 and refused to confirm or deny whether it held the requested information by virtue of the exemption at section 40(5) of the FOIA.
5. On 13 January 2017 the complainant wrote to Dyfed Powys Police and requested an internal review of its handling of the request.
6. Dyfed Powys Police provided the outcome of its internal review on 7 March 2017 and upheld its decision that section 40(5) of the FOIA applied to the request.

Scope of the case

7. The complainant contacted the Commissioner on 22 January 2017 to complain about the way his request for information had been handled.
8. The scope of the Commissioner's investigation is to determine whether Dyfed Powys Police correctly applied section 40(5) to the request.

Reasons for decision

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

Section 40 – personal information

10. Generally, the provisions in section 40 subsections 1 to 4 exempt personal data from disclosure under FOIA if to do so would breach any of the data protection principles set out in the Data Protection Act 1998 (DPA). The section 40(5) exemption states that the duty to confirm or deny whether or not information is held does not arise if providing the requester with confirmation or denial would itself contravene any of the data protection principles.

11. The consequence of section 40(5)(b)(i) FOIA is that, if a public authority receives a request for information which, if it were held, would be the personal data of a third party (or parties), then it can rely on that section to refuse to confirm or deny holding the requested information.
12. Consideration of section 40(5) FOIA 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 breach of any of the data protection principles.

Is the information personal data?

13. The first step for the Commissioner to determine is whether providing confirmation or denial would involve a disclosure of personal data, as defined by the DPA. If it would not, then section 40(5) cannot apply.
14. The DPA defines personal data 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 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.”*
15. The two main elements of personal data are that the information must ‘relate’ to a living person and that the person must be identifiable. Information will relate to a person 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.
16. Dyfed Powys Police considers that the requested information (ie the date of promotion), if held, would constitute the personal data of an individual as it relates to their personal development.
17. The Commissioner notes that the request is for the date that a named individual was promoted. By its nature the request identifies that individual and the information, if held, would constitute their personal data. Accordingly the Commissioner is satisfied that confirmation or denial would involve disclosure of personal data.

Would confirming or denying the information is held contravene one of the data protection principles?

18. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether confirming or denying the requested

information is held would breach the first data protection principle. She considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:

- personal data shall be processed fairly and lawfully; and
- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

19. In considering whether confirming or denying the requested information is held would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. She has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.
20. Dyfed Powys Police provided the Commissioner with detailed representations to support its view that confirmation or denial as to whether the requested information in this case is held would breach the first data protection principle. The Commissioner has fully considered these representations when reaching a decision in this case. However, the level of detail which the Commissioner can include in this notice about Dyfed Powys Police's submissions to support its position is limited. This is because inclusion of any further detailed analysis is likely to reveal whether or not the requested information is held.
21. Dyfed Powys Police confirmed that it does not have a specific written policy in respect of disclosure of personal data of its employees. However, the unwritten stance it adopts, and is publicised to staff to inform expectation about what 'personal data may be disclosed about them is that unless there is a lawful or legitimate reason or specific consent from the individual to whom the personal data relates, then personal information will not be disclosed.
22. In terms of the consequences of disclosure on the individual, Dyfed Powys Police referred to the current National Security Alert status in respect of terrorist attacks. It referred to the terrorist attacks which have occurred in 2017 which involved attacks not only on members of the public but on members of the armed forces as well as members of the emergency services. Bearing this in mind Dyfed Powys Police considers that releasing any information into the public domain which identifies individuals with a current or previous connection with a police force has the potential for disastrous implications by placing those

individuals and members of their families at risk from members of such groups and organisations.

23. Dyfed Powys Police stated that due to the nature of undertaking the profession of a police officer, as well as through the normal and lawful course of duties, police officers may not be held in favourable light by some members of the public. This would apply particularly to any individuals with criminal intent who may have had unfavourable first hand encounters with an officer during their serving career. Dyfed Powys Police pointed out that in certain realms of society there are feelings of dislike towards police officers and their families, who as a consequence could be subject to harm or distress whilst the officer is still a serving officer.
24. In this case, if the information were held, it would relate to an officer who had not worked for Dyfed Powys Police for several years. Dyfed Powys Police considers that further re-identification of any involvement the individual had with the police could possibly rekindle any previous threats of harm, distress or revenge towards the officer or any member of his family.
25. Dyfed Powys Police added that as a result of the current National Security alert, it regularly provides bulletins to all staff and officers not only in relation to vigilance at police premises but also in relation to identification of officers and staff whilst travelling to and from their place of work. The advice provided is in essence that officers should not travel to and from work in their uniform and staff should remove any lanyards when leaving police premises. In addition all staff are advised to avoid drawing unnecessary attention to their occupation away from work.
26. The Commissioner considers that information about employment related matters will usually be inherently 'private' in nature and she recognises that police officers and other employees or associates will have a high expectation that such matters will not be placed in the public domain and that their privacy will be respected. As such, their reasonable expectation would be that information of the type requested would not be disclosed.
27. The Commissioner accepts that disclosure of information relating to employment status or other association with the police could prove detrimental to any police employee if it were placed into the public domain via the FOIA. As such she accepts that it could cause unnecessary and unjustified damage or distress to the individual concerned.

28. Notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to confirm or deny whether the information is held, if it can be argued that there is a more compelling public interest in disclosure.
29. The Commissioner acknowledges that there is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. On the other hand the Commissioner recognises that this legitimate interest must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of any individual who would be affected by confirming or denying that the requested information is held. In this particular case, although the complainant has a personal interest in the confirmation or denial of the existence of such information, it is difficult to see a more specific public interest in disclosure of the information requested.
30. In view of the absence of a compelling public interest in disclosure, combined with the reasonable expectations of the data subject and the consequences of disclosure, the Commissioner has concluded that it would be unfair for Dyfed Powys to confirm or deny whether it holds any relevant information. The Commissioner is therefore satisfied that Dyfed Powys Police correctly relied on section 40(5) of the FOIA and it is not required to confirm or deny whether it holds the information requested.

Right of appeal

31. 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

32. 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.
33. 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

David Teague
Regional Manager (Wales)
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF