

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 January 2021

**Public Authority:** Chief Constable of Cambridgeshire Constabulary  
**Address:** Constabulary Headquarters  
Hinchingsbrooke Park  
Huntingdon  
Cambridgeshire  
PE29 6NP

### Decision (including any steps ordered)

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1. The complainant requested from Cambridgeshire Constabulary (the Constabulary) information in relation to a particular case. The Constabulary refused to confirm or deny holding the information requested relying on section 40(5A) of FOIA, stating that if the requested information was held, it would be the complainant's own personal data.
2. The Commissioner's decision is that the Constabulary was correct to rely on 40(5A) of FOIA.
3. The Commissioner does not require the Constabulary to take any step following this decision notice.

### Request and response

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4. On 1 July 2020, the complainant wrote to the Constabulary requesting information in the following terms:

*"I would like to request all details including but not limited to the investigating PC's physical notes of CC-25022020-0036"*

5. The Constabulary responded on 29 July 2020. It refused to confirm or deny holding the information sought by the complainant on the basis that if the requested information was held, it would be the complainant's own personal data. The Constabulary advised him to submit a Subject Access Request (SAR) under the Data Protection Act 2018 for this information.
6. On the same date the complainant wrote back to the Constabulary, expressing his dissatisfaction with the response received and seeking an internal review.
7. The Constabulary responded to the complainant's request for an internal review on 12 August 2020, by repeating the advice that the complainant should submit a SAR.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 12 August 2020 to complain about the way his request for information had been handled. He expressed his belief that he was entitled to know how the Constabulary investigated an alleged crime that had been reported.
9. During the course of the Commissioner's investigation, the Constabulary told her that it had not conducted an internal review. The Commissioner advised the Constabulary that, for the purpose of the FOIA, upon responding to an information request, public authorities are required to treat any expression of dissatisfaction by the requester as a request for an internal review. As explained above, the complainant requested an internal review from the Constabulary and he received a response to that request.
10. Consequently, the Constabulary's response of 12 August 2020 for the purpose of FOIA is considered to be the outcome of its internal review.
11. The following analysis determines whether the Constabulary was correct to rely on section 40(5A) of the FOIA when refusing to confirm or deny holding information within the scope of the request.

### **Reasons for decision**

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12. Under section 1(1)(a) 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 holding information does not always apply and authorities may

refuse to confirm or deny holding information through reliance on certain FOIA exemptions.

### **Section 40(5) – personal information**

13. Section 40(5A) provides that the duty to confirm or deny does not arise in relation to information that, if held, would fall within the scope of section 40(1) FOIA. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under FOIA.

*Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?*

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

*“any information relating to an identified or identifiable living individual”.*

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.
17. In the course of her investigation, the Commissioner asked the Constabulary to confirm whether, if it were to hold information within the scope of the complainant's request of 1 July 2020, that information would contain only the personal data of the requester.
18. The Constabulary responded by stating *“yes I can confirm this to be the case.”* In addition, the Constabulary confirmed that the complainant's request in this case relates to an incident that the complainant reported to the force through a telephone call.
19. On the basis of this statement from the Constabulary, the Commissioner accepts that if the Constabulary held information within the scope of the request, it would be the complainant's personal data.
20. In his complaint form submitted to the Commissioner, the complainant stated that *“it [the information requested] relates to a problem experienced by the local community and is therefore of public interest how the Police responds.”*
21. However, section 40(5A) FOIA is an absolute exemption. This means that if it applies there is no requirement to go on to consider whether confirmation or denial would nevertheless be in the public interest.

22. In conclusion, the Commissioner finds that the Constabulary correctly applied section 40(5A) of FOIA and so it was not obliged to confirm or deny whether it held the information requested.

### Other matters

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23. Although not forming part of the formal decision notice the Commissioner uses this section to address issues that have become apparent as a result of a complaint or her investigation of that complaint and which are causes for concern.
24. If a public authority receives a request, ostensibly submitted under FOIA, from a requester seeking their own personal information, it is advisable to consider whether a response under data protection legislation would be more appropriate and helpful to the requester in the circumstances.
25. In the Commissioner's [guidance on FOIA section 40](#), it is stated:
- "Under section 40(5A), you do not have to confirm or deny whether you hold information that is the personal data of the requester. You should deal with the request as a subject access request."*
26. The Constabulary should be aware of this and should take this approach whenever similar circumstances arise.

## Right of appeal

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27. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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** .....

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**