

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2022

Public Authority: Chief Constable of South Wales Police
Address: Cowbridge Road
Bridgend
Mid Glamorgan
CF31 3SU

Decision

1. The Commissioner's decision that South Wales Police is correct to rely on section 40(5) of FOIA to neither confirm nor deny it holds information about an investigation as to do so would disclose the personal data of a third person. South Wales Police breached section 17(1) of FOIA as it did not issue its refusal within 20 working days of the request.

Request and response

2. The complainant made the following information request to South Wales Police on 8 May 2022:

"Could you please provide a clear explanation of why South Wales Police (SWP) have asked [redacted] to accept that his actions were "human error".

In particular could SWP explain how "human error" was involved in the bus passenger figures for the T2 service increasing from 345,814 passengers in 2017/2018 to 691,628 passengers in 2018/2019 representing an increase of 20%. The false figures indicate that the passenger numbers exactly doubled and I request that SWP explain how this can be attributed to "human error".

I asked a number of questions following your communication of 07/03/2022 which you have had 1 month to consider. They are not difficult questions but you have refused to answer them.

Could you please therefore provide copies of the following documents referred to by SWP during the 12 month investigation.

- (1) The notes for the police interview of [redacted] (referred to by SWP on 30/11/2021, 01/12/2021, 21/01/2021 and 07/03/2022).
 - (2) The "incorrect" version of the 2018-2019 Trawscymru Annual report.(referred to by SWP on 11/08/2021, 12/08/2021 and 07/03/2022)
 - (3) The "correct" version of the 2018-2019 Trawscymru Annual report.(referred to by SWP on 07/03/2022)
 - (4) The "documented evidence", (provided to SWP by the Welsh Government Data Security Head), that [redacted] had attempted to correct the incorrect data over the months before the Strategic Management Board Meeting (referred to by SWP on 07/03/2022)
 - (5) The minutes from the Strategic Management Board meeting (referred to by SWP on 07/03/2022)
 - (6) The "incorrect" version of the form (which contained the figures subsequently published) (referred to by SWP on 07/03/2022)
 - (7) The "correct" version of the form (referred to by SWP on 07/03/2022)
 - (8) The copy of the bus passenger figures for 2018-2019 provided to South Wales Police by Bus Users Cymru.(referred to by SWP on 22/10/2021 and 07/03/2022)
 - (9) Copies of all the email trails retrieved during the investigation. (referred to by SWP on 21/01/2022 as "awaiting some further email trails")."
3. South Wales Police's final position was to neither confirm nor deny it holds information within scope of the request under section 40(5), section 30(3) which concerns investigations and proceedings and section 31(3) which concerns law enforcement.

Reasons for decision

4. This reasoning covers South Wales Police's application of section 40(5) to the complainant's request. If necessary, the Commissioner will consider South Wales Police's application of section 30(3) and/or section 31(3). The Commissioner will also consider the timeliness of South Wales Police's refusal.
5. Section 1(1)(a) of FOIA obliges a public authority to confirm whether or not it holds information that has been requested – this is known as 'the duty to confirm or deny'.
6. However, under section 40(5) of FOIA a public authority is not obliged to comply with section 1(1)(a) if the mere fact of confirming whether or not information is held would disclose the personal data of a third person.
7. In this case, if South Wales Police were to confirm it did or did not hold the requested information it would, in effect, be confirming whether or not the individual named in the request was the subject of a particular investigation. Whether that individual was the subject of an investigation is their personal data.
8. The Commissioner appreciates that the complainant has an interest in the subject of the request. It is a legitimate interest for them to have that would be met, in the first instance, through South Wales Police confirming or denying it holds the requested information. As South Wales Police noted in its response to the request (although in regard to sections 30 and 31) there is also a wider public interest in the public being aware of any of South Wales Police's investigations into allegations of wrongdoing which might encourage individuals to provide intelligence and promote trust.
9. In its response to the request, however, South Wales Police confirmed that it follows Authorised Professional Practice for Information Management guidance in respect of police information, which includes whether anyone has been the subject of an investigation. It processes such information for specific purposes only and these do not include disclosing it under FOIA. South Wales Police said that confirming or denying it held the requested information could therefore undermine ongoing investigations and compromise information sharing agreements.
10. Irrespective of any information the complainant may have gleaned outside of FOIA, the Commissioner considers that the individual named in this case would reasonably expect that their personal data would not be disclosed to the world at large under FOIA. As South Wales Police

noted in its response, confirmation or denial would therefore cause that individual harm or distress.

11. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that confirming or denying the requested information is held would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. Since section 40(5) is engaged, it has not been necessary for the Commissioner to consider South Wales Police's application of sections 30(3) and 31(3).
12. Section 17(1) of FOIA obliges a public authority to issue a refusal notice in respect of exempt information (if held) within 20 working days of the request.
13. In this case, the complainant submitted their request on 8 May 2022 and did not receive a refusal notice until 9 September 2022, following the Commissioner's intervention. Technically, South Wales Police therefore breached section 17(1) of FOIA.
14. However, South Wales Police explained to the Commissioner that the complainant had submitted their request to a member of staff who had blocked the complainant's correspondence due to the "huge volume" of emails that they were sending to them, and others. In their final email to the complainant, that individual had advised the complainant to send complaints and requests to a specific department. The complainant instead sent their request to that individual. South Wales Police say that the complainant would have received an email to say that their correspondence had been blocked. If so, in the Commissioner's view, rather than wait and report a non-response to the Commissioner, a reasonable person would have simply re-directed their request to the department specified or submitted it through the dedicated information access page on South Wales Police's website¹.

¹ <https://www.south-wales.police.uk/rqo/request/ri/request-information/rip/request-information-police/request-information-about-police/foi-request-form/>

Right of appeal

15. 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

16. 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.
17. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF