

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

### **Decision notice**

**Date:** 19 August 2022

**Public Authority:** Commissioner of Police of the Metropolis  
**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

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

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1. The complainant requested from the Metropolitan Police Service ("the MPS") information regarding a misconduct outcome. The MPS provided some information to the complainant but refused further information to the request by virtue of section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that the MPS is entitled to rely on section 40(2) of FOIA to withhold the requested information. Therefore, the Commissioner does not require the MPS to take any steps as a result of this decision.

#### **Request and response**

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3. On 8 April 2021 the complainant wrote to the MPS and requested information in the following terms:

"Please see this misconduct outcome - [https://www.met.police.uk/foi-ai/metropolitan-police/misconductoutcomes/2021/march/PC-\[name redacted\]/](https://www.met.police.uk/foi-ai/metropolitan-police/misconductoutcomes/2021/march/PC-[name redacted]/) while hearings are being held in private during the coronavirus pandemic (with press unable to attend) such as this one, the MPS opted to publish summaries going into the reasoning behind the decisions. However none had been published for this case and I am told it is not going to be.

1. Please provide the summary under the FOIA. If it is not provided then at least outline which of the allegations the officer faced were found proven as misconduct and which were not with a brief explanation as to why.”
4. On 18 June 2021 the MPS responded and refused the request by virtue of section 40(2) (personal information) of FOIA. However, the MPS supplied the complainant with a DOI Notice of Outcome and said that this was provided to him in good faith.
  5. On 12 August 2021 the complainant asked the MPS for an internal review.
  6. On 24 August 2021 the MPS provided the complainant with its internal review response. It said that it should have stated within its refusal notice that it was providing him with a partial disclosure.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 24 August 2021 to complain about the way his request for information had been handled.
8. The following analysis focuses on whether the exemption at section 40(2) of the FOIA was cited correctly.

### **Reasons for decision**

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#### **Section 40 – Personal information**

9. Section 40(2) of the 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.
10. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. 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 UK General Data Protection Regulation ('UK GDPR').

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

11. 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 the FOIA cannot apply.
12. 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?**

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

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

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. 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.
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. The information withheld in this case includes specific personal details about an individual and their personal lives in connection with a criminal allegation. The personal data relates to the data subject who can be identified as they are named within the misconduct outcome.
18. Having considered the withheld information, the Commissioner is satisfied that the information both relates to and identifies the individual concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
19. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
20. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

21. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

22. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
23. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
24. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the GDPR.

**Would it be possible to anonymise any of the information and disclose it?**

25. The complainant confirmed that he would like "the police to provide the summary outcome report (redacted if necessary) or at the very least detail what each allegation was and which ones were found proven."
26. The MPS was therefore asked if some of the information could be suitably redacted to prevent identification of the officer(s) concerned. It said that it provided as much information as it could, and added "for completeness our Directorate of Professional Standards contacted the Legally Qualified Chair in order to seek his views on disclosure of the outcome report and/or further detail in this case, as he is the author of the outcome document." MPS further explained that the Legally Qualified Chair's view regarding further disclose in this matter was that further details of this case should not be disclosed. He believed this may adversely impact on the private life of the officer concerned and/or others in this case.

Is the information criminal offence data?

27. Information relating to criminal convictions and offences is given special status in the UK GDPR.
28. Article 10 of the UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA personal data relating to criminal convictions and offences includes personal data relating to:
  - (a) The alleged commission of offences by the data subject; or
  - (b) Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.

29. Having considered the wording of the request, the Commissioner finds that the requested information does include criminal offence data. The summary outcome report, clearly relates to a named identifiable individual linked to an investigation of allegations of crime and police misconduct matters.
30. The MPS stated the outcome report relates to and identifies the data subject. It does not believe disclosure would be fair as none of the conditions have been met for Schedule 1, parts 1 to 3 conditions. MPS said it had not approached the data subject as it would be inappropriate and impractical in the circumstances. It explained that the data subject would have no expectation of the information being placed in the public domain again, which MPS said, would cause them distress.
31. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.
32. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under the FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject) or Part 3 paragraph 32 (data made manifestly public by the data subject).
33. When considering the disclosure of criminal offence data under FOIA, information can only be disclosed if either the individual whose data it is has given their explicit consent for the information to be disclosed or, if they have manifestly made the information public themselves.
34. Whilst it is noted that details regarding some of the officers concerned are still in the public domain by way of the media, the Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to an FOIA request or that they have deliberately made this data public.
35. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data in order to disclose it under the FOIA would therefore breach principle (a).
36. If personal data is not criminal offence data or special category data, the personal information may be disclosed but only if it would be lawful, fair and transparent to do so. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether this is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these

interests override the rights and freedoms of the individuals whose personal information it is.

37. With regards to the information requested, the Commissioner considers that the complainant is pursuing a legitimate interest, and that disclosure of information relating to the allegations of an officer and misconduct outcomes, is, to some degree, necessary to meet that legitimate interest.
38. However, the Commissioner considers the MPS has a strong and reasonable expectation that in its role as a data controller, it will not disclose information about the named police officer and it will respect their confidentiality. Furthermore, the MPS has expressed concern that the data subject would have no expectation of the information being placed again in the public domain. The MPS said that disclosure would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the officer concerned.
39. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the MPS. Therefore, he considers there is no legal basis for the MPS to disclose this information and to do so would be in breach of principle (a).

### **The Commissioner's conclusion**

40. Whilst the Commissioner understands the complainant's wish to obtain this information and the wider public interest in accountability and openness in relation to police activity, he is mindful that disclosure under FOIA is disclosure to the world at large and not just to the requester.
41. Without any evidence to the contrary, the Commissioner accepts the MPS's view that there is a duty of confidentiality to the person involved to ensure the outcome summaries in this case remain confidential.
42. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that it is not necessary to go on to separately consider whether disclosure would be fair or transparent.
43. The Commissioner's decision is the MPS is entitled to rely on section 40(2) of FOIA to withhold the requested information. He requires no further action to be taken by the MPS in relation to this request.

## **Right of appeal**

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44. 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)

45. 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.
46. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**