

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 June 2024

**Public Authority:** Chief Constable of Cambridgeshire  
Constabulary

**Address:** Constabulary Headquarters  
Hinchingsbrooke Park  
Huntingdon  
Cambridgeshire  
PE29 6NP

#### Decision (including any steps ordered)

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1. The complainant has requested information about a report.
2. The above public authority relied on section 40(2) (third party personal information) to withhold the information.
3. The request was primarily for the complainant's personal data which (if held) would be exempt information under section 40(5A) of FOIA. The Commissioner has therefore proactively applied section 40(5A).
4. To the extent that any information (if held) relates to third parties, it is exempt under section 40(5B) of FOIA.
5. The Commissioner does not require further steps to be taken.

#### Request and response

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6. On 15 November 2023, the complainant wrote to the public authority and requested information in the following terms:

"Please could you send me any records you have about this report [redacted] about an car parked on a verge next to zig-zag lines? (from the subject line it appears to have reference number [redacted])."

7. The public authority responded on 13 December 2023, within the statutory limits under FOIA. It refused to disclose the information and relied on section 40(2) of FOIA in order to do so. It upheld its position following an internal review.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 11 February 2024 to complain about the way their request for information had been handled. They also complained that the public authority had not responded within the statutory deadline.
9. The Commissioner considers that the public authority should have applied section 40(5A) to refuse to confirm or deny that the requested information is held and the Commissioner has proactively applied this exemption.
10. Therefore the scope of his investigation is to establish whether the public authority is entitled to rely on section 40(5A) of FOIA to refuse to confirm or deny that the requested information is held.

### **Reasons for decision**

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#### **Section 40 - personal information**

11. Section 40(5A) of FOIA provides that the duty to confirm or deny whether information is held does not arise in relation to information which constitutes personal data of which the applicant is the data subject.
12. Therefore, for the public authority to be entitled to rely on section 40(5A) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, confirmation or denial would need to constitute the disclosure of the complainant's own personal data.

#### **Would confirmation or denial reveal personal data?**

13. Section 3(2) of the DPA defines personal data as:  
"any information relating to an identified or identifiable living individual".
14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

15. 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.
16. 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.
17. Here the complainant is seeking information regarding a report. In this case, this is clearly information which (if held) pertains to the complainant. If held, it would therefore be the complainant's own personal data and therefore is exempt from the public authority's duty to confirm or deny whether requested information is held information by virtue of section 40(5A).
18. Furthermore, in merely confirming that it held any information within the scope of the request, the public authority would also, by definition, be confirming, to the world at large (which is what FOIA requires) whether the complainant had made a report about an alleged incident.
19. Whether the complainant is or is not happy for the holding of their personal data to confirmed or denied in this fashion is irrelevant.
20. The Commissioner is therefore satisfied that the request seeks information (if held) of which the complainant is the data subject.
21. The public authority relied on section 40(2) to withhold the requested information. It is the Commissioner's view that the public authority should have relied on section 40(5A) to neither confirm nor deny whether the information was held and the Commissioner has applied it himself, proactively, to prevent the inadvertent disclosure of personal data.
22. In addition it is the Commissioner's view that any third party personal data (if held) would be exempt under section 40(5B) of FOIA.

### **Other matters**

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23. The public authority has advised the complainant that this matter should be dealt with as a subject access request (SAR). The Commissioner notes that the complainant has not accepted this advice. The Commissioner strongly recommends that the complainant follows the public authority's advice as regards making a SAR for the requested information, if held.

24. The Commissioner was not impressed with the responses received from the public authority to his investigation questions. The Commissioner expects a full response to all questions and the public authority fell short of this expectation.

## Right of appeal

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25. 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)

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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