

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

### **Decision notice**

**Date:** 10 February 2023

**Public Authority:** Chief Constable of Hertfordshire Constabulary  
**Address:** Hertfordshire Constabulary Headquarters  
Stanborough Road  
Welwyn Garden City  
Hertfordshire  
AL8 6XF

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

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1. The complainant requested information from Hertfordshire Constabulary ('the public authority'). The Commissioner's decision is that the public authority is entitled to rely on section 40(5B) (personal information) of FOIA to refuse to confirm or deny whether any information is held.
2. The Commissioner does not require the public authority to take any steps.

### **Request and response**

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3. On 17 January 2022, the complainant made the following request for information to the public authority:

"During late August 2020, a wedding was held in Astons Road which culminated in a large gathering on Saturday August 29th which was reported as starting at noon and continuing until the evening. The crime records indicate a crime of anti-social behaviour during August 2020 at or near Russell Road of which the anonymised map thereof indicates a site close to the venue of the wedding.

We would please like details of this offence:- its exact site, its exact date and the amount of the fine incurred.”

4. The public authority refused to confirm or deny holding the requested information.

## **Reasons for decision**

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### **Section 40(5) - personal data**

5. In both its initial response and internal review response the public authority refused to confirm or deny whether it held the requested information, citing the exemption at section 40(2) of FOIA. However, the Commissioner notes that the public authority should have cited section 40(5B) of FOIA. This reasoning therefore covers whether the public authority was entitled to apply section 40(5B) of FOIA to the request.<sup>1</sup>
6. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny that it holds particular information if the mere act of confirming (or denying) that information is held would, in itself, reveal personal data about an identifiable individual and would contravene one of the data protection principles.
7. 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.
8. As the request is for details of an offence, its exact site, its exact date and the amount of the fine incurred, this information would relate to and identify a living individual or individuals. In this case, the Commissioner is satisfied that confirming or denying whether such information is held would, in itself, result in the disclosure of third party personal data. This is because the public authority would, in effect, be confirming whether or not it held information on an individual or individuals relating to an offence.
9. 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

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

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; and
  - (b) proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings, including sentencing.
10. Based on the wording of the request, the Commissioner is satisfied that the complainant was seeking information relating to an offence.
  11. 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.
  12. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under 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).
  13. The Commissioner has considered each of these conditions and whether any of them could be relied on by the public authority to confirm or deny whether it held criminal offence data falling within the scope of this request. The Commissioner has considered these on his own merit and finds that, having regard for the restrictive nature of the Schedule 1, Parts 1 to 3 conditions, none of the conditions can be met.
  14. 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 would therefore contravene one of the data protection principles. Namely, that set out at Article 5(1)(a) of UK GDPR (lawfulness, fairness, transparency). The Commissioner has determined that the public authority was correct to refuse to confirm or deny holding any information within scope, in accordance with section 40(5B) of FOIA.

**Right of appeal**

15. 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)

16. 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.
17. 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 .....**

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