

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 July 2022

**Public Authority:** Chief Constable of South Yorkshire Police

**Address:** South Yorkshire Police Headquarters

Carbrook House

Carbrook Hall Rd

Sheffield S9 2EG

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to payments made to the victims of the child grooming scandal in Rotherham.
2. South Yorkshire Police refused to provide the requested information, citing section 38(1) (health and safety) of FOIA.
3. The Commissioner's decision is that South Yorkshire Police was entitled to rely on section 38(1)(a) in relation to that information.
4. The Commissioner requires no steps to be taken as a result of this decision.

#### **Request and response**

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5. On 12 March 2021, the complainant wrote to South Yorkshire Police and requested information in the following terms:

"I would like details of how much you have paid to victims of the sex grooming gangs for period 1997 - 2013 for the Rotherham CSE [Child Sexual Exploitation] scandal (the period covered by the Independent Inquiry into Child Sexual Exploitation in Rotherham (1997 - 2013) ( A. Jay).

This should include a breakdown of payments by amount".

6. The request was made using the 'whatdotheyknow' website.
7. Following correspondence between the two parties regarding previous similar requests, and South Yorkshire Police requesting clarification of the request in this case, on 16 March 2021 the complainant told South Yorkshire Police:

"I would like the request to proceed, please.

The info requested has not been published"
8. South Yorkshire Police responded on 12 April 2021, citing [request reference]. It refused to provide the requested information, citing the following as its basis for doing so:
  - section 38 (1)(a)(b) Health and Safety.
9. Following an internal review South Yorkshire Police wrote to the complainant on 22 June 2021, maintaining its original position.
10. On 22 June 2021, he wrote to South Yorkshire Police saying:

"Before I decide to complain to ICO, how many payments were made, what was the total?"
11. South Yorkshire Police responded on 24 June 2021:

"You requested this same information in [request reference] while the wording may be different, the scope of the request is the same as the previous request".

## **Scope of the case**

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12. The complainant contacted the Commissioner on 24 June 2021 to complain about the way his request for information had been handled. He told the Commissioner:

"I apply for a s50 DN.

Failure to confirm info is held.

I do not agree the exemption was correctly applied -

"By breaking down the compensation payments into individual payments will further endanger their emotional wellbeing"

There is no personal data".

13. As is his practice, the Commissioner wrote to both parties setting out the scope of his investigation. While mindful of the complainant's reference to personal data, as section 38 was the only exemption cited by South Yorkshire Police, he told the complainant that he would look at whether South Yorkshire Police is entitled to rely on section 38 as a basis for refusing to provide the withheld information.
14. The complainant acknowledged that correspondence, confirming that he disputes that the exemption applies. For the avoidance of doubt, he also clarified that the period for payments made is any time up to the date of the request.
15. The Commissioner has previously issued decision notices in cases involving similar requests for information relating to the child grooming scandal in Rotherham – case references FS50718317<sup>1</sup> and FS50787185<sup>2</sup>.
16. In case reference FS50718317, the Commissioner's decision was that South Yorkshire Police was entitled to rely on section 38(1)(a) in relation to both the overall total compensation paid and the individual compensation payments. In case reference FS50787185, the Commissioner's decision was that South Yorkshire Police was entitled to rely on section 38(1)(a) to withhold information relating to payments made to victims.
17. While acknowledging the existence of other similar cases having been investigated, the Commissioner's duty is to decide, on a case-by-case basis, whether a request for information has been dealt with in accordance with FOIA.
18. The analysis below considers South Yorkshire Police's application of section 38 of FOIA to the requested information.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259444/fs50718317.pdf>

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614189/fs50787185.pdf>

19. The Commissioner has considered the complainant's reference to personal data in 'Other matters' below.

## Reasons for decision

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### Section 38 health and safety

20. Section 38(1) of FOIA states:

"Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual".

21. The Commissioner's guidance 'Section 38 - Health and Safety'<sup>3</sup> recognises that section 38(1)(a) focuses on endangerment to any individual's physical or mental health while section 38(1)(b) focuses on endangerment to the safety of any individual. His guidance also states:

"The use of the phrase "any individual" in section 38 includes any specific individuals, any member of the public, or groups within society".

22. In order to satisfy the Commissioner that this exemption is engaged, the public authority must demonstrate that there is a causal link between the endangerment and disclosure of the information.
23. The public authority must also show that disclosure would, or would be likely to, have a detrimental effect on the physical or mental health or safety of any individual. The effect cannot be trivial or insignificant. In the context of section 38, even if the risk falls short of being more probable than not, it needs to be such that there may very well be endangerment.

### South Yorkshire Police's view

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<sup>3</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/>

24. In correspondence with the complainant, South Yorkshire Police told him:

"The survivors of CSE can suffer from long-term effects on their general emotional wellbeing, mental health and can lead to a number of long-term concerns. These psychological impacts can have significant detrimental impact on a survivor's quality of life including fear, anger, guilt, self-blame and confusion. The release of any further details is likely to cause further significant upset [and] distress to any individual involved".

25. It also told him:

"Whilst the number of individuals who have been identified as being subject to CSE is over 1400, the actual number of settled claims is very small and the disclosure of information would, in our opinion, lead to the potential further psychological impact that survivors are known to suffer from along with distress and harm to the mental health of the individuals involved or their families".

26. In its submission to the Commissioner, South Yorkshire Police confirmed its view that disclosure would be likely to endanger the physical or mental health of the individuals involved.

27. In support of that view, and recognising that, if the information was to be shared through FOIA it would become available to the wider world, South Yorkshire Police argued that disclosure "would most certainly attract media attention".

28. It told the Commissioner:

"South Yorkshire Police should also add that this could attract attention of CSE suspects, their families and acquaintances, it could be assumed that claimants do not want these individuals to know about compensation claims paid, we can not rule out any repercussions and the likelihood of future events endangering them".

29. It argued that the risk of such endangerment as a result of disclosure in this case is more than remote or hypothetical "when the circumstances of these cases are taken into consideration".

30. With respect to the requested breakdown of payments by amount, it argued that if individual figures were released, it would potentially increase the existing psychological impacts that survivors are known to suffer from.

31. It explained that each claimant will likely be known to a number of the other claimants, family, friends, and/or local people and that these people may be aware of the compensation claims. It argued that disclosure of the amount of claims, either as individual payments or as a whole, would be likely to damage the individuals involved, including their emotional wellbeing.
32. It argued that the settlement of compensation claims should be a position in time when survivors of CSE can start to have some closure and begin to rebuild their lives and that disclosure of the requested information in this case would be detrimental to that process.

### **The Commissioner's view**

33. While South Yorkshire Police referred to 38(1)(a)(b) in this case, the Commissioner considers that its arguments predominantly relate to endangerment to mental health and emotional wellbeing - of the survivors and members of their families. Accordingly he has first considered its arguments in relation to section 38(1)(a).

### **The applicable interests**

34. The Commissioner accepts that the actual harm which South Yorkshire Police alleges would, or would be likely to, occur if the withheld information was disclosed relates to the applicable interests which the exemption is designed to protect.

### **The nature of the endangerment**

35. The Commissioner's guidance states:

"Endangering mental health... means it must have a greater impact than causing upset and distress."

36. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of a causal link, because the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would lead to endangerment: there must be a logical connection between the disclosure and the endangerment in order to engage the exemption.
37. In this case, he is satisfied that South Yorkshire Police has demonstrated a causal link between the potential disclosure and the stated endangerment. Acknowledging the psychological impacts that survivors are known to suffer from he accepts that coming to terms with abuse would be of significant distress, that the settlement of compensation could allow the closure process to begin and that re-opening matters, by way of disclosure of information to the world at large, after the

individuals involved have begun to re-build their lives, has the potential to endanger the mental health of the parties concerned.

### **Likelihood of endangerment**

38. In its correspondence with the complainant, South Yorkshire Police variously cited 'is likely' and 'will'. However, in its submission to the Commissioner, it confirmed that it considers that the lower threshold of endangerment - 'would be likely to' - applies.

### **Is the exemption engaged?**

39. The Commissioner cannot give an expert opinion on whether disclosure of the information would be likely to endanger the physical or mental health of an individual.

40. He recognises that the question of the degree of endangerment is not a straightforward one. However, he accepts that, even given the passage of time, re-opening matters relating to abuse and exploitation, by way of disclosure of information to the world at large, has the potential to endanger the mental health and wellbeing of those involved.

41. Having considered the submissions provided by South Yorkshire Police, and the likely consequences of the disclosure of this information into the public domain, the Commissioner is satisfied that the level and nature of the endangerment identified would be likely to go beyond stress or worry and constitute an endangerment to the mental health of any individual.

42. Accordingly, he is satisfied that section 38(1)(a) is engaged on the basis that there is a real and significant likelihood of the endangerment occurring. He is also satisfied that section 38(1)(a) is engaged in relation to the request in its entirety.

43. Having concluded that section 38(1)(a) is engaged, and satisfied that the lower level of 'would be likely to endanger' has been demonstrated, the Commissioner has gone on to consider the balance of the public interest.

### **The public interest test**

44. Section 38 is a qualified exemption. This means that, even if the information requested is exempt from disclosure, the public authority must go on to consider whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.

### **Public interest arguments in favour of disclosure**

45. South Yorkshire Police recognised the public interest in accountability and transparency. In terms of the profile of the case, it recognised the importance of the public being aware of such payments.

### **Public interest arguments in favour of withholding the information**

46. South Yorkshire Police told the Commissioner:

“South Yorkshire Police have a duty of responsibility to consider the impact on the individuals’ wellbeing if the information was to be released and have to carefully weigh up whether it is in the public interest to disclose”.

47. In favour of withholding the information, South Yorkshire Police stressed the importance of the wellbeing of the individuals concerned. It argued that release of the requested information could seriously endanger the mental health of those involved.
48. It also considered that it would not be in the public interest if disclosure lead to loss of confidence in the police protecting such sensitive information.

### **Balance of the public interest**

49. The Commissioner will invariably place significant weight on protecting individuals from risk to their physical and mental wellbeing. The natural consequence of this is that disclosure under FOIA will only be justified where a compelling reason can be provided to support the decision.
50. Clearly in any such situation where disclosure would be likely to lead to endangerment to health, there is a public interest in avoiding that outcome.
51. In this case, the Commissioner considers that the strength of the arguments favouring disclosure is outweighed by the public interest in maintaining the exemption in order to safeguard the mental health of the victims of child sexual exploitation and their families. Therefore, in all the circumstances, the Commissioner has decided that the balance of the public interest favours maintaining the exemption at section 38(1)(a) of FOIA.

### **Other matters**

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52. In his correspondence with the Commissioner, one of the complainant’s grounds for complaint was:



“There is no personal data”.

53. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
54. In establishing whether information is personal information, a test used by both the Commissioner and the First-tier Tribunal is to assess whether a ‘motivated intruder’ would be able to recognise an individual if he or she was intent on doing so.
55. In summary, the test is whether the withheld information can identify an individual with a degree of certainty when it is combined with any additional information which is reasonably likely to be accessed and used to aid identification.
56. Mindful that the request for information stipulates that the requested information “should include a breakdown of payments by amount”, in the circumstances of this case the Commissioner considers it likely that the information could be used by a motivated intruder to identify an individual and therefore that the requested information comprises personal information.
57. While South Yorkshire Police has not cited section 40 (personal information) of FOIA and the Commissioner has not investigated whether that exemption applies, were he to do so, the Commissioner considers a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals.
58. The Commissioner recognises that, where compensation claims are involved, claimants will have a reasonable expectation that, unless they wish to make the information public, these details will be kept private and not disclosed to the public. It follows that disclosure of the information under FOIA has the potential to cause unwarranted distress and damage to those concerned.

## Right of appeal

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59. 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: 0203 936 8963  
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)

60. 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.

61. 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 .....**

**Laura Tomkinson**  
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