

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2021

Public Authority: Chief Constable of South Wales Police
Address: Police Headquarters
Cowbridge Road
Bridgend
CF31 3SU

Decision (including any steps ordered)

1. The complainant has asked to know the outcome of a complaint he submitted to Operation Snap about an alleged offence committed by another driver. South Wales Police (SWP) would neither confirm nor deny whether it held the requested information, citing the exemption at section 40(5) (Personal information) of the FOIA.
2. The Commissioner's decision is that the requested information, if held, would be the complainant's own personal data and therefore that SWP was entitled to rely on section 40(5A) of the FOIA to refuse to confirm or deny whether it held it.
3. The Commissioner requires no steps as a result of this decision.

Background

4. Operation Snap forms part of the GoSafe¹ initiative (comprising the 22 Unitary authorities in Wales, four Welsh Police Forces and the Welsh Government) which aims to improve road safety in Wales.
5. According to its website², members of the public who believed they have witnessed other drivers committing driving offences may submit video

¹ <https://gosafe.org/about-us/the-partnership/>

² <https://gosafe.org/faq/operation-snap/>

and photographic evidence to Operation Snap. The footage and any other evidence provided will be reviewed by a warranted police officer and a decision made as to whether any action should be taken, which may include further investigation and referral to the Crown Prosecution Service.

Request and response

6. On 18 April 2020, the complainant wrote to SWP and requested information in the following terms:

"On 1 February 2020 I submitted video footage via the Operation Snap/Go Safe website. The details of the footage are:

Submission Number: [redacted]

Date of Incident: 30 January 2020

VRM of other vehicle: [redacted]

I would like to know what action was taken as a result of the submission, including whether any court proceedings have concluded and the date of any court hearing if the proceedings are ongoing. If no action was taken, I would like to know the reasons for the decision to take no action".

7. SWP responded on 13 May 2020. It would neither confirm nor deny whether it held the requested information, on the grounds that section 40(5) (personal information) of the FOIA applied.
8. The complainant requested an internal review on 13 May 2020. SWP provided the outcome of the internal review on 25 June 2020. It maintained the application of section 40(5) of the FOIA to neither confirm nor deny whether it held the requested information.

Scope of the case

9. The complainant contacted the Commissioner on 28 June 2020 to complain about the way his request for information had been handled. He disagreed with SWP's decision to neither confirm nor deny whether it held the requested information under section 40(5) of the FOIA.
10. The analysis below considers whether SWP was entitled to rely on section 40(5A) of the FOIA to neither confirm nor deny whether it held the requested information.

Reasons for decision

Section 40 – personal information

11. Section 1(1)(a) of the FOIA provides that where a public authority receives a request for information, it is obliged to tell the applicant whether it holds that information. This is commonly known as 'the duty to confirm or deny'.

12. There are, however, exemptions from the duty to confirm or deny. Section 40(1) 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."

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

"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)."

14. Taken together, this means that where a request asks for information which is the requester's own personal data, a public authority is not obliged to confirm or deny whether it holds that information.

15. Section 3(2) of the Data Protection Act 2018 defines personal data as:-

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

16. The request in this case asks for information about the outcome of a complaint the complainant submitted about an alleged driving offence committed by another driver. Although the incident relates to the alleged actions of a third party, the Commissioner is satisfied that, if held, the requested information would also comprise the complainant's own personal data. This is because it relates directly to the outcome of a complaint that he has made to Operation Snap about an alleged offence he believes he witnessed.

17. The GoSafe³ website sets out what is required of people who submit complaints to Operations Snap. It says that:

³ <https://gosafe.org/faq/operation-snap/>

"...as part of the Criminal Justice process, and in order to allow the Police to deal with the offender in an appropriate manner, you will be required to provide a statement."

18. It also says that in some cases, complainants will be required to give evidence in court about the incidents they have reported.
19. The Commissioner is therefore satisfied that the requested information relates to the complainant and that he will be identifiable from it.
20. It follows that the Commissioner is satisfied that the requested information comprises the complainant's own personal data and that, as such, SWP was entitled to rely on section 40(5A) of the FOIA to neither confirm nor deny holding it.

Other matters

21. The Commissioner understands that Operation Snap recently introduced a policy of updating people on the reports they submit. Its website states:

"You will be updated on the outcome of your submission within 14 days. In accordance with the Data Protection Act 1988 and General Data Protection Regulations (GDPR) we will only be able to release basic information about the outcome of your submission. We will be only be able to advise you on whether we are able to proceed with the case you submitted."

22. She has been advised that this policy was not in place at the time the complainant submitted his report to Operation Snap. The complainant's attention is therefore drawn to following information on Operation Snap's website:

"I MADE A SUBMISSION TO OPERATION SNAP BEFORE YOU HAD A POLICY TO UPDATE PEOPLE – CAN I HAVE AN UPDATE ON MY SUBMISSION?"

In order for us to review your request, please contact us via <https://gosafe.org/contact-us/general-enquiries/> with details of when you made the submission and any reference number and we will endeavour to get back to you as soon as practicable."

23. Any disclosure made in response to such a request would be a confidential matter between the requester and the public authority, and would fall outside of the scope of the FOIA.

Right of appeal

24. 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

25. 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.
26. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF