

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2016

Public Authority: Chief Constable of Cheshire Constabulary
Address: Cheshire Constabulary HQ
Oakmere Road
Winsford
Cheshire
CW7 2UA

Decision (including any steps ordered)

1. The complainant has requested information about an examination of his mobile phone carried out by Cheshire Constabulary ("the Constabulary"), including details of the officers involved. The Constabulary judged that most of the information constituted the complainant's own personal data. That part of the request was successfully dealt with as a subject access request under the Data Protection Act 1998 ("the DPA"). The Constabulary also disclosed some technical information and information about a senior officer. It refused to disclose information about a junior member of police staff, citing section 40(2) (personal data) of the FOIA.
2. The Information Commissioner's decision is that the Constabulary was entitled to rely on section 40(2) to refuse to disclose the information. He requires no steps to be taken.

Request and response

3. On 13 September 2015, the complainant wrote to the Constabulary and made the following request for information:

"Please can you provide me with a copy of the 303 page phone analysis report along with the two screen shots taken showing the disk needed to be formatted and the FAT signature being invalid. Detective Sergeant [name redacted] has retrieved this information"

I also require the full name and number of Police staff [surname redacted] who examined the phone,

I also require the full name and number of the sergeant in charge of the e-forensics"

4. The Constabulary responded on 9 October 2015. It disclosed the screen shots and the name and phone number of the sergeant in charge of e-forensics. It refused to disclose the phone analysis information, stating that it was exempt from disclosure under section 40(1) (personal data of the applicant). It provided the complainant with a link to its subject access request form. It refused to disclose the name and phone number of the police staff member ("the employee") who the complainant believed had examined the phone, stating that this was exempt under section 40(2) (personal data of third parties).
5. Following an internal review the Constabulary wrote to the complainant on 12 October 2015. It upheld its decision to apply section 40(1) and 40(2) to withhold the remaining information. It again directed the complainant to make a subject access request for his own personal data.

Scope of the case

6. The complainant contacted the Commissioner on 14 October 2015 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation the complainant obtained the information which had been withheld under section 40(1), via a subject access request under the DPA. Since the Constabulary had disclosed the screenshots and details of the sergeant in charge of e-forensics, this decision notice considers only whether it was entitled to rely upon section 40(2) to withhold information about the employee who the complainant believed examined the phone.

Reasons for decision

8. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the DPA.
9. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as

defined by the DPA. Section 1 of the DPA defines personal data as follows:

“‘personal data’ means 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 intentions of the data controller or any other person in respect of the individual.”

10. 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 data protection principles under the DPA. The Commissioner notes in this case that the Constabulary said that disclosure would breach the first data protection principle.

Is the withheld information personal data?

11. The information in question here is the first name (the complainant already knows the surname and quoted it in his request) and contact number of the employee who the complainant believes examined his phone. The Commissioner is satisfied that this is personal data in accordance with section 1 of the DPA.

Would the disclosure of this personal data contravene any of the data protection principles?

12. The Commissioner now needs to consider whether disclosure would breach the first data protection principle. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
13. The Commissioner's guidance on requests for personal data about employees¹ states that there are a number of factors which may determine whether disclosure would be fair. These include the

¹ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

employee's reasonable expectations; the consequences for them of disclosure; and the balance between their rights and any legitimate public interest in disclosure.

Reasonable expectations of the data subject

14. A key issue to consider in assessing fairness is whether employees have a reasonable expectation that their information will not be disclosed. This will depend on a number of factors.

Whether the information relates to the employee in their professional role or to them as individuals

15. Information about an employee's actions or decisions in carrying out their job is still personal data about that employee, but given the need for accountability and transparency about public authorities, there may be some expectation of disclosure.
16. The withheld information here clearly relates to the employee in their professional role, as it relates to their work with the complainant's phone.
17. However, the complainant clearly has some interest in the employee as an individual. He has informed the Commissioner that his principle purpose in requesting the information is to establish whether the employee actually exists, as he suspects the Constabulary may have fabricated some information in relation to the examination of his phone. His specific request to know the employee's contact number implies at least some interest in contacting them personally.

Seniority

18. It is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones. In this case, the Constabulary has disclosed information about the sergeant in charge of e-forensics. However, it has explained to the Commissioner that the employee whose details have been requested is a civilian, junior member of staff and that their duties were administrative in nature. In relation to the complainant's phone, the Constabulary said:

"[redacted - employee's name] is a junior member of staff who dealt with [redacted - complainant's name] in an administrative capacity only."

19. The Constabulary has also clarified that the employee no longer works in the e-forensics department.

Whether the employee has a public facing role

20. It may also be fair to release more information about employees who are not senior managers but who represent their authority to the outside world, as a spokesperson or at meetings with other bodies. This implies that the employee has some responsibility for explaining the policies or actions of their authority. However, it would not apply simply because an employee deals with enquiries from the public or sends out material produced by others.
21. In this case, the Constabulary has explained to the Commissioner that the employee did not occupy a public facing role.

Consequences of disclosure

22. The Constabulary emphasised that the employee was not employed at a level or in a capacity where they would expect to be contacted by the public. Furthermore, the Constabulary asked the employee whether, on this occasion, they would be willing for their details to be passed to the complainant, and the employee declined to give consent. In the circumstances, the Commissioner accepts that the employee would consider the consequent loss of privacy to be distressing and unnecessarily intrusive.

Balancing rights and freedoms with legitimate interests

23. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake, along with specific interests.
24. However, the interest in disclosure must be a public interest, not the private interests of the individual requester. The requester's interests are only relevant in so far as they may reflect a wider public interest. This is because, when information is disclosed under the FOIA, it is effectively disclosed to the world at large, and not merely to the requester.
25. In this case the complainant has expressed concerns about the way his phone has been handled by the Constabulary and considers that provision of the withheld information would go some way towards addressing his concerns. The Commissioner accepts there is the legitimate interest in the police being open to scrutiny and accountability in their dealing with the public because they are appointed to uphold the law.
26. It is clear to the Commissioner that the complainant is dissatisfied with the way his phone was treated by the Constabulary. However, it is not within the remit of the Commissioner to consider the merits of that

concern, nor is he aware of the wider background to it. The Commissioner notes that, where someone is dissatisfied at the treatment they have received from the police, a complaint may be made to a force's Professional Standards Department, with, in some cases, the right of onward appeal to the Independent Police Complaints Commission. The Commissioner considers that this goes some considerable way to satisfying the legitimate interest in scrutiny and accountability.

27. Although the Commissioner can appreciate why the information might be of particular interest to the complainant, he is mindful of the fact that the FOIA is request and motive blind and has not seen any evidence to indicate that there is sufficient wider legitimate public interest which would outweigh the rights and freedoms of the employee in this case.
28. Taking all of the above into account, the Commissioner concludes that it would be unfair to the employee to release the requested information, and would therefore breach the first data protection principle. The Commissioner is satisfied that the employee occupies (or did when employed in that post in question) a junior, non-public facing administrative post. Disclosure would not have been within their reasonable expectations and, having expressly refused to give consent, it could cause unwarranted distress.
29. The Commissioner acknowledges that there is a legitimate interest in knowing that the police are transparent and accountable, but, for the reasons stated in paragraph 24, does not consider that this outweighs the employee's strong expectations of, and rights to, privacy. The Commissioner has therefore decided that the Constabulary has correctly applied section 40(2) of the FOIA to the requested information.

Right of appeal

30. 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

31. 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.
32. 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

Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF