

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2018

Public Authority: Chief Constable of West Midlands Constabulary
Address: foi@west-midlands.pnn.police.uk

Decision (including any steps ordered)

1. The complainant has requested information relating to herself. West Midlands Police explained that it was neither confirming nor denying whether it held the requested information by virtue of section 40(5)(a) (an applicant's personal information) of FOIA.
2. The Commissioner's decision is that West Midlands Police has applied section 40(5)(a) of FOIA appropriately.
3. The Commissioner does not require West Midlands Police to take any steps as a result of this decision.

Background

4. The complainant has issues regarding her neighbour and West Midland Police (WMP). She has submitted several related requests under both the FOIA and Data Protection Act 1998 (the DPA) about allegations she has made against her neighbour and WMP.

Request and response

5. On 14 July 2017 the complainant submitted a request for information to WMP. The request related to allegations she has made against her neighbour and WMP. The Commissioner will not reproduce the full request as it contains information about the allegations made by the complainant. However, she has provided the full request in a confidential annex to both parties.
6. The Commissioner considers the following is the actual request under the FOIA:

"I am requesting all recordings of telephone calls and documents be

added to my freedom and data access request from in April / may [sic] 2017. This as yet has not been received."

7. WMP responded on 26 July 2017. It refused to confirm or deny whether it held the requested information by virtue of section 40(5)(a).
8. There was some confusion about whether the complainant had requested an internal review. However, WMP confirmed that she had requested an internal review in relation to an earlier, similar request she had submitted, but not in relation to the present request.
9. The Commissioner asked WMP whether, if the complainant had requested an internal review in the present case, it would have upheld its application of section 40(5)(a). WMP confirmed that it would.

Scope of the case

10. The complainant contacted the Commissioner on 23 November 2017 to complain about the way her request for information had been handled. She considered that WMP should have disclosed the requested information to her.
11. The Commissioner will consider whether WMP has applied section 40(5)(a) appropriately.

Reasons for decision

12. 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

13. Section 40(5)¹ of the FOIA provides that public authorities are not obliged to confirm or deny that they hold information which is (or if it were held, would be) personal data of the applicant.

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. Section 40(1) of the FOIA provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because there is a separate legislative access regime for an individual's own personal data, namely the right of subject access under section 7 of the DPA. The section 40(1) exemption is absolute, which means there is no requirement to consider the public interest.

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

15. 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."

16. 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.
17. The Commissioner has considered the wording of the complainant's request. She notes that the complainant is asking for information relating to the allegations she made.
18. The Commissioner considers that if held, the requested information would be the complainant's own personal data as it would relate to the allegations she made. She therefore considers that the present request is a request for information which can be linked to a named, living individual - the complainant herself. It is therefore her personal data and falls within the scope of section 40(1).
19. Therefore, to comply with section 1(1)(a) would put into the public domain information about the existence or otherwise of allegations the complainant made against her neighbour and WMP; this would constitute a disclosure of personal data that would relate to the complainant.
20. In considering whether WMP 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 WMP in this case.

Other matters

21. WMP also confirmed that the complainant had submitted a subject access request about this which had been dealt with under the DPA. The Commissioner considers that this is the correct access regime, as she considers that the complainant is asking for her own personal information.

Right of appeal

22. 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

23. 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.
24. 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

**Deborah Clark
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