

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2019

Public Authority: Chief Constable of Lancashire Constabulary

Address: Police Headquarters

Saunders Lane

Hutton

Lancashire

PR4 5SB

Decision (including any steps ordered)

1. The complainant requested information about "*all incidents*" which had taken place within a specified area over the preceding five years. Lancashire Constabulary provided some of the requested information but withheld the remainder citing section 40(2), the exemption for personal information.
2. During the Commissioner's investigation, he subsequently stipulated that he only required the information for one of the fifteen incidents in scope. This had been partially disclosed to him, with the remaining information withheld under section 40(2).
3. The Commissioner's decision is that section 40(2) is only engaged in respect of a telephone number and a vehicle registration mark.
4. By failing to communicate the non-exempt information it held by the time of the internal review and to provide its initial response to the request within the statutory 20 working days' time limit, Lancashire Constabulary has breached sections 1(1)(b) and 10(1) of FOIA. By failing to issue its section 40(2) refusal notice for parts of the requested information within 20 working days, Lancashire Constabulary has also breached section 17(1) of FOIA. The Commissioner does not require Lancashire Constabulary to take any remedial steps in relation to the delays.
5. The Commissioner requires Lancashire Constabulary to take the following steps to ensure compliance with the legislation:

- Disclose the full incident log for the incident ending in '0288' to the complainant with the exception of the informant's contact number and the vehicle registration mark.
6. Lancashire Constabulary must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

7. The Commissioner considers it appropriate to the understanding of this decision notice to briefly set out the chronology of this investigation.
8. It was not immediately apparent from the wording of the complainant's request (see below) that he was only interested in road related incidents in the specified location. This resulted in various iterations and responses being issued to the complainant, including Lancashire Constabulary citing section 12(1), the cost of compliance, in relation to his request for "*all incidents*", of which there were 4892 potentially in scope. Once it had been established that the complainant was only concerned with road related incidents in the specified area, Lancashire Constabulary carried out a further search of its Command and Control incident reporting system.
9. This search identified 15 incidents in scope of the request and Lancashire Constabulary provided some of the requested information. However, it did not answer the part of the request relating to the age, gender and disability of those involved in the road related incidents.
10. It is important to note that, following clarification of the request, section 12(1) was no longer relevant as this had only been cited in relation to "*all incidents*". Lancashire Constabulary maintained that section 40(2) applied to parts of the information associated with the 15 road related incidents.
11. During the investigation, the Commissioner made several attempts to resolve this complaint informally, which resulted in further disclosures of some of the requested information being made by Lancashire Constabulary to the complainant in a table format. Three versions of an RTC ('Road Traffic Collision') incident table were issued, each one disclosing more of the previously withheld information; however, parts of it continued to be withheld under section 40(2). In addition, two separate 'gender only' related tables were provided to the complainant with no information redacted.

12. The complainant disagreed with Lancashire Constabulary's application of section 40(2) to the RTC related tables.
13. During the latter stage of the Commissioner's investigation the complainant advised that he wanted a decision notice, and said he was only concerned with securing the requested information for one specified incident involving a cyclist; this is reflected in the 'Scope' section of this notice.

Request and response

14. On 12 January 2019, the complainant wrote to Lancashire Constabulary and requested information in the following terms (bold text as marked by the complainant):

"I request, in electronic form despatched by email, the following:

*Details of all incidents, reported to Lancashire Constabulary and allotted Constabulary incident numbers, which took place within the red boundary marked on the enclosed annotated map and which took place in the 5 years up to and including today 12.1.19. In words, the area consists of the Sainsbury's [area redacted] access roads, the carpark and the marked area of the adjacent [road name redacted], and does **not** include the Sainsbury's store itself. In words, the period over which the request applies is 00:00 13.1.2014 to 23:59 12.1.19.*

*The information is requested in Microsoft Excel spreadsheet .xlsx format or a Microsoft Word table in .docx format, with columns headed something like **Date, Time, Incident Number, Brief Description of Incident.***

*I am requesting that the information is **not** presented as a photograph or photographs of handwritten or typed script. I am **not** requesting any specific personal or vehicle identifiable data but I **am** requesting pertinent details such as the age, sex, disability status etc. of persons (if any) involved and type of vehicle (if any) involved such as 'Ford Transit van', 'double decker Stagecoach bus', '2 wheeled cycle' or suchlike which will be available in the incident description."*

Scope of the case

15. The complainant initially contacted the Commissioner on 11 February 2019 to complain about the way his request for information had been handled. At the point of complaining, he had not received any response.
16. On 15 February 2019, Lancashire Constabulary responded outside the statutory 20 working days' time limit. It provided some of the requested information but withheld the remainder under section 40(2).
17. The complainant requested an internal review on 7 March 2019, stating that he only required information relating to road incidents. He raised a number of points with his main concerns being:
 - The delay in Lancashire Constabulary's response.
 - The omission of the other requested information from the response (ie "*the age, sex, disability status etc. of persons (if any) involved and type of vehicle (if any) involved such as 'Ford Transit van', 'double decker Stagecoach bus', '2 wheeled cycle' or suchlike which will be available in the incident description*").
 - Lancashire Constabulary's reliance on section 40(2) for the incident numbers.
18. Following provision of the internal review, the complainant contacted the Commissioner on 30 April 2019 advising that he remained dissatisfied.
19. On 25 June 2019, the Commissioner wrote to Lancashire Constabulary to investigate its reliance on section 40(2) and confirmed the scope of her investigation to the complainant.
20. There followed further correspondence between the Commissioner and Lancashire Constabulary in which, ultimately, Lancashire Constabulary clarified that it wished to rely on section 12(1) only for the 4892 incidents which had been identified in the unclarified request, and section 40(2) only in relation to the RTCs which the complainant had clarified he was interested in, of which there were 15.
21. As a result, and after informing the complainant, the Commissioner has therefore not considered Lancashire Constabulary's reliance on section 12(1) any further as she is only considering the clarified request for the 15 identified RTC incidents.
22. In an attempt to informally resolve this case, there have been various exchanges between the Commissioner and both parties during the course of the investigation, resulting in further disclosures of some of the previously withheld information. Lancashire Constabulary has

explained it had included (in the information disclosed to the complainant), the first 250 characters only of the text of the incident logs for the 15 incidents in scope of the request (see also paragraph 28).

23. Subsequently, in his correspondence of 21 November 2019 with the Commissioner, the complainant revised his position advising the following [complainant's emphasis in bold text]:

"More importantly, the limited text provided for the only case I am interested in is obviously insufficient to comply with my request for 'the details'. This is the 3rd incident, concerning the cyclist, where the incident number ends with "0288" and the provided text ends "report from MOP believe the R".

*... I require only the **entire text from the incident log text**, as recorded at the time, and without any stupid redactions such as the blacking-out of the vehicle model. I am not asking for the text to be explained or for the police service abbreviations to be amplified, and I appreciate that this is the text as recorded at the time from the mouth of the informant so may not be consistent or sensible. All redactions must be properly justified. All LC has to do is paste the text and remove any names. If I get that, I will call it a day and will not request **any** further details on the **other** incidents because I am not interested in them anyway. I don't need any details on the other cyclist incident, the 3rd incident from the bottom, with the incident number final digits of "0989"
..."*

24. The Commissioner notes that the complainant has not complained about Lancashire Constabulary's approach in relation to the remaining 14 incidents; he has stipulated that he requires the "entire text" for incident '0288' only. She has therefore only considered Lancashire Constabulary's handling of the information held in relation to incident '0288' and disregarded the remaining 14 incidents in scope.
25. The Commissioner has determined whether Lancashire Constabulary was entitled to rely on section 40(2) for the remaining withheld information in scope ie the text of the full incident log for incident '0288'.

Reasons for decision

The withheld and disclosed information

26. The information originally in scope consisted of RTC related incidents only, within the specified location and time period, of which there were

15. The three tables disclosed to the complainant during the Commissioner's investigation included columns for the corresponding incident log numbers, age, disability and incident log opening text.
27. The Commissioner understands from Lancashire Constabulary that incident logs can sometimes run to 20 pages and that the extracts provided to the complainant were the first 250 characters of those logs.
28. The Commissioner acknowledges that Lancashire Constabulary has created this table (which it is not obliged to do under FOIA) in a bid to provide the complainant with the information he originally requested. It has also explained that:

"Lancashire Constabulary do not hold summary details of the incidents... The incident logs do not contain a 'summary' field. The log is a dynamic record of an incident as relayed to the call taker who inputs the information provided by the caller into the force incident recording system as it is provided to them. In our efforts to assist [the complainant] we have provided him with details in terms of the nature of the RTC incident, for example, 'cyclist knocked over by vehicle'. In doing so however, it could be considered that we have created information which we are not obliged to do in response to FOI requests. Certainly in order to provide detail as outlined in [the complainant's] example, we would be obliged to read the log in its entirety and create a precis based on our interpretation of the incident.

That said, in further efforts to bring this matter to an acceptable conclusion we have extracted relevant text from the first lines of the opening report. This text is detailed in the enclosed table. The content has been redacted ..."

29. Given the complainant's stated final position of being interested in the full incident log associated with incident '0288' only, the Commissioner requested a full copy of this and has considered below whether Lancashire Constabulary is entitled to rely on section 40(2) to withhold the majority of this information. She notes that Lancashire Constabulary has already provided the complainant with the first 250 characters of the incident log, with some redactions under section 40(2), and that this information and text is replicated in the full log.

Section 40 - personal information

30. The complainant has complained about Lancashire Constabulary's reliance on section 40(2) for the information held in relation to incident '0288'. He has stipulated that he requires the "entire text" of this incident log.

31. Section 40(2) of 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(3A)(3B) or 40(4A) is satisfied.
32. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
33. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
34. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

35. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

36. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
37. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
38. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

The complainant's view

39. The complainant disputed that section 40(2) applied in this case. As stated above, he told the Commissioner that, in relation to incident 0288 he required:

*"only the **entire text from the incident log text**, [complainant's emphasis] as recorded at the time, and without any ... redactions I am not asking for the text to be explained or for the police service abbreviations to be amplified, and I appreciate that this is the text as recorded at the time from the mouth of the informant so may not be consistent or sensible."*

40. Additionally, from the wording of the complainant's request, the Commissioner notes that he said:

*"I am **not** requesting any specific personal or vehicle identifiable data ..."*

41. He said he would not challenge the removal of any individual's names from the incident log text; the Commissioner can confirm that the unredacted table does not contain any names.
42. Within the text of the incident log is a vehicle registration mark ('VRM'). Based on the wording of the request, and because the Commissioner considers a VRM to be 'vehicle identifiable data' the Commissioner has therefore excluded the VRM from her consideration. In addition, the incident includes the phone number of the person who reported the matter, which the Commissioner considers to be something which is 'specific personal ... data' so this has also been removed from her consideration below as being properly withheld.

Lancashire Constabulary's view

43. In its submission to the Commissioner, Lancashire Constabulary provided further information in support of its view that the withheld information related to an identified or identifiable living individuals.

44. It said:

"Publication of information under the Freedom of Information Act 'is to the wider world' and therefore carries more data protection risk.

We have considered the ICO guidance which suggests that information relevant to a small number of living people should be anonymised to ensure identification is not possible when combined with other information already in the public domain. Due to the low number of returns in respect of the RTCs when

this search was completed, it is not possible to break down the information (by date) whilst retaining the anonymity of the data”.

45. Lancashire Constabulary also argued:

“The incident log reference directly relates to an individual. When combined with the information previously provided it constitutes the personal data of a member of the public.

As you are aware the Constabulary has expended a significant amount of time and effort seeking to assist the applicant and has already provided information relevant to the request. If we were to provide [the complainant] with the incident log numbers, we would in essence be providing the applicant with the exact date the incident occurred. This in combination with the data already provided, namely the area of the incident, the fact this relates to RTCs and a brief description of the type of incident, would allow the applicant or any other person who might subsequently view this information to build a picture and potentially identify an individual involved or the particulars of the incident relating to the individual. The particulars being such that they may have been kept private by the individual.

For example a member of the public is aware that a neighbour had returned from a trip to the local supermarket with damage to their vehicle. If the information in the table was in the Publication [sic] of the information provided in confidence would not be lawful. There is no lawful basis which requires the publication of such information. Nor for the reasons articulated above could the publication be seen to comply with the fairness requirement of Article 5(1)(a); the individuals concerned would not expect that information provided for a specific policing purpose would be published.

The Constabulary would particularly wish to highlight that the incident log number is a means of the Constabulary recording and subsequently retrieving personal information provided to us by a member of the public in confidence. Once the information has been published/ released to the applicant there is no restriction as to what the individual can do with that information. Nor can the Constabulary further control how this information, which was collected and held by the data controller in confidence for a policing purpose might then be used. If published in a newspaper article someone could identify the person or individual involved, which wouldn't be fair to the individual concerned. Loss of control of the personal data by the public authority following publication was a key point highlighted within Information

Commissioner v Halpin (GIA) [2019] UKUT 29 (AAC), when considering whether S.40(2) was applicable."

46. Lancashire Constabulary has not submitted any further arguments to explain why the remaining withheld information (ie the entire text of the incident log for '0288') is personal data and how an individual would be identified by its disclosure. Having provided the Commissioner with a full copy of the incident, it did mention that it would not want certain parts of the document to be released, but it did not explain how those elements constituted personal data and how anyone could be identified by disclosure.

The Commissioner's view

47. The Commissioner has first considered whether the withheld information constitutes personal data within the meaning of the DPA.
48. In this respect, the ICO's Code of Practice on Anonymisation² recognises:

"the concept of 'identify' – and therefore of 'anonymise' - is not straightforward because individuals can be identified in a number of different ways. This can include direct identification, where someone is explicitly identifiable from a single data source, such as a list including full names, and indirect identification, where two or more data sources need to be combined for identification to take place;"

49. The Commissioner's guidance³ states:

"The DPA defines personal data as any information relating to an identified or identifiable living individual. If an individual cannot be directly identified from the information, it may still be possible to identify them. You need to consider all the means reasonably likely to be used to identify an individual".

50. The Commissioner is, therefore, mindful that the definition of personal data in the DPA is based on the identification, or likely identification, of an individual.

² <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

³ <https://ico.org.uk/media/for-organisations/documents/2614720/personal-information-section-40-and-regulation-13-version-21.pdf>

51. A test used by both the Commissioner and the First-tier Tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of reidentification of an individual from information which, on the face of it, appears truly anonymised.

52. The ICO's Code of Practice on Anonymisation⁴ notes that:

"The High Court in [R (on the application of the Department of Health) v Information Commissioner [201] EWHC 1430 (Admin)] stated that the risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA".

53. In summary, the motivated intruder test is that if the risk of identification is reasonably likely the information should be regarded as personal data.

54. In respect of the withheld date of incident '0288', Lancashire Constabulary has not explained why it considers it to constitute personal data and how disclosure of this date could lead to the reidentification of any individual. Whilst a member of the public may have witnessed the incident, and they may be aware of the date and that the police attended so they could 'match' it to the incident concerned, it is not clear how disclosure of the date would allow them to actually identify who the parties are. In such circumstances, disclosure of the date only provides a time stamp to an incident that they witnessed rather than the names or identities of those involved.

55. Without any further explanation to the contrary from Lancashire Constabulary, the Commissioner is satisfied that the withheld date does not constitute personal data, even within the context of an incident log number, as it does not allow for the identification of any individual on this occasion. She therefore finds that the date, which is included in both the incident log number and within the text of the log itself, must be provided as per her step in paragraph 5. (It is noted that this should not be viewed as setting a precedent, provision of this type of information will depend on the circumstances of the case).

⁴ <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

56. The remaining withheld information under consideration in this case also does not directly identify individuals. However, because the name of an individual is not recorded, the Commissioner understands this does not necessarily mean that an individual cannot be identified.
57. Lancashire Constabulary gave an example of what it perceived to be the risk of identification, where it said that a member of the public who was aware of a neighbour returning from a trip to the local supermarket with damage to their vehicle, would be able to identify that individual if the withheld information in the table was released.
58. However, for the member of the public to be aware of the exact date of that trip, to know exactly where an individual had driven to and where any damage was sustained, the Commissioner's view is that he or she would need to have a very detailed knowledge of the circumstances.
59. Without prior knowledge of precisely where and when the damage to the car occurred, and without having prior knowledge of the actual names of the related parties, it is extremely unlikely that an individual could be identified by release of the remaining withheld information.
60. For all the aforementioned reasons, the Commissioner is not persuaded that the possibility of identifying an individual, or individuals, from the withheld information, is more than remote.

Conclusion

61. The Commissioner has therefore decided that Lancashire Constabulary was not entitled to withhold the remaining information in scope under section 40(2), by way of section 40(3A)(a) and requires it to comply with the step set out in paragraph 5 of this notice.

Section 10(1) – time for compliance with a request

62. Section 1(1) of FOIA states:

"(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

63. Section 10(1) of FOIA states:

"(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

64. The complainant submitted his request on 12 January 2019. Lancashire Constabulary did not provide its response until 15 February 2019, which is 24 working days after receipt of the request.
65. As Lancashire Constabulary did not communicate information it later disclosed by the time of the internal review to the complainant it breached section 1(1)(b) of FOIA. By failing to provide its response within 20 working days it also breached 10(1) of FOIA. As the response has been issued no steps are required.

Section 17(1) – time for refusal of a request

66. Section 17(1) of FOIA states:

*"(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, **within the time for complying with section 1(1)**, give the applicant a notice which –*

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

67. Lancashire Constabulary's initial response to the complainant withheld some of the requested information under section 40(2) of FOIA. As this refusal notice was not issued within the time frame for complying with section 1(1) (ie 20 working days) Lancashire Constabulary breached section 17(1) of FOIA. As the response has been issued no remedial steps are required.

Other matters

68. 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 FOIA.
69. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews

should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.

70. The Commissioner is concerned that it took her intervention and 33 working days for an internal review to be completed in this case.
71. She is also concerned about the delay in Lancashire Constabulary responding to the request which exceeded the 20 working days' statutory time limit.
72. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft "Openness by Design strategy"⁵ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"⁶.

⁵ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁶ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

73. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

74. 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.

75. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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