

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 October 2023

Public Authority: Chief Constable of Lancashire Constabulary
Address: Police Headquarters
Saunders Lane
Hutton
Preston
Lancashire
PR4 5SB

Decision (including any steps ordered)

1. The complainant requested specified evidence presented by a named police officer at the inquest into the death of a specified individual. Lancashire Constabulary refused to provide the requested information citing section 32(1)(a) of FOIA (a subsection of the exemption for court records).
2. The Commissioner's decision is that Lancashire Constabulary was entitled to withhold the requested information by virtue of section 32(1)(a) of FOIA. The Commissioner also finds that Lancashire Constabulary breached section 10 of FOIA by failing to provide its initial response within 20 working days.
3. No steps are required as a result of this notice.

Request and response

4. On 29 June 2023, the complainant wrote to Lancashire Constabulary and requested information in the following terms:

"Having attended the inquest into the death of [name redacted] where the digital evidence was presented by DC [name redacted] way [sic] of powerpoint slides

Under Freedom of Information Act I would like to request the following information:

* A copy of the presentation file itself including all the relevant slides presented relating to the mobile phone & Fitbit

* Additionally, the source data file that was summarised in the presentation relating to the Fitbit steps shown in 15-minute intervals between 08:00 and 09:30"

5. Lancashire Constabulary responded, late, on 3 August 2023. This was therefore a breach of section 10 of FOIA. It refused to provide the requested information, citing section 32(1)(a) of FOIA – a subsection of the exemption for court records, etc. The Commissioner has made a record of the delay in this case.
6. The complainant requested an internal review on 21 August 2023. He argued that section 32(1)(a) could not be relied upon because of his belief that the named police officer would have compiled it as part of the investigation.
7. Following its internal review, Lancashire Constabulary wrote to the complainant on 14 September 2023. It maintained that section 32(1)(a) applied, explaining that:

"The information / report to which you prefer [sic] was produced as instructed by the Coroner's Inquest and not for a policing purpose."

Scope of the case

8. The complainant contacted the Commissioner on 24 September 2023 to complain about the way his request for information had been handled. He again argued that at least the presentation slides would have been prepared by the named officer during the investigation, such that section 32(1)(a) could not be applied.
9. The Commissioner has considered whether Lancashire Constabulary was entitled to refuse to provide the requested information by virtue of section 32(1)(a) of FOIA.

Reasons for decision

Section 32 – court records etc

10. Section 32(1) of FOIA covers court records. It provides an exemption for information held only by virtue of being recorded in a document that has been:
 - a) filed or placed in the custody of a court;
 - b) served on, or by, a public authority; or
 - c) created by the court, or a member of the administrative staff of the court.
11. The information in question must only be held for the purposes of proceedings in a particular cause or matter.
12. Courts are responsible for a wide variety of information, much of it of a sensitive nature, or which could prove harmful to the administration of justice if disclosed to the world at large. The purpose of the exemption at section 32 of FOIA is not to protect the court system from scrutiny, but to prevent FOIA from being used to circumvent the proper supervision of the courts over the information they acquire and create.
13. Section 32(1) is a class based exemption. This means that any information falling within the category described is automatically exempt from disclosure, regardless of whether or not there is a likelihood of harm or prejudice if it is disclosed. Section 32 is an absolute exemption and therefore it is not subject to the public interest test.
14. Lancashire Constabulary has confirmed to the complainant that the withheld information is only held by virtue of being contained in court records for the purposes of proceedings and has relied on section 32(1)(a) of FOIA.
15. Following the Commissioner's enquiries, Lancashire Constabulary confirmed that the missing person investigation was complete on 19 February 2023 on the discovery of [name redacted] body (together with the Fitbit). It explained:

“Following the subsequent Home Office postmortem which determined that [name redacted] had died from drowning, the matter was passed to the coroner's court and Lancashire Constabulary was asked to stop any investigative work that was being currently undertaken. The Fitbit was in the possession of Lancashire Constabulary's Digital Media Investigation Unit

('DMIU'), but no extraction work had been undertaken at this point. On June 16th 2023, the Senior Coroner requested that the Fitbit be examined by Lancashire Constabulary. A PowerPoint was produced [sic] relation to the findings, and this was sent to the Senior Coroner on the June 19th, 2023, prior to the inquest taking place week commencing June 26th, 2023."

16. Lancashire Constabulary told the Commissioner that the testing of the Fitbit and the subsequent presentation was undertaken purely on request of the Coroner. No testing was undertaken, and therefore no findings were documented by Lancashire Constabulary unit until the request from the Coroner was received. It stated that, therefore, the requested source file and the PowerPoint were both created and held purely for the purpose of the Coroner's Court.
17. The Commissioner is satisfied that the requested information was requested by the Coroner and created for the purposes of the inquest, following completion of the police investigation.
18. Therefore, the Commissioner's decision is that the withheld information engages the exemption at section 32(1) of FOIA and Lancashire Constabulary was entitled to rely on subsection 32(1)(a) of FOIA to withhold it.

Right of appeal

19. 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

20. 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.
21. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF