

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 January 2024

Public Authority: Chief Constable West Midlands Police
Address: Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant has requested information regarding misconduct hearing outcomes from West Midlands Police ('WMP'). WMP relied on section 40(2) of FOIA (third party personal information) to withhold the information.
2. The Commissioner's decision is that WMP has correctly relied on section 40(2) of FOIA to withhold the information.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 17 August 2023, the complainant wrote to WMP and requested information in the following terms:

"Please send me copies of the outcome notices of misconduct proceedings for Inspector [name redacted] and Sergeant [name redacted]...".
5. WMP responded on 20 September 2023. It stated that it could neither confirm nor deny whether the requested information was held. It cited section 40(5)(b) as a basis for doing this.
6. Following an internal review, WMP wrote to the complainant on 6 October 2023. It stated that it was maintaining its original position.

7. Following a Decision Notice from the Commissioner¹, WMP was advised that it needed to issue a new response which did not rely on section 40(5)(b) of FOIA.
8. On 17 November 2023, WMP wrote to the complainant stating that the requested information was still being withheld, but cited section 40(2) as a basis for doing this.

Scope of the case

9. The complainant contacted the Commissioner on 9 December 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to establish whether WMP is entitled to withhold the requested information under section 40(2) of FOIA.

Reasons for decision

Section 40 - personal information

11. 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.
12. 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 UK General Data Protection Regulation ('UK GDPR').
13. 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.

¹ [ic-262761-k4d8.pdf \(ico.org.uk\)](#)

14. 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 DP principles.

Is the information personal data?

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

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

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
17. 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.
18. 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.
19. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information withheld in this case includes specific personal details about named individuals and their personal life in connection with criminal allegations. The personal data relates to the data subjects who can be identified as they are named within the request.
20. Having considered the nature of the withheld information, the Commissioner is satisfied that it both relates to and identifies the individuals concerned. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.
21. This information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.

Is the information criminal offence data?

22. Information relating to criminal convictions and offences is given special status in the UK GDPR.
23. 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; or

(b) Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.

24. The Commissioner has outlined his view in a similar request for information made by the same complainant in his Decision Notice IC-261295-W3W7². In that case, the Commissioner upheld the public authority's position that the requested information was exempt from disclosure on the basis that it was criminal offence data of identifiable parties.
25. For the above reason, the Commissioner will not reproduce the content of that decision notice here but he has adopted the analysis and concluded that WMP is entitled to rely on section 40(2) as the requested information is criminal offence data.

² [ic-261295-w3w7.pdf \(ico.org.uk\)](https://ico.org.uk/decision-notice/261295-w3w7)

Right of appeal

26. 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

27. 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.
28. 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

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