

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 November 2023

Public Authority: Chief Constable of West Midlands Police

Address: Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant has requested information from West Midlands Police (WMP) in relation to two specific Police Officers. WMP disclosed some information in response to the first part of the request but would "neither confirm nor deny" (NCND) holding the information for the second part of the request citing section 40(5)(b) (Personal information) of FOIA.
2. The Commissioner's decision is that WMP was not entitled to rely on the exemption cited for the second part of the request. The Commissioner requires WMP to take the following steps to ensure compliance with the legislation:
 - Confirm or deny whether the requested information is held.
 - If information is held, it should either be disclosed or WMP should issue a fresh refusal notice in compliance with section 17 FOIA.
3. WMP must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 17 August 2023, the complainant wrote to WMP and requested information in the following terms:

"Please send me copies of the outcome notices of misconduct proceedings for (name redacted by ICO)

and (name redacted by ICO).

(name redacted by ICO)

"Twisted former police inspector Lee Bartram was sacked by West Midlands Police in September

last year for making hundreds of indecent images of children."

<https://www.birminghammail.co.uk/news/midlands-news/disgraced-police-officers-sacked-forces16383556>

(name redacted by ICO)

"A police sergeant who admitted two child grooming charges after sending an indecent image to an

undercover officer has been sacked by his force for gross misconduct."

[https://www.birminghammail.co.uk/news/midlands-news/west-midlands-police-officer-sacked16983346.](https://www.birminghammail.co.uk/news/midlands-news/west-midlands-police-officer-sacked16983346)"

5. WMP responded with an undated email and released information pertaining to the first part of the request but cited section 40(5)(b) to neither confirm nor deny it held information in relation to the second part of the request.
6. The complainant requested an internal review on 21 September 2023.
7. WMP provided its internal review on 6 October 2023 in which it maintained its original position and cited a previous decision notice IC-242246-N4D0 it felt upheld the forces rationale for a similar request.
8. The complainant has said: "I question the relevance of this decision. The information requested in (name redacted by ICO) did not relate to a decision formally taken by WMP to dismiss him. It was not information publicly shared by WMP. This request refers to two formal dismissal decisions which differ from (name redacted by ICO) in relation to WMP's transparency and accountability obligations. (name redacted by ICO)

case is a bad apple; (name redacted by ICO) and (name redacted by ICO) are bad pears.

Reasons for decision

Neither confirm nor deny ("NCND")

9. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
10. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
11. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
12. WMP has taken the position of neither confirming nor denying whether it holds information for only the second part of the request, citing section 40(5) of FOIA. The issue that the Commissioner has to consider here is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not WMP is entitled to NCND whether it actually holds the information requested by the complainant.
13. Put simply, in this case the Commissioner must consider whether or not WMP is entitled to NCND whether it holds information about the specific officer named in the request.

The Commissioner's view

14. The Commissioner has reached his view based on the documentation provided; he did not deem it necessary to conduct a full enquiry at this stage.
15. A hearing at Birmingham Magistrates' Court in August 2019 outlined the case against the named officer and outcome, and was widely reported in the media, this information is still available online today. It was reported that a misconduct hearing chaired by the officers Chief Constable was held in September 2019 where the officer was dismissed for gross misconduct.

16. Accordingly, it seems highly likely to the Commissioner that any investigation material, if still held (ie not since destroyed or misplaced) would be held by WMP.
17. On this basis, the Commissioner does not agree that WMP should take an NCND position regarding whether or not it holds the information requested. As there was a hearing, clearly a police force has been involved and, in this case, WMP is the likely force. If the investigation were not undertaken by WMP, then there can be little harm in it confirming one way or the other. If any material has been destroyed in light of the passage of time, then this could be stated, as indeed could the loss of any material.
18. Reinforcing the point, the Commissioner is only considering whether or not WMP is entitled to NCND whether it holds any material. Whether or not the actual material is suitable for disclosure is a different matter.
19. Having considered all the arguments put forward by WMP in respect of confirming or denying whether it holds any information, the Commissioner finds that 40(5) is not engaged.

Right of appeal

20. 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

21. 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.
22. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF