

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2015

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant requested details of substantiated officer complaints from the Metropolitan Police Service (the "MPS"). Having initially relied on section 12(1)(cost limit) and 40(2)(personal information) of the FOIA to forego disclosure, the MPS changed its position during the Commissioner's investigation and provided the requested information other than officers' names, which it continued to withhold under section 40(2). The Commissioner's decision is that section 40(2) is engaged. No steps are required.

Background

2. This request can be followed on the "What do they know" website¹.
 3. The case concerns substantiated allegations about officers who were dealt with in accordance with Home Office guidance for the 1999 Police Regulations (these have since been superseded). The MPS has advised the Commissioner that:
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¹ https://www.whatdotheyknow.com/request/substantiated_complaints_against

"... the allegation categories (for matters raised between 1999 and 2004) were based upon Home Office Guidance ... the categories are used by staff to record complaints and allegations that most closely fit within an allegation category".

4. The allegations are recorded on the MPS's internal 'Tribune' system. It has explained to the Commissioner that:

"Tribune is the system used by the MPS to record allegations of misconduct against employees of the MPS. When allegations of misconduct are recorded, they are grouped into 'allegation categories' in accordance with national guidance. Allegation categories such as 'corrupt practice' or 'irregularity in evidence/perjury' do not refer to whether the offence alleged was of a criminal nature but rather, refer to the type of allegation made".

5. The Commissioner notes that the MPS has tried to explain this to the complainant but she is still of the opinion that mere reference to the word 'perjury' means that an officer has committed a criminal offence. This is not the case. The categorisation is purely a term used for internal misconduct matters. The MPS tried to explain this to the complainant by providing comments such as:

"... the allegation recorded against the officer under the category 'irregularity in evidence/perjury' for which 'advice' was received, concerned the officer's failure to supervise an investigation. This allegation was not a criminal allegation of perjury".

6. The MPS also provided the following advice:

"Please find an internet link below to the Independent Police Complaints Commission (IPCC) Statutory Guidance upon the recording of complaints under the Police Reform Act 2002². Definitions of the allegations to which the officers were the subject, can be found upon pages 11 - 16 of this document. Please note that as the allegations were recorded between 1999 and 2004, the definitions as set out within the IPCC guidance, may differ from those published at the time the allegations were recorded. The definitions should therefore be used to give a broad indication of the nature of the allegations recorded".

²http://www.ipcc.gov.uk/sites/default/files/Documents/statutoryguidance/guidance_on_recording_of_complaints_under_PRA_2002.pdf

Request and response

7. On 6 October 2014, the complainant wrote to the MPS and requested information in the following terms:

"From 01 January 1999 to 31 December 2004, 207 'officer allegations' were recorded against police officers attached to CIB/DPS. Of the 207 officer allegations, 7 officer allegations were substantiated.

What were the allegations against these 7 officers, what were the officers' names and how were the officers dealt with?"

8. The MPS responded on 13 October 2014. It advised the complainant that it had previously responded to an earlier request of hers on 29 February 2012 and in that response had provided the outcomes; it gave these again. It advised that the names of the officers were exempt from disclosure under section 40(2) of the FOIA.

9. On the same day the complainant responded saying:

"One of the substantiated complaints was 'irregularity in evidence/perjury'. The officer was dealt with by way of 'advice' or 'discussion'. Perjury is a criminal offence punishable by imprisonment.

The officer was guilty of this. I demand to know the officer's name and why he wasn't prosecuted. I also want to know the name of the person who made the decision not to prosecute this officer".

10. In responding the MPS advised her that the allegation "was not a criminal allegation of perjury". It again found that it would be unfair to release the officer's name. In respect of the person who made the decision not to prosecute it explained: "In response to your request to be informed of the name of the person who made the decision not to prosecute the officer, I can confirm that this allegation was not a criminal allegation".

11. On 29 October 2014 the complainant challenged this response as being "factually wrong", saying that "perjury is a crime".

12. On 1 November 2014 the complainant made a further related request:

1. *"What were the ranks of the 7 police officers who committed these offences?"*

2. *What were the ranks of the senior officers who decided not to prosecute these 7 police officers?*
 3. *Were each of these offences noted on each officer's record?*
 4. *If so, how soon after the offences were committed were they noted on each officer's record.*
 5. *What were the dates of any trials where these offences may have been committed?*
 6. *What type of cases were these officers involved in when they committed these offences?*
 7. *What happened to the cases?*
 8. *In subsequent trials where these officers gave evidence, was the information made available to the Defence that these officers had previously committed perjury, misfeasance or had perverted the course of justice?*
 9. *Were the victims of these officers' crimes provided with the information that the officers had been 'found guilty' of these offences? (albeit by their commanding officers circumventing the justice system).*
 10. *Have the people found guilty in court cases involving these 7 police officers been notified that these police officers have committed perjury / misfeasance?*
 11. *Were these 7 police officers allowed to carry on front-line policing or were they removed from their duties? If they were removed, what duties were they moved to and how soon after the offences?"*
13. Following an internal review the MPS wrote to the complainant on 17 November 2014. It maintained its position regarding the withholding of the officers' names. It advised that it was treating the questions above as a new request.
 14. On 24 November 2014 the MPS provided a response to the new request advising that, because of some parts, it would exceed the appropriate limit to respond to it. However, in an effort to assist, it nevertheless provided responses to those elements to which it was able within the appropriate limit.
 15. On 8 December 2014 the complainant requested an internal review of this second request. This was provided on 30 December 2014; the MPS maintained its position.
 16. During the course of the Commissioner's investigation the MPS changed its position. It disclosed the remainder of the requested information other than the names of the officers concerned, which it continued to withhold under section 40(2) of the FOIA.

Scope of the case

17. Following disclosure of the requested information, the only information which remains withheld is the names of the 7 officers concerned. This will be considered below.

Reasons for decision

Section 40(2) – personal information

18. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

Is the requested information personal data?

19. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the Data Protection Act 1998 (DPA). If it is not personal data, then section 40 cannot apply.
20. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
21. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
22. The second part of the test is whether the withheld information identifies any individual.
23. The requested information in this case is the names of 7 police officers who are the subjects of substantiated complaints. In the Commissioner's view it is clear that the withheld information 'relates' to them, they are the focus of the request and it is therefore their 'personal data'.
24. Having accepted that the requested information constitutes the personal data of living individuals other than the applicant, the Commissioner must go on to consider whether disclosure would breach one of the data protection principles.
25. The MPS has advised that it believes disclosure would breach the first data protection principle.

Would disclosure contravene the first data protection principle?

26. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 is met.
27. In the case of a 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 fair, lawful and meet one of the DPA schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.
28. The Commissioner has first considered whether disclosure would be fair.
29. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
30. In consideration of these factors, the MPS provided the following explanation to the complainant:

"...In claiming this exemption, I have given due regard to Condition one and six of Schedule 2 of the DPA. Condition one of the DPA requires that consideration is given to whether consent for disclosure has been given whilst Condition six requires that consideration is given to whether disclosure would constitute legitimate processing of that data. I have found that as no prior consent has been given to release this information and in the case of legitimate processing, the release of this personal data would be unexpected and subsequently unfair, that it is appropriate not to release this information."

31. The MPS added that the requested information:

"... is plainly personal information about an individual and on this basis the review is therefore satisfied that the information being requested constitutes someone's personal data as it has a real and direct relationship to a living person. Section 2 DPA defines 'sensitive personal data' and so far as material, means personal data consisting of information as to (g) the commission or alleged

commission by him of any offence. The review is therefore satisfied that the information being requested is the sensitive personal data of each officer”.

32. The MPS also argued that, in its opinion, the provision of the nature of the allegations made and how each officer was dealt with is sufficient to satisfy any wider legitimate public interest in disclosure.
33. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible data controller, will not disclose certain information about them and that they will respect their confidentiality. For example, he considers that information relating to disciplinary or personnel matters will carry a strong general expectation of privacy for those parties concerned. Therefore, the reasonable expectation of the related data subject is that such information would not be disclosed and that the consequences of any disclosure could be damaging or distressing to them.
34. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
35. In considering these 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
36. The Commissioner acknowledges that the issue under consideration in this case raises issues in relation to accountability and transparency. However, he also notes the MPS's arguments above which show that it has provided some information to the complainant in order to explain the types of complaints which were considered against each officer concerned. It also gave their rank and the outcome of each complaint. Furthermore, it tried to explain the related terminology as to what the recorded outcomes meant in an attempt to satisfy the request. In the Commissioner's view, the MPS has therefore provided sufficient information to meet the legitimate interest of the public without infringing the rights of the parties connected to these sensitive matters.
37. In light of the nature of the information and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subjects. He considers these arguments outweigh any legitimate interest in disclosure. He has therefore concluded that it would be unfair to disclose the withheld information - in other words, disclosure would

breach the first data protection principle. He therefore upholds the MPS's application of the exemption at section 40(2).

38. As disclosure would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether any schedule 2 or 3 conditions of the DPA would be met. However, his initial view is that no such conditions would be met.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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.

Signed

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