

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 1 February 2018

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

#### **Decision (including any steps ordered)**

---

1. The complainant requested information from Norfolk Constabulary relating to suspects who have been wanted by Norfolk Constabulary for the longest period of time and the number of outstanding arrest warrants.
2. Norfolk Constabulary confirmed it held some of the requested information. It provided some information within the scope of the request but refused to provide the remainder, citing sections 40(2) (personal information) and 44(1) (prohibitions on disclosure) of the FOIA.
3. The Commissioner has investigated Norfolk Constabulary's application of section 40(2) to the withheld names of the wanted persons and has concluded that the information is exempt from disclosure on the basis of that exemption.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

---

5. On 3 May 2017, the complainant wrote to Norfolk Constabulary and requested information in the following terms:

*"A. Please could you provide me with the name, age, alleged offence, location of alleged offence, year of offence and police photo of the 15 criminals who have been wanted for the longest period of time by Norfolk Constabulary*  
*B. How many outstanding arrest warrants does Norfolk Constabulary currently have?*  
*C. Please can you state for (b) the offence the arrest warrant is for?"*

6. Norfolk Constabulary responded on 29 June 2017. It responded to parts B and C of the request. With respect to part A of the request, it denied holding some of the requested information - namely some of the police photos. While it provided some information within the scope of the request, it refused to provide the remainder citing the following exemptions as its basis for doing so:
  - section 31(1)(a) law enforcement
  - section 40(2) personal information
  - section 44(1)(a) prohibitions on disclosure
7. The complainant requested a review of Norfolk Constabulary's application of section 40(2) of the FOIA to the withheld names.
8. Following an internal review Norfolk Constabulary wrote to the complainant on 4 August 2017 maintaining its position with respect to section 40(2) of the FOIA.

## **Scope of the case**

---

9. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation on 19 December 2017 to complain about the way his request for information had been handled.
10. While he accepted that the requested names constituted personal information, he disputed the police's refusal to disclose the names of 13 of the 15 suspects by virtue of section 40(2) of the FOIA.
11. He told the Commissioner:

*"I would argue the right of the public to know the names of people where an arrest warrant has been out on them for years should override the data protection rights of the subjects".*
12. Although the Commissioner understands from the complainant that other police forces would appear to have complied with similar requests

for information, this does not set an automatic precedent for disclosure under the FOIA. Each case must be considered on its merits.

13. The disputed information in this case comprises the names of 13 of the 15 individuals within the scope of the request – individuals who, at the time of the request, had been wanted for the longest period of time by Norfolk Constabulary.
14. During the course of the Commissioner's investigation, Norfolk Constabulary confirmed its application of exemptions to the withheld information including its application of section 40(2) of the FOIA to the 13 withheld names within the scope of the request.
15. The analysis below considers Norfolk Constabulary's application of section 40(2) of the FOIA to those names.

## **Reasons for decision**

---

### *Section 40 personal information*

16. 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 one of the conditions listed in section 40(3) or 40(4) is satisfied.
17. In this case the relevant condition is contained in section 40(3)(a)(i). This applies where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (DPA).

### *Is the information personal data?*

18. Section 1 of 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."*

19. 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.

20. Mindful of the wording of the request, the Commissioner considers that individuals would be identifiable from the withheld information.

21. In correspondence with the Commissioner, the complainant accepted that the names of the individuals within the scope of his request:

*"... would of course be considered personal information under Section 40..."*

22. Norfolk Constabulary agreed that providing the requested information *"would obviously allow for an individual to be identified"*. It also told the complainant that:

*"... providing details which would identify a suspect or offender, could also result in identifying the victim"*.

*Is the information sensitive personal data?*

23. Sensitive personal data is defined in section 2 of the DPA. It is personal information which falls into one of the categories set out in section 2 of the DPA:

*(a) the racial or ethnic origin of the data subject,*

*(b) his political opinions,*

*(c) his religious beliefs or other beliefs of a similar nature,*

*(d) whether he is a member of a trade union,*

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

*(f) his sexual life,*

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

*(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.*

24. In correspondence with the complainant, Norfolk Constabulary told him that as the requested information was in relation to the commission of an alleged offence, it would be defined as sensitive personal data.

25. The request in this case relates to information about individuals wanted by the police. Having considered the withheld information, the Commissioner is satisfied that, given the nature of the information, the

information withheld by virtue of section 40(2) of the FOIA comprises information that falls within the definition of personal data in section 1(1) of the DPA and within the definition of sensitive personal data under sub-section 2(g) of the DPA.

26. Having accepted that the request is for the sensitive personal data of living individuals other than the applicant, the Commissioner must go on to consider whether disclosure of the information would contravene any of the data protection principles.

*Would disclosure contravene one of the data protection principles?*

27. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The Commissioner must next consider whether disclosure would breach one of the data protection principles.
28. In this case, the Commissioner notes that Norfolk Constabulary considers that disclosure would breach the first data protection principle.
29. The Commissioner agrees that the first data protection principle is the most relevant in this case.

*Would disclosure contravene the first data protection principle?*

34. 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."*

30. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions and, in the case of sensitive personal data, one of the Schedule 3 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

*Would disclosure be fair?*

31. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.

32. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

- the data subject'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 individuals concerned); and
- the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

*Reasonable expectations*

33. In the Commissioner's view, a key issue to consider in assessing fairness is whether the individual concerned has a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an individual in a professional capacity or to them as individuals and the purpose for which they provided their personal data.

34. With respect to the information that had been provided by Norfolk Constabulary, the complainant acknowledged, in correspondence with the Commissioner:

*"In the two cases where names of suspects were released, they were released because they had been named at the time of the offence".*

35. In respect of the remaining withheld names, however, he argued that:

*"A suspect, who has evaded police capture for years, should expect at some point for police to seek them. It is not beyond their 'reasonable expectation' for police to appeal to the public and release their details as part of this".*

36. Norfolk Constabulary told the complainant that it considered that it would be reasonable to expect that the Constabulary would process personal data and sensitive personal data, for example:

*"... to record crimes, to investigate those crimes, to gather evidence and present a case to the Crown Prosecution Service... The processing in this context ... could be considered 'fair processing'".*

37. However, it argued that disclosing information about an individual to provide a response to a FOIA request would not be expected and would therefore be considered 'unfair processing'.

38. Similarly, Norfolk Constabulary told the Commissioner that an individual's reasonable expectation would be that the information would not be disclosed under the FOIA:

*"... especially given the passage of time and that the Constabulary did not consider it an option at the time of the investigation".*

#### *Consequences of disclosure*

39. 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 to that individual.

40. Norfolk Constabulary told the Commissioner:

*"... there has been no personal information released prior to this request into the public domain therefore we can make the assumption that the processing will be seen as unwarranted by both accused, victims and associated families".*

41. Norfolk Constabulary accepted that if, having been obtained fairly and lawfully in conjunction with police investigations, personal data is then used in such a way that it causes detriment to an individual, this may still be classed as fair use providing the detrimental effect is justified. However, it told the Commissioner:

*"In this case, it would be difficult to argue that the justification exists because there has not been any public interest in the individual investigations prior to this time".*

42. Given the subject matter, and mindful of the time element specified in the request, the Commissioner accepts that disclosure in this case could lead to an intrusion into the private lives of the individuals concerned and the consequences of any disclosure could cause damage and distress to any party concerned.

#### *The legitimate public interest*

43. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to provide the information if there is an overriding legitimate interest in disclosure to the public.

44. In support of his view that Norfolk Constabulary was putting the data protection of suspects above public safety and the public's right to know, the complainant told Norfolk Constabulary:

*"I fail to see how naming someone who has been wanted for years for a serious crime should take precedent over the public knowing who these suspects are".*

45. The complainant told the Commissioner:

*"When an individual is wanted by the police for several years ... it is in the public interest to enlist the help of the public in finding them ... The only way the public can help is if they know who these suspects are".*

46. Regarding the passage of time, the complainant argued:

*"... the longer these suspects are either on the run or can not be found, public interest in arresting these suspects ... increases rather than decreases. If the force is prepared to release names and photos of those wanted for minor crimes as they happen, how can data protection concerns stop it releasing names and photos of those wanted for years for serious crimes?"*

47. He also argued:

*"The Constabulary's first duty is to keep people safe. Yet by not releasing information about people who have been wanted for years, it is failing in its duty to alert the public that they may be living near, next to or [in] some cases with people wanted for very serious crimes".*

48. In correspondence with the complainant, Norfolk Constabulary acknowledged that, in order for the public to assist in locating an individual wanted by the police, they would require the disclosure of relevant information.

49. However, Norfolk Constabulary disputed that it was putting the data protection of the suspects above public safety and the public's right to know.

50. Norfolk Constabulary confirmed that, in considering whether to withhold or disclose the requested information, each individual case has been reviewed and the following taken into consideration:

- whether the details are already in the public domain
- the passage of time;
- the perceived current risk to the public;
- whether the individual is suspected of being abroad; and
- the nature of the offence.

51. Norfolk Constabulary also confirmed that, should the Constabulary consider the public to be at risk, then an operational disclosure could be made. It explained that any such disclosure made:

*"... would not be considered under the FOIA, but as a tool to progressing the Police investigation".*

52. Similarly, Norfolk Constabulary told the Commissioner that it will release photographs of wanted persons:

*"...where there is an operational requirement for them to do so, where it is considered that there is sufficient evidence to prosecute and there are significant public safety concerns".*

53. In support of its withholding of the requested information, Norfolk Constabulary told the complainant that the publication of a name of a wanted person is managed by the Constabulary's Corporate Communications Department in a controlled manner. It further advised that people will usually only be named as wanted:

*"... in exceptional circumstances, where it is deemed that public safety is at risk and/or there is a real risk of re-offending".*

54. Norfolk Constabulary also explained to the Commissioner how it ensures that it continues to maintain public safety while at the same time balancing operational requirements and individual expectations. For example, it described the nature of the checks it carries out for wanted persons.

*Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure*

55. Notwithstanding a data subject's reasonable expectations or any damage or distress caused, it may still be fair to disclose information 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 disclosure.
56. The Commissioner would stress that this is a different balancing exercise to 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. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
57. Examples of a legitimate public interest in disclosure include the general public interest in transparency, public interest in the issue the

information relates to and any public interest in disclosing the specific information. In balancing these legitimate interests with the rights of the data subject, the Commissioner recognises that it is also important to consider a proportionate approach.

58. The Commissioner acknowledges that the complainant in this case is concerned about public safety and the public's right to know. She also appreciates, for example, the nature of the alleged offences for which the individuals are wanted by the police, those details having been provided to the complainant by Norfolk Constabulary.
59. The Commissioner accepts that the issue of individuals wanted by the police is understandably a matter of considerable public interest. She also accepts that the fact that suspects have been wanted for some considerable time may add to public concern.
60. However, from the evidence she has seen, the Commissioner notes that Norfolk Constabulary has demonstrated that it takes steps both to protect the public and to meet the public's right to know.
61. In reaching a decision in this case, the Commissioner is mindful of her role both as regulator of the FOIA and of the DPA. She recognises that as the independent regulator of the FOIA, her role is to ensure people have easy access to records they are entitled to see. However, as regulator of the DPA, she recognises the rights of individuals to confidentiality.
62. Having considered all the arguments, the Commissioner's decision is that Norfolk Constabulary was entitled to rely on section 40(2) to refuse to disclose the requested information.
63. She is satisfied that disclosure would not be within the data subjects' reasonable expectations, that it would be likely to have detrimental consequences for them and that the legitimate interests that would be served by disclosure are not capable of outweighing the data subjects' expectation of, and right to, privacy. The Commissioner therefore accepts that it would be unfair to the data subjects to disclose the requested information and that to do so would breach the first data protection principle.
64. As the Commissioner has determined that it would be unfair to disclose the requested personal data, it is not necessary for her to go on to consider whether disclosure would be lawful or whether one of the Schedule 2 or Schedule 3 conditions of the DPA would be met.

## Right of appeal

---

65. 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)

66. 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.

67. 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**