

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 May 2016

Public Authority: Chief Constable of Northumbria Police

Address: Northumbria Police HQ
North Road
Ponteland
Newcastle upon Tyne
NE20 0BL

Decision (including any steps ordered)

1. The complainant has requested copies of all the correspondence and communications between Northumbria Police and the Independent Police Complaints Commission regarding a rape investigation. Northumbria Police withheld the information citing section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that Northumbria Police have applied section 40(2) (personal information) of the FOIA appropriately. However, the Commissioner considers that Northumbria Police has breached section 17(1) (refusal of a request).
3. The Commissioner does not require Northumbria Police to take any steps as a result of this decision.

Request and response

4. On 19 January 2015 the complainant wrote to Northumbria Police (NP) and requested information in the following terms:

"Please provide copies of all correspondence and communications with the IPCC in relation to the Nile Ranger rape investigation. If not included please provide copies of all referrals sent to the IPCC in relation to the investigation."

5. NP responded on 17 March 2015. It refused to provide the requested information citing the following exemptions:

Section 40(2) – personal information
Section 31 – law enforcement.

6. Following an internal review on 27 May 2015 NP upheld its original decision regarding the application of section 40(2) but withdrew its application of section 31.

Background

7. There was a court hearing regarding an accusation of rape. The accused was found innocent and two police officers were suspended over their handling of the allegation. An internal investigation was carried out. One of the officers was dismissed and the other was disciplined. This information is in the public domain.

Scope of the case

8. The complainant contacted the Commissioner on 11 June 2015 to complain about the way his request for information had been handled. He pointed out that there is a legitimate and compelling interest in transparency surrounding alleged police misconduct and wrongdoing and disclosure is necessary to meet those interests.
9. The Commissioner will consider whether NP applied section 40(2), appropriately. He will also consider the length of time taken to deal with the request.

Reasons for decision

Section 40 – personal data

10. 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 its disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).

Is the information personal data?

11. The definition of personal data is set out in section 1 of the DPA:
*“ ...data which relate to a living individual who can be identified
a) from those data, or*

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

12. The two main elements of personal data are that the information must 'relate' to a living individual and the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
13. In this case, NP told the complainant that it considered that requested information was clearly about individuals that could be identified from the release of the information when coupled with information already in the public domain.
14. The Commissioner has considered the withheld information. He is satisfied that it constitutes information which falls within the definition of 'personal data' as set out in section (1) of the DPA as the information comprises personal data relating to several individuals.
15. The Commissioner is therefore satisfied that section 40(2) is engaged.

Is the information sensitive personal data?

16. Sensitive personal data is defined in section 2 of the DPA. It is personal information which falls into one of the categories set out in section 2 of the DPA. Of relevance in this case is that section 2 relates to personal data consisting of information as to:

(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

17. The Commissioner is satisfied that some of the withheld information is also sensitive personal data. This is because it relates to an investigation by the IPCC into allegations of misconduct by police officers in relation to a rape allegation.
18. Having accepted that some of the information comprises the sensitive personal data of third parties, the Commissioner will go on to consider whether disclosure would breach one of the data protection principles.

Would disclosure breach one of the data protection principles?

19. NP told the complainant that it considered that disclosure of the requested information would contravene the first data protection principle. The Commissioner agrees that the first data protection principle is relevant in this case.

Would disclosure contravene the first data protection principle?

20. The first principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met”.

21. 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 fair, lawful and would meet one of the DPA Schedule 2 conditions and, in this case, one of the Schedule 3 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

22. When 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.
23. Under the first principle, the disclosure of the information must be fair to the data subject. Assessing fairness involves balancing the data subject’s rights and freedoms against the legitimate interest in disclosure to the public.
24. 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.

Has the data subject consented to the disclosure?

25. The Commissioner is not aware of anything to suggest that consent has been given for disclosure of the requested information by any parties concerned.

Has the data subject actively put some or all of the requested information into the public domain?

26. Where the data subject has put some or all of the requested information into the public domain, the Commissioner considers that this weakens the argument that disclosure would be unfair.
27. In this case the Commissioner has not seen any evidence that any of the data subjects have actively put some or all of the requested information into the public domain.

Reasonable expectations

28. In order to reach a view on whether the disclosure of this information would be fair in this case, the Commissioner has placed specific emphasis on the nature of the information itself.
29. The requested information, if disclosed, would reveal information about police officers and a member of the public. The Commissioner does not accept that disclosing this information would be fair and considers that it may cause distress to the individuals involved.
30. The Commissioner notes the complainant's comment about the need for transparency regarding alleged police misconduct and wrongdoing and that disclosure is necessary to meet those interests.
31. He also notes that NP confirmed that the incident itself was subject to formal legal proceedings and the actions of officers were subject to internal investigation, with all outcomes reported within the public domain.
32. NP argued that the individuals involved have an expectation that their own data will be treated fairly, with respect and in accordance with specific legislation including the DPA.

Consequences of disclosure

33. In looking at the consequences of disclosure on the data subjects, the Commissioner has considered what they might be.
34. NP explained that the rape allegation had already been the subject of legal proceedings and the officers in question had also been subjected to an internal investigation. It also explained that the names of people and the information provided by them and about them is classified as their personal information.
35. The Commissioner is satisfied that disclosure of the requested information would be likely to cause further distress to those individuals. He is satisfied that disclosure would have detrimental consequences. The consequences for the officers concerned would be to re-open a matter about them which has already been dealt with.

Conclusion

36. The Commissioner considers that there is some legitimate public interest in the disclosure of the requested information, especially as it concerns alleged misconduct of police officers. However, he considers that there is already a large amount of information in the public domain, including the outcome of the disciplinary hearing into the police officers conduct. He considers this goes some way in meeting the public interest.
37. The Commissioner notes that some of the requested information is considered to be 'sensitive' personal data. By its very nature this is deemed to be information that individuals regard as the most private information about themselves. The Commissioner therefore considers that as disclosure of this type of information is likely to have a detrimental or distressing effect on the data subjects concerned, it would be unfair to disclose it.
38. As the Commissioner considers that it would be unfair to the individuals concerned to disclose the withheld information and to do so would contravene the first data protection principle, he has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA conditions is met. However, his initial view is that no schedule 2 condition would be met, nor does he consider that a schedule 3 condition would be met.
39. The Commissioner therefore considers that the section 40(2) exemption is engaged.

Section 17 – refusal of a request

40. Section 17(1) FOIA provides that a public authority must respond to request for information within the time scale for compliance with section 1(1), which is 20 working days, starting the date after receipt. The complainant requested information on 24 September 2014 and NP did not respond until 24 November 2014. The Commissioner considers that NP has breached section 17(1).

Other matters

41. The complainant requested an internal review on 17 March 2015 and NP responded on 27 May 2015. Part VI of the section 45 Code of Practice makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information. He considers that the procedure should encourage a prompt determination of the complaint.
42. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
43. The Commissioner is concerned that it took over 20 working days for the internal review to be completed.

Right of appeal

44. 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

45. 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.
46. 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

Jon Manners
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