

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 May 2024

Public Authority: Chief Constable of Northamptonshire Police
Address: Wootton Hall
Wootton Hall Park
Northampton
NN4 0JQ

Decision (including any steps ordered)

1. The complainant has requested details of the involvement of a named police officer with a particular academy school from Northamptonshire Police. Northamptonshire Police refused to provide the requested information under section 40(2) (Personal information) of FOIA. The Commissioner's decision is that it was correct to do so.
2. The Commissioner does not require further steps.

Background

3. Information about the governance of academy schools can be found online¹. In this handbook, it states:

"The trustees of the academy trust are both charity trustees and company directors. This handbook refers to them as trustees.

¹ <https://www.gov.uk/guidance/academy-trust-handbook/part-1-roles-and-responsibilities>

However, in some academy trusts, such as church academies, those on the board are known instead as 'directors'."

4. Northamptonshire Police explained to the complainant:

"...[on] the school website it clearly states, Board of Trustees (**Governors**)' [Commissioner's emphasis], and stated that 'Information on academies and how they operate is readily available in the public domain.'

In an effort to assist, I am providing the following link which explains about the role of school governors in an academy setting, as this may help your understanding -

<https://governorsforschools.org.uk/governance-in-academy-trusts/#> - the website states:

'If you're a governor of an academy, it's likely you'll sit on a local governing board (LGB) within a multi-academy trust (MATs).

MATs are charitable companies that run multiple academies under contract with the Department for Education. They have greater autonomy than maintained schools, so they have the flexibility to determine their own governance arrangements.

Technically speaking, LGBs are committees of the MAT's board of trustees.'"

Request and response

5. On 12 November 2023, the complainant wrote to Northamptonshire Police and requested the following information:

"In a letter dated 8th November 2023, Detective Superintendent [name redacted] stated how DI [name redacted] is a governor of [school redacted] School Limited but NOT a director.

Companies House records quite clearly show she is a director of [school redacted] School Limited (reference redacted) and has been since January 2022. The school's website also shows that DI [name redacted] is a trustee of this limited company.

Please confirm if a record exists that DI [name redacted] is both a director and trustee of this limited company and the date when this was reported to and recorded by Northants Police.

Please be aware this information is available in the public domain, therefore confirming the specific details cannot represent releasing of personal information as this person has been comfortable enough to release this into the public domain, an answer confirming a record exists of an interest without confirming specifically what this is will be insufficient, as the issue is how DI [name redacted] through her Superintendent purports to ONLY be a governor and not a director and trustee”.

6. On 8 December 2023, Northamptonshire Police responded. It advised the complainant that the request was vexatious, citing section 14(1) of FOIA.
7. The complainant requested an internal review on 8 December 2023, saying:

“There is a demonstrable act of corruption and misfeasance within Northants Police and responding would prove this. This has proven true with [name redacted] and evidence I have provided to the press being the individual who holds a lot of evidence and is providing this to the press.

The act of an officer not disclosing information about a directorship on the register of interests, this being challenged and then a senior officer lying about information in the public domain goes a long way to further proving this is not a spurious allegation nor baseless request.

The optics are very clear in that the reason for refusing is to offer protection to the officers involved and therefore this request has been labelled as vexatious to prevent the information surrounding the officer being made public that would further the existing issues. The nature of information that proves corruption and a request that you would accede to for any other member of the public cannot be deemed as vexatious by being requested.

There needs to be a clear explanation of if this request would be refused for any other member of the public and if it is not then there [sic] decision to withhold this demonstrates a disproportionate approach in requests from members of the public, with decisions being made on the basis of refusing those who have already exposed significant corruption resulting in the suspension and eventual dismissal of the most senior rank of Chief Constable.

Exposing corruption and requesting the information in relation to this is not vexatious and you are put to strict proof to explain how you have reached this conclusion.”.

8. Northamptonshire Police provided an internal review on 10 January 2024, in which it revised its position. It advised that the request was not vexatious but that the requested information was exempt from disclosure by virtue of section 40(2) of FOIA.

Scope of the case

9. The complainant initially contacted the Commissioner prior to receiving an internal review. Having received this, he wrote again on 10 January 2024. His grounds of complaint were as follows:

“This relates to a failure by Northants Police to register conflicts of interests and a consistent refusal to be transparent...it relates to malfeasance in public office and relates to wider corruption of senior officers...”.

10. The complainant did not refer to section 40(2), the revised position which Northamptonshire Police relied on. However, the Commissioner will consider the citing of section 40(2) of FOIA below. The complainant did refer to his request being considered vexatious, however, this is not the case; he was advised that similar future requests may be so deemed.
11. The Commissioner has viewed the withheld information.

Reasons for decision

Section 40 - Personal information

12. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

13. In this case the relevant condition is contained in section 40(3A)(a)². This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
14. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

16. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. 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.
19. 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.
20. The request refers to a named officer and, having considered the withheld information, the Commissioner is satisfied that the information relates to that officer. He is satisfied that this information both relates to and identifies the officer concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
21. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

² As amended by Schedule 19 Paragraph 58(3) DPA.

FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

22. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

23. Article 5(1)(a) of the UK GDPR states that: "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

24. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

25. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

26. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful **only** if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.

27. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"³.

³ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

28. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
29. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

30. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
31. The complainant clearly believes that the officer concerned may have been dishonest when declaring a business interest, something which he considers has been compounded by a senior officer saying there has been no such misrepresentation.
32. Obviously there is a legitimate public interest in the disclosure of information which may evidence whether police officers have acted dishonestly.

Is disclosure necessary?

33. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under

FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

34. In addressing the comments which the complainant raised when requesting an internal review (see paragraph 6 above), Northamptonshire Police responded as follows. It said that his views were statements of his own opinions rather than information requests and advised that, if he believed that there was corruption and misfeasance within Northamptonshire Police that needed investigating, then this could be raised via the Northamptonshire Police website, providing a link for him to do so⁴. It also provided the commentary which is included in "Background" above to show the different status of academy schools as opposed to state schools.
35. The Commissioner notes that whereas a non-academy school may have a 'governor', in academy schools such as here, the equivalent role is referred to as a 'trustee'; this can be evidenced in the background information provided above. He considers that the use of 'governor' versus 'trustee' or 'director' in this case is one of semantics rather than any attempt to mislead or be dishonest. As advised above, he has viewed the withheld information and any details regarding any business interests which the named officer has declared.
36. If the complainant does not accept this rationale then he can raise this as a complaint via the channels provided by Northamptonshire Police. He therefore has an alternative recourse and disclosure under FOIA is not necessary.
37. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).

The Commissioner's view

38. The Commissioner has therefore decided that Northamptonshire Police was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

⁴ <https://www.northants.police.uk/fo/feedback/complaints/complaints/>

Right of appeal

39. 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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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