

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2018

Public Authority: Police and Crime Commissioner for North Yorkshire

Address: Office of the Police and Crime Commissioner
12 Granby Road
Harrogate
North Yorkshire
HG1 4ST

Decision (including any steps ordered)

1. The complainant requested information about a covert operation in which he considered he was the target.
2. The North Yorkshire Police and Crime Commissioner (North Yorkshire PCC) neither confirmed nor denied holding information within the scope of the request, citing section 40(5)(a) (personal data) of the FOIA.
3. The Commissioner's decision is that North Yorkshire PCC was correct to neither confirm nor deny holding information within the scope of the request by virtue of section 40(5)(a) of the FOIA.
4. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

5. On 26 December 2017, the complainant wrote to North Yorkshire PCC and requested information in the following terms:

"Have you at any point questioned the proportionately [sic] of money the Chief Constable / Chief Constable's staff has spent on a covert operation targeting me?"
6. The request was made via the 'whatdotheyknow' website.

7. Following an exchange of correspondence in which the complainant confirmed that he wished his question to be treated as an FOIA request, North Yorkshire PCC provided its substantive response on 26 January 2018. It refused to confirm or deny whether it held the requested information citing section 40(5)(a) of the FOIA (personal information).
8. North Yorkshire PCC advised the complainant with respect to the subject access provision under the Data Protection Act 1998 (DPA).
9. The complainant requested an internal review on 26 January 2018. He told North Yorkshire PCC:

"The public have a right to know about the cost of public monies being spent and the PCC have a duty to make sure the CC [Chief Constable] is not mispending".
10. Following an internal review, North Yorkshire PCC wrote to the complainant on 3 April 2018 maintaining its original position.

Scope of the case

11. Following earlier correspondence, the complainant contacted the Commissioner on 19 April 2018 confirming that he wished to pursue his complaint about North Yorkshire PCC's handling of his request for information.
12. The analysis below considers North Yorkshire PCC's application of section 40(5)(a) of the FOIA to the requested information.

Reasons for decision

Section 40 personal information

13. Section 40(5) of the FOIA states:

"The duty to confirm or deny –

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)...".

14. Subsection (1) of section 40 of the FOIA states that:

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".

15. The definition of personal data is set out in section 1 of the DPA. Section 1 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."

16. 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.

17. In this case, North Yorkshire PCC told the complainant:

"Section 40(5)(a) applies as the requested information, if held, would constitute personal data under section 40(1) as the requestor has intimated that the information relates to themselves".

18. It further explained:

"To either confirm or deny that the information is held would disclose that individuals had, or had not, been subject to a covert operation targeting a particular individual, which in itself is personal information to the individual concerned and therefore exempt under Section 40(5)(a) of the Act".

19. In correspondence with the Commissioner, North Yorkshire PCC told her:

"As [the complainant] was asking for information that, if held, would constitute personal data relating to himself, under the Act, the OPCC was therefore not required to confirm whether or not the information was held".

20. In correspondence with the Commissioner, the complainant said:

"The PCC ... is 100% responsible for the budget of the CC [Chief Constable] and as the budget is public funds she has a duty to inform the public that those funds are being spent proportionality. The CC disproportionately spent money targeting me with a police covert operation to spy on me..."

21. The Commissioner considers that context is important here. Having considered the wording of the request, the Commissioner is satisfied that the complainant is, or would be, a data subject of the requested information for the purposes of section 40 of the FOIA. This is because the requested information, if held, is about or connected to the complainant himself.
22. In relation to such information, and as set out in paragraphs 15 and 16 above, the provisions of section 40(5) of the FOIA mean that North Yorkshire PCC was not required to comply with the duty imposed by section 1(1)(a) of the FOIA - to confirm or deny that the information is held - as the duty to confirm or deny does not arise in relation to information which is (or, if it were held by the public authority, would be) exempt information by virtue of subsection (1).
23. The Commissioner is satisfied that complying with section 1(1)(a) in this case would effectively confirm or deny whether the requested information is held in connection with the complainant.
24. She therefore considers that the section 40(5)(a) exemption was correctly relied upon by North Yorkshire PCC in this case.

Other matters

25. In the Commissioner's view, it is appropriate that any decision as to whether or not a data subject is entitled to be told if personal data about them is being processed should be made in accordance with the subject access provisions of the DPA.
26. If a data subject is dissatisfied with the outcome of a subject access request, they can raise their concern about how the organisation handled that request with the ICO.
27. The Commissioner is satisfied that North Yorkshire PCC advised the complainant in this case with respect to making a subject access request.

Internal review

28. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA. However, the Commissioner has issued guidance in which she has stated that in her view internal reviews should take no longer than 20 working days to complete, and even in

exceptional circumstances the total time taken should not exceed 40 working days.

29. In this case, the internal review that the complainant requested on 26 January 2018 was not completed in accordance with that guidance.

Right of appeal

30. 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

31. 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.
32. 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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Wycliffe House
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