

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

### **Decision notice**

**Date:** 18 October 2023

**Public Authority:** Chief Constable of Merseyside Police  
**Address:** Merseyside Police HQ  
15 Cazneau St  
Liverpool  
L3 3AN

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

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1. The complainant asked Merseyside Police a series of questions in relation to an alleged speeding incident it had contacted him about. Merseyside Police said that the questions did not describe recorded information and it refused to respond, citing section 8(1)(c) (Request for information) of FOIA.
2. The Commissioner's decision is that most of the questions did not comply with section 8(1)(c) of FOIA and so Merseyside Police was not obliged to respond to them.
3. However, the Commissioner found that questions (2) – (4) and (13) did describe recorded information. The Commissioner has exercised his discretion to consider the application of section 40(5A) (Personal information) in respect of that information. His decision is that section 40(5A) is engaged and that Merseyside Police should have refused to confirm or deny that it held the requested information.
4. The Commissioner also found that Merseyside Police breached section 17(1) of FOIA by failing to issue a refusal notice within the statutory time for compliance.
5. The Commissioner does not require any steps as a result of this decision.

## Request and response

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6. On 2 May 2023, following correspondence he had received about an alleged speeding offence, the complainant wrote to Merseyside Police and requested information in the following terms:

“(SDSAR) and General Data Protection Regulations (GDPR) questions below:

Please clarify:

1. In what specific Fiduciary capacity is Automatic Camera Device operating in this matter?
2. On what lawful basis, compliant General Data Protection Regulation (GDPR) and Data Protection Act 2018, is Automatic Camera Device accessing, processing, storing, and sharing our personal data or information relating to it?
3. What specific evidence does Automatic Camera Device have in its possession for our explicit consent to access, process, store and share our personal data or information relating to it?
4. With which third party individual(s) or corporation(s) has the Automatic Camera Device, shared our personal data and what is their Fiduciary relationship to us?
5. The meaning of “you” in the phrase “you were requested to supply information within 28 days”?
6. The meaning of “requested” in the above statement?
7. The significance, bearing in mind the four-corner rule in contract law, of the box starting “Notice of Intended Prosecution”? Are the contents of said box not isolated and therefore not part of the substantive content in the letter dated 26th April 2023?
8. Where is the obligation, on any data subject allegedly driving, to reveal either their own personal data or those of another person?
9. The application of section 89(2) Road Traffic Regulation Act 1984 – which states: “A person prosecuted for such an offence shall not be liable to be convicted solely on the evidence of one witness to the effect that, in the opinion of the witness, the person prosecuted was driving the vehicle at a speed exceeding a specified limit.”
10. Whether a Notice of intended prosecution is a lawful demand or merely an offer to contract with a man or woman via their Legal person name?

11. Whether the offer to a man or woman to lay claim to their Legal person name for third party corporate profit is not Legal entrapment, unlawful and a crime of personage?
  12. On what basis the road traffic regulations apply to a man or woman without evidence for their consent or that they were 'driving' in commerce under contract?
  13. Whether you have evidence for the identity of any alleged driver at the time of the alleged offence?
  14. Whether the reliance on our cooperation to provide driver details is not a breach of our unalienable right to silence so as not to self-incriminate at Law?
  15. Whether the threatening tone of your letter dated 26th April 2023 to provide the information requested constitutes 'exploitation' or securing services by threats contrary to Modern Slavery Act 2015 Section 3, subsection 5?"
7. On 4 May 2023, Merseyside Police responded. It provided a copy of the Notice of Intended Prosecution and clarified that disclosure of evidence would be provided if the matter progressed to Court proceedings. It said it would not correspond further on the matter.
  8. The complainant responded on 4 May 2023, referring to FOIA and his intention to complain to the ICO if his request was not complied with.
  9. There followed further exchanges of correspondence between the two parties, but the request was not formally responded to under the terms of FOIA.
  10. Then, on 8 August 2023, Merseyside Police provided its response to the request under FOIA. It apologised for failing to respond within the statutory time for compliance. It said the questions failed to describe the information being requested and so were not valid requests for information under section 8(1)(c) of FOIA.
  11. Following an internal review, Merseyside Police wrote to the complainant on 14 August 2023. It maintained its position that the questions were not valid requests for information under section 8(1)(c) of FOIA.

## **Scope of the case**

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12. The complainant contacted the Commissioner on 14 August 2023 to complain about the way his request for information had been handled. He disagreed with Merseyside Police's position that the questions were

not valid requests and he expressed concern at its delay in providing a formal response under FOIA.

13. The analysis below considers whether the 15 questions satisfied the requirement at section 8(1)(c) of FOIA to describe the requested information.
14. The Commissioner has also considered whether Merseyside Police should have applied section 40(5A) (Personal data) of FOIA to neither confirm nor deny that it held the information requested in questions (2) – (4) and (13).
15. The Commissioner has also considered Merseyside Police's timeliness when responding, under section 17 of FOIA.

## **Reasons for decision**

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### **Section 8 – Request for information**

16. Section 8 of FOIA deals with the validity of requests for information and states:

“...any reference to “a request for information” is a reference to such a request which-

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested”.

17. If a request does not comply with any of the requirements of section 8(1)(a) - (c), then it is invalid. This means there is no obligation for a public authority to confirm or deny whether the information is held under section 1(1), or to issue a formal refusal notice under section 17.
18. Section 16 of FOIA does state, however, that public authorities have a duty to provide advice and assistance, “...so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”. The Commissioner considers this duty to extend to requesters who have made invalid requests.
19. The request in this case was made in writing and a name and address was given. The Commissioner is therefore only considering whether or not the request describes the information requested.

20. Section 84 of FOIA defines 'information' for the purposes of section 1(1) of FOIA (ie information which an applicant can request under FOIA) as "information recorded in any form...".
21. Therefore, not only must the complainant's request satisfy the criteria in section 8 of FOIA, it must also be a request for **recorded** information in order to constitute a valid request for information under FOIA. A public authority is not required to create new information that it does not already hold, in order to answer an FOIA request.
22. In his guidance on section 8<sup>1</sup>, the Commissioner states:

"Authorities should...treat any description that allows the requested information to be distinguished from other information held by the authority as valid under Section 8(1)(c)".
23. The Commissioner also acknowledges that a request in the form of a question will be valid under section 8(1)(c), provided it describes distinguishing characteristics of the information being sought.
24. Merseyside Police's refusal notice explained that it was not possible to identify from the questions any actual information or specific document being requested. It advised him to refer to the ICO website<sup>2</sup> which provides guidance on how to make a valid request. It also referred him to Merseyside Police's Privacy Notice, on its website, setting out how it collects, handles, shares and retains personal data.
25. This presented an opportunity for the complainant, when requesting an internal review, to provide more specific information to enable Merseyside Police to identify recorded information with which it could respond to each question. However, he did not do so and simply described the questions as 'very clear'.
26. Having had regard to their wording, the Commissioner considers that questions (1), (5) – (12) and (14) - (15) do not identify distinguishing characteristics from which particular recorded information can be identified. Rather, they ask for an opinion or an explanation of correspondence the complainant has received from Merseyside Police, or for its interpretation of particular legal points. As explained in paragraph 21, FOIA does not require Merseyside Police to create information from

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/recognising-a-request-made-under-the-freedom-of-information-act-section-8/>

<sup>2</sup> <https://ico.org.uk/for-the-public/official-information/>

which to answer the complainant's questions, and, given their specificity, the Commissioner considers it highly unlikely that responses to the questions already exist in recorded form.

27. Accordingly, the Commissioner finds that questions (1), (5) – (12) and (14) – (15) were not valid requests under section 8(1)(c) of FOIA as they did not describe the information being requested. As the Commissioner is satisfied that these requests were not valid requests, Merseyside Police was under no obligation to respond to them under FOIA.
28. It is noted that Merseyside Police endeavoured to provide information which was relevant to some aspects of the questions (by referring to its Privacy Notice), and it referred the complainant to the ICO's guidance on making requests. The Commissioner is satisfied that it complied with its duties under section 16 (Advice and assistance) of FOIA.
29. Turning to questions (2) – (4) and (13), the Commissioner considers that these do contain descriptions that allow the requested information to be distinguished from other information held by Merseyside Police. Questions (2) – (4) ask Merseyside Police to provide its lawful bases for processing the complainant's personal data. Question (13) asks to know whether Merseyside Police holds the identity of the driver involved in the alleged speeding offence it has contacted him about.
30. The distinguishing characteristics are that the questions ask for information relating to the complainant specifically (about Merseyside Police's processing of his personal data, and about the evidence it holds in a speeding case about which it has contacted him).
31. It follows that the Commissioner is satisfied that questions (2) – (4) and (13) were valid requests for information under section 8(1)(c) of FOIA.
32. As the questions asked for information which related to the complainant, the Commissioner has considered below whether they were primarily for the complainant's own personal data.

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

33. The Commissioner has discretion to consider exemptions not cited by a public authority. Given his role as regulator for data protection legislation, the Commissioner takes account of the need to protect personal data when considering whether such information may be disclosed under FOIA. Accordingly, he will consider whether to exercise that discretion and apply section 40 himself to prevent the disclosure of personal data, where he considers it necessary, to avoid a breach of data protection legislation.

34. Having considered the request, the Commissioner has examined whether Merseyside Police should have cited section 40(5A) of FOIA to neither confirm nor deny whether it held the information specified in questions (2) – (4) and (13).
35. Section 1(1)(a) of FOIA provides that where a public authority receives a request for information, it is obliged to tell the applicant whether it holds that information. This is commonly known as 'the duty to confirm or deny'. There are, however, exemptions from the duty to confirm or deny.
36. Section 40(1) of FOIA provides that information which is the personal data of the requester is exempt from disclosure under FOIA. This is because individuals must request their personal data under a separate legislative access regime (in this case, the Data Protection Act 2018<sup>3</sup> ('DPA')).
37. Section 40(5A) of FOIA states that:

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)."
38. Taken together, these sections mean that where a request asks for information which is the requester's own personal data, a public authority is not obliged to confirm or deny whether it holds that information.
39. Section 3(2) of the DPA defines personal data as:-

"...any information relating to an identified or identifiable living individual".
40. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
41. 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.

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<sup>3</sup> Section 45(1) of the DPA provides the right of access to information processed for law enforcement purposes

42. 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.
43. As set out in paragraph 29, questions (2) – (4) ask Merseyside Police to provide its lawful bases for processing the complainant's personal data, albeit is written in a third party style. Question (13) asks to know whether Merseyside Police holds the identity of the driver involved in the alleged speeding offence it has contacted him about.
44. In order to locate any relevant information it may hold, Merseyside Police would necessarily have to undertake searches by reference to the complainant's name and the related alleged offence, as the requested information relates specifically to him. The Commissioner is therefore satisfied that the requested information relates directly to the complainant and his personal circumstances.
45. It follows that the requested information falls within the definition of 'personal data' in section 3(2) of the DPA, and that it is the complainant's personal data. The Commissioner has concluded that, as such, Merseyside Police should have cited section 40(5A) of FOIA to neither confirm nor deny holding it.
46. This is an absolute exemption and so its application is not subject to a public interest test.

## **Procedural matters**

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### **Section 17 – Refusal of request**

47. By failing to issue a valid refusal notice communicating its position on questions (2) – (4) and (13) within the statutory time for compliance, Merseyside Police breached section 17(1) of FOIA
48. The Commissioner has made a record of this breach for monitoring purposes. He would remind Merseyside Police of the importance of recognising and dealing with FOIA requests in a timely fashion. More information on this can be found on his website<sup>4</sup>.

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<sup>4</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/time-limits-for-compliance-under-the-freedom-of-information-act-section-10/>



## **Other matters**

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49. Although it does not form part of this decision notice, the Commissioner wishes to comment on the subject access procedures that have been explained to the complainant by Merseyside Police.
50. The complainant has no right of access to his personal data under FOIA. He has been informed by Merseyside Police, and by the Commissioner, that if he wishes to make a subject access request under the DPA for any personal data it holds about him, he must first provide information capable of verifying his identity.
51. The Commissioner is satisfied that this is a reasonable and proportionate security measure which reduces the likelihood of any inappropriate disclosures being made by Merseyside Police to individuals other than the data subject.
52. The complainant can make a subject access request using the online facility on Merseyside Police's website<sup>5</sup>.

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<sup>5</sup> <https://www.merseyside.police.uk/rqo/request/ri/request-information/ir/ask-for-delete-change-information/ask-for-information-about-yourself/?tid=828402&lid=&cid=&rid=11237&stepid=1-1-2>

## Right of appeal

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53. 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)

54. 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.

55. 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 .....**

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**