

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2022

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

Decision (including any steps ordered)

1. The complainant has requested criminal information about a named Councillor from the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny ("NCND") holding the requested information. It cited sections 30(3) (Investigations and proceedings), 31(3) (Law enforcement) and 40(5) (Personal information) of FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 40(5). No steps are required.

Request and response

3. On 25 March 2022, the complainant wrote to the MPS and requested information in the following terms:

"On [date redacted], [name redacted], of [address redacted], was arrested in the vicinity of the [location redacted] roundabout, London, E3, for driving a [car model redacted] whilst unfit through drugs. In [date redacted], having pleaded guilty, [name redacted] was sentenced to a 12-month driving ban and a £500 fine.

[Name redacted] was an elected councillor at the time of the offence and remains an elected councillor now, but never publicly declared his conviction. After being questioned in a public council meeting [time redacted] about the conviction, [name redacted]

released a lengthy statement giving an account of the events which led to his conviction.

I am requesting the disclosure of a number of materials pertaining to this case, as I believe it is clearly in the public interest to check whether [name redacted], as an elected official, has given an honest account of this incident to the electorate and one which is consistent with the evidence.

I contend that as details of the offence would have been heard in open court, as the conviction has been debated in a privileged, public council meeting, and as [name redacted] has since chosen to proactively release a lengthy statement detailing his account of the incident, details material to the offence itself cannot be reasonably withheld under Section 40. Other personal data can be redacted but, in my submission, cannot be reasonably cited as a justification for withholding entire documents.

I am requesting disclosure of the following:

- 1) All witness statements prepared for this case by police officers, police staff members or police volunteers involved in arresting or questioning [name redacted].
- 2) All witness statements prepared for this case by officers or civilians involved in ascertaining whether [name redacted] was under the influence of drugs.
- 3) All reports which explain how it was determined that [name redacted] was unfit through drugs, ie. Any documents containing the results of any toxicological tests.
- 4) All other witness statements gathered in the course of the investigation into this incident.
- 5) Any prepared statement [name redacted] provided to the police.
- 6) Any transcripts of interviews between [name redacted] and police officers.
- 7) Any paperwork which would record any statements made by [name redacted] to police officers outside of an interview – including, but not limited to, a record of anything he told the desk sergeant/custody sergeant, and any notes officers may have written in their pocket books [sic].

If the Metropolitan Police feels it is unable to process and release all of the requested information within the FOI time limit, it should

produce a schedule of pertinent materials held by the force in order that I can narrow my request”.

4. On 28 April 2022, the MPS responded. It would NCND holding any information, citing sections 30(3), 31(3) and 40(5) of FOIA.
5. The complainant requested an internal review on 29 April 2022.
6. The MPS provided an internal review on 19 May 2022 in which it maintained its original position.

Reasons for decision

Section 40 - personal information

7. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR') to provide that confirmation or denial.
8. Therefore, for the MPS to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request the following two criteria must be met:
 - Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - Providing this confirmation or denial would contravene one of the data protection principles.

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

9. Section 3(2) of the DPA 2018 defines personal data as:-

“any information relating to an identified or identifiable living individual”.
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. 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.
12. Clearly the request relates to a named, living person. Therefore, the Commissioner is satisfied that if the MPS confirmed whether or not it

held the requested information this would result in the disclosure of a third party's personal data. The first criterion set out above is therefore met.

If held, would the information be criminal offence data?

13. The MPS has also argued that confirming or denying whether it holds the requested information would result in the disclosure of information relating to the criminal convictions and offences of a third party.
14. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA 2018 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 of the disposal of such proceedings including sentencing.
15. Clearly the wording of the request relates to an alleged criminal offence. For the MPS to confirm publicly whether or not it holds any information would therefore result in the disclosure of information relating to criminal convictions and/or offences of a named third party.
16. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held in response to a FOI request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.
17. The MPS has explained to the complainant that:

"Information held by the police must be held for a specific policing purpose. To disclose whether or not the MPS holds information about individuals gathered for a specific policing purpose would require disclosing personal data.

You have argued that as your request relates to a high profile individual that the information, if held, should be disclosed. You have asked about information pertaining to an individual's private life. Although they are a public figure, they have a right to privacy for matters concerning their private life.

There is a video in the public domain of a council meeting of [date withheld] in which the matters you have referenced are put to the

principal party of your request but the video does not contain a statement from [name withheld] confirming or denying the matter.

Additionally, you have pointed out that there are media articles which reference a statement from [name withheld]. For the purposes of FOIA and Data Protection, these media articles cannot be considered as being from official sources”.

18. As the complainant is a journalist, the MPS also explained to him:

“The MPS Directorate of Media and Communications’ (DMC) publish details of some offences on the MPS website and these serve a specific purpose at the time of publication. It would be unfair to disclose the same or similar information at a later date by way of a FOIA disclosure if it is not currently available on public communication channels. This is because the legal gateways for disclosing information under FOIA differ from that used by DMC”.

19. Although a press statement may possibly have been made in 2016 when the alleged offence occurred, if indeed it did, this does not mean that the statement remains in the public domain after it has served its purpose. Furthermore, based on his experience, the Commissioner would not expect DMC to have retained any statements made from so long ago, so it would be unable to confirm this.

20. The Commissioner has considered the MPS’s position and the conditions attached to Schedule 1, Parts 1 to 3. Taking into account the arguments advanced by the MPS and having regard to the restrictive nature of the conditions, he has concluded that none can be met.

21. As none of the conditions required for processing criminal offence data are satisfied there can be no legal basis for confirming whether or not the requested information is held; providing such a confirmation or denial would breach data principle (a) and therefore the second criterion of the test set out above is met. It follows that the MPS is entitled to refuse to confirm or deny whether it holds the requested information on the basis of section 40(5)(B) of FOIA.

22. The Commissioner has not found it necessary to consider the other exemptions cited.

Right of appeal

23. 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

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

24. 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.
25. 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
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