

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 April 2021

Public Authority: Chief Constable of Staffordshire Police
Address: Police Headquarters
Weston Road
Stafford
ST18 0YY

Decision (including any steps ordered)

1. The complainant requested information about how Staffordshire Police recorded an incident of theft that he had reported. Staffordshire Police refused to disclose the information under the FOIA, citing the non disclosure exemption at section 40(2) (personal information). However, it disclosed most of the complainant's own personal data to him under the subject access provisions of the Data Protection Act 2018.
2. The Commissioner's decision is that the request was for the complainant's own personal data, and that, as such, Staffordshire Police should have neither confirmed nor denied holding any information by virtue of section 40(5A) of the FOIA.
3. The Commissioner requires no steps as a result of this decision.

Background

4. In March 2020 the complainant believed he witnessed petrol theft at a service station and he reported the incident to Staffordshire Police. His report provided detailed information about what he saw, his contact details and confirmed that he could provide photographic evidence and testify in court.
5. The incident was not initially recorded as a crime. The complainant submitted a complaint about this decision to Staffordshire Police, following which it recorded the incident as a crime.

6. The file on the incident was then closed by Staffordshire Police.

Request and response

7. On 12 August 2020, in the course of an exchange of correspondence about the matter, the complainant requested from Staffordshire Police information in the following terms:

"Re: Complaint ref [redacted] of [date redacted] (Theft of Petrol)

1. The initial incident report sufficiently un redacted to show how the incident was recorded together with the time and date of the entry.

2. The crime report number issue [sic] to this report of 'theft of fuel' clearly showing the date the crime report was entered on the system and the Home Office category it was reported under.

3. Details of how and when the crime report was finalised. Please include any earlier finalisations and dates if the report was closed and reopened.

4. Please provide me with a copy of Staffordshire Police's policy and guidance for the recording of reports of crime, or if this information is already published direct me to where I can find the information.

5. Please provide me with the current Home Office guidelines for the recording of reports of crime, or if this information is already published direct me to where I can find the information."

8. Staffordshire Police responded on 25 August 2020. It provided the information requested at parts (4) and (5).
9. It said that the information requested in parts (1) - (3) of the request was exempt from disclosure under section 40(2) (personal information) of the FOIA.
10. The complainant requested an internal review of the application of section 40(2) to parts (1) - (3) of the request on 25 August 2020. Staffordshire Police responded on 26 August 2020. It maintained its application of section 40(2) to refuse to disclose parts (1) - (3) of the request.

Scope of the case

11. The complainant contacted the Commissioner on 7 September 2020 to complain about the way his request for information had been handled.

12. Prior to the start of the Commissioner's investigation, on 12 June 2020 and on 9 September 2020, Staffordshire Police disclosed to the complainant personal data it held about him in connection with the incident report. It did so under the subject access request (SAR) provisions of the Data Protection Act 2018 (DPA). Between them, the disclosures included the information he asked for at parts (1) and (2) of the FOIA request. For part (3), the date the crime report was finalised was provided, but the remaining information was subject to a non-disclosure restriction under the DPA.

13. The complainant acknowledged to the Commissioner that this information had been disclosed to him through a SAR, but said:

"Whilst I am aware that the SAR and FOI may produce the same information, I am aware of [sic] that the release of information under the FOI is treated as a release to the wider public rather than to an individual as it is under SAR.

My appeal to the Commissioner is under the provisions of the FOI and therefore I ask that any information subsequently provided by Staffordshire Police be under the provisions of that act so it will be available to the wider public, although I understand that Staffordshire Police may wish to kept [sic] such information away from the public."

14. The Commissioner therefore understands the complainant to be disagreeing with Staffordshire Police's decision to make a restricted disclosure of this information to him, under the DPA. He is asking that it instead be disclosed under the FOIA (and thus, to the world at large). He has given his reasons as follows:

"What I have requested is information which will demonstrate whether Staffordshire Police correctly recorded and dealt with a report of theft made by a member of the public. The correct recording for reports of crime are important as recorded crime figures are regularly used to show how well the police are dealing with crimes in the community.

If the information demonstrates that Staffordshire Police are indeed complying with Home Office guidelines for recording reported crime, then it will reflect positively on the force. If the information demonstrates that Home Office guidelines are not being followed, it would reflect badly on Staffordshire Police; either way the public have the right to know the truth."

15. In addition to the FOIA, the Commissioner is responsible for regulating data protection legislation. As such, she takes account of the need to protect personal data when considering whether such information may be disclosed under the FOIA. Accordingly, she will intervene and apply exemptions herself where she considers it necessary.

16. Having considered the request, and in view of information provided to her by both the complainant and Staffordshire Police, the Commissioner has considered whether, instead of section 40(2), Staffordshire Police should have cited section 40(5A) of the FOIA to neither confirm nor deny whether it held the information. She has done so on the grounds that this was a request for the complainant's own personal data, and was therefore exempt under section 40(1) of the FOIA.

Reasons for decision

Section 40(5A) – complainant's own personal data

17. Section 1(1)(a) of the FOIA provides that where a public authority receives a request for information, it is obliged to tell the applicant whether it holds that information. This is commonly known as 'the duty to confirm or deny'. There are, however, exemptions from the duty to confirm or deny.
18. Section 40(1) of the FOIA provides that information which is the personal data of the requester is exempt from disclosure under the FOIA. This is because, as outlined in paragraph 12, individuals may request their personal data under a separate legislative access regime, the DPA.
19. Section 40(5A) of the FOIA states that:

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)."
20. Taken together, these sections mean that where a request asks for information which is the requester's own personal data, a public authority is not obliged to confirm or deny whether it holds that information.
21. Section 3(2) of the DPA defines personal data as:-

"...any information relating to an identified or identifiable living individual".
22. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
23. 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.

24. 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.
25. The request in this case asks for information about the handling of an incident report the complainant submitted to Staffordshire Police. Although the incident relates to the alleged actions of a third party, the Commissioner is satisfied that the requested information would also comprise the complainant's own personal data. This is because it relates directly to the handling of an allegation that he has made, in which he is clearly identified and for which he has offered to give evidence in court. Staffordshire Police would only be able to locate the requested information by direct reference to him personally and no-one else would have knowledge of any details about that information as he personally reported the incident. The complainant has acknowledged this, saying that he does not require the disclosure of personal information about third parties. His focus is on knowing how, in procedural terms, Staffordshire Police handled his report.
26. Having considered the above, the Commissioner is satisfied that the requested information relates to the complainant and that he will be identifiable from it. The FOIA is applicant blind and the complainant must be treated as any other member of the public who would have no personal knowledge as to whether or not a crime had been reported by the complainant.
27. It follows that the requested information falls within the definition of 'personal data' in section 3(2) of the DPA, and that it is the complainant's personal data. The Commissioner has concluded that, as such, Staffordshire Police should have cited section 40(5A) of the FOIA to neither confirm nor deny holding it. The complainant has no right of access to this information under the FOIA.
28. This is an absolute exemption and so its application is not subject to a public interest test.

Right of appeal

29. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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