

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2018

Public Authority: Chief Constable North Yorkshire Police

Address: Police Headquarters

Alverton Court

Crosby Road

Northallerton

North Yorkshire

DL6 1BF

Decision (including any steps ordered)

1. The complainant requested information relating to a covert police operation in 2015.
2. North Yorkshire Police 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 Police was entitled to neither confirm nor deny if the requested information was held 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 30 December 2017, the complainant wrote to North Yorkshire Police and requested information in the following terms:

"A covert operation was mounted with me being a target of it in 2015. Please provide me with the following information.

1. Name of the operation

2. Name(s)/rank(s) of Gold Commander of this operation.

3. Name(s)/rank(s) of Senior Investigating Officer(s).
4. Name / rank of the Handler of the CHIS
5. Cost of the operation

To clarify, my address at the time operation was mounted was [address details redacted]".

6. The request was made via the 'whatdotheyknow' website.
7. North Yorkshire Police responded on 26 January 2018. It refused to confirm or deny whether it held the requested information citing section 40(5)(a) (personal information) of the FOIA. It advised the complainant with respect to the subject access provision under the Data Protection Act 1998 (DPA).
8. The complainant requested an internal review of that decision on 26 January 2018.
9. Following the Commissioner's intervention, North Yorkshire Police wrote to the complainant on 6 April 2018 maintaining its original position. It apologised for the delay in responding.

Scope of the case

10. Following earlier correspondence regarding the time taken to provide an internal review, the complainant contacted the Commissioner on 19 April 2018 to complain about the way his request for information had been handled.
11. He disputed that the information he had requested constituted personal information. He told the Commissioner:

"I have not requested any information that would allow them to use this clause. It is about public officials and there is no reason to hold they are exempt".
12. The Commissioner acknowledges that the complainant also considered North Yorkshire Police's response in this case to be inconsistent with its response to a different FOI request.
13. Although the Commissioner understands from this that North Yorkshire Police would appear to have complied with a similar request, this does not set an automatic precedent for disclosure under the FOIA. Each case must be considered on its merits.
14. The Commissioner acknowledges that, in respect of that other request, North Yorkshire Police told the complainant:

"I note that you refer to the previous publication of information in relation to a North Yorkshire Police Operation under FOI. The existence of this operation has been confirmed on a number of occasions in the public domain, therefore the data released was in line with this, and in keeping with the Act".

15. During the course of her investigation, North Yorkshire Police confirmed its application of section 40(5)(a) to the requested information in this case.
16. The analysis below considers North Yorkshire Police's application of section 40(5)(a) of the FOIA to the requested information.

Reasons for decision

Section 40 personal information

17. 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)...".

18. 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".

19. 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."

20. 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.

21. In this case, North Yorkshire Police 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".

22. 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".

23. The Commissioner acknowledges that the complainant disputes that the request relates to his own personal information. He also told her:

"Just because I was the target of the operation does not mean the public can not see what money was spent on the operation and who was involved in it at which rank level".

24. The Commissioner accepts that the complaint in this case appears to be in relation to information about a Police operation, including with respect to the names and ranks of the officers involved and the cost of the operation. However, she considers that the preamble to the multi-part request in this case sets the context for the whole of the request.

25. Having considered the wording of the request, the Commissioner is satisfied that if North Yorkshire Police confirmed or denied that a covert operation was mounted, this would place information about the complainant into the public domain ie it would confirm or deny whether he was the target of a covert operation.

26. Clearly this information would relate to the complainant and so would be his 'personal data'.

27. The Commissioner considers that context is important here. She considers it inescapable that confirmation or denial in response to any part of the request would disclose whether North Yorkshire Police holds personal data relating to the complainant.

28. Accordingly, she 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.

29. In relation to such information, the provisions of section 40(5) of the FOIA mean that North Yorkshire Police 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).
30. 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.
31. She therefore considers that the section 40(5)(a) exemption was correctly relied upon by North Yorkshire Police in this case.

Other matters

32. 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.
33. 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.
34. The Commissioner is satisfied that North Yorkshire Police advised the complainant in this case with respect to making a subject access request.

Internal review

35. 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.
36. 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

37. 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

38. 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.
39. 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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