

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2024

Public Authority: Chief Constable of Avon and Somerset Police
Address: Force Headquarters
PO Box 37
Valley Road
Portishead
Bristol
BS20 8QJ

Decision (including any steps ordered)

1. The complainant has requested copies of the CCTV and other evidence used to convict the “kill the bill” demonstrators who took part in the protest on 21 March 2021. Avon and Somerset Police refused to disclose the requested information citing section 30(1)(a)(b) and (c) of the FOIA.
2. The Commissioner has used his discretion to apply section 40(2) – (third party personal data) of FOIA to the requested information. The Commissioner considers that the information is exempt from disclosure under section 40(2) and does not require the public authority to take any steps as a result of this decision notice.

Request and response

3. On 31 May 2023, the complainant wrote to Avon and Somerset Police and requested information in the following terms:

"I should like copies of the CCTV and other evidence used to convict the "kill the bill" demonstrators who took part in the protest on 21st March 2021."

4. Avon and Somerset Police responded on 28 June 2023. It stated that it held the requested information but was withholding it under section 30(1)(a)(b)(c) of the FOIA.
5. On 2 July 2023 the complainant requested an internal review, however Avon and Somerset Police failed to conduct one within the statutory timeframe.

Scope of the case

6. The complainant contacted the Commissioner on 30 August 2023 to complain about the way their request for information had been handled.
7. During the Commissioner's investigation, Avon and Somerset Police provided a sample of the withheld information. Upon viewing the sample of the withheld information the Commissioner has used his discretion and considered whether it is exempt from disclosure under section 40(2) of the FOIA – third party personal data.

Reasons for decision

Section 40 – personal information

8. 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 one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
9. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
10. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.

11. 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 DPA principles.

Is the information personal data?

12. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual.”

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. 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.
15. 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.
16. In the circumstances of this case, having considered a sample of the withheld information, the Commissioner is satisfied that the information relates to the data subjects as it has been used to make informed decisions about them. The individuals can also be identified visually and vocally from the camera footage.
17. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.
18. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

Would disclosure contravene principle (a)?

19. Article 5(1)(a) of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

20. 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 lawful, fair and transparent.

21. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
22. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the GDPR.

Is the information criminal offence data?

23. Information relating to criminal convictions and offences is given special status in the UK GDPR.
24. Article 10 of the UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA personal data relating to criminal convictions and offences includes personal data relating to:
 - (a) The alleged commission of offences by the data subject; and
 - (b) Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.
25. Having considered the wording of the request, the Commissioner finds that the requested information does include criminal offence data. He has reached this conclusion on the basis that the requested information relates to evidence used to convict individuals involved in the protest on 21 March 2021.
26. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.
27. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject) or Part 3 paragraph 32 (data made manifestly public by the data subject).
28. The Commissioner has seen no evidence or indication that the individual(s) concerned have specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
29. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data would therefore breach principle (a) and so this information is exempt under section 40(2) of FOIA.

Other matters

30. Whilst not a statutory requirement under FOIA, it's always good practice for a public authority to provide an internal review. Furthermore, the Commissioner's guidance states that this internal review outcome should be provided within 20 working days of receipt of the internal review request.
31. This timeframe can be extended to 40 days in exceptional circumstances. Avon and Somerset Police failed to provide its internal review outcome within this timeframe.

Right of appeal

32. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

33. 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.
34. 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

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