

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 May 2015

Public Authority: Chief Constable of North Wales Police
Address: Police Headquarters
Glan-y-Don
Abergele Road
Colwyn Bay
LL29 8AW

Decision (including any steps ordered)

1. The complainant requested information relating to a complaint about electoral fraud by a candidate in a particular by-election. North Wales Police responded to the complainant's request by neither confirming nor denying whether it held the requested information in reliance on section 40(5) of the FOIA. The Commissioner's decision is that North Wales Police has correctly applied the provisions of section 40(5) in the circumstances of this case. He does not require any steps to be taken.

Request and response

2. On 11 December 2014 the complainant made a request to North Wales Police for information concerning a complaint about electoral fraud by a candidate at a particular by-election. The Commissioner has not reproduced the exact wording of the request in this notice as it could lead to the identification of the complainant and other third parties.
3. North Wales Police responded on 5 January 2015 and refused to confirm or deny whether it held the requested information by virtue of the exemption at section 40(5) of the FOIA.
4. On 11 January 2015 the complainant wrote to North Wales Police and requested an internal review of its handling of the request.
5. North Wales Police provided the outcome of its internal review on 26 January 2015 and upheld its decision that section 40(5) of the FOIA

applied to the request. It also informed him of his right to make a subject access request under the Data Protection Act 1998 ('DPA').

Scope of the case

6. The complainant contacted the Commissioner on 22 February 2015 to complain about the way his request for information had been handled.
7. The Commissioner has considered whether North Wales Police acted correctly in refusing to confirm or deny whether it held the requested information.
8. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. In considering such matters, the Commissioner is mindful that whilst an individual may be aware that information does or does not exist because of their involvement in events, it does not follow that the general public is also aware of the existence of that information. Disclosure under the FOIA is a disclosure to the world at large.
9. In a case such as this one, the decision for the Commissioner is whether confirmation or denial that the information is held should be placed in the public domain. The Commissioner recognises that the complainant has personal reasons for making the request in this case. However, neither the identity of the applicant nor any purely personal reasons for wanting the requested information is relevant to the consideration of a freedom of information request. FOIA is about disclosure to the public and public interests. It is not about specified individuals or private interests.

Reasons for decision

Section 40(5) – personal information

10. Generally, the provisions in section 40(1)-(4) of the FOIA exempt personal data from disclosure. In relation to a request which constitutes the personal data of individual(s) other than the applicant (i.e. the person making the request), section 40(5)(b)(i) further excludes a public authority from complying with the duty imposed by section 1(1)(a) FOIA if compliance would contravene any of the data protection principles or section 10 of the DPA or would do so if the exemptions in section 33A(1) of the DPA were disregarded.

11. Consideration of section 40(5) involves two steps: first, whether providing the confirmation or denial would involve the disclosure of personal data, and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.
12. On the issue of whether confirmation or denial in response to the complainant's request would involve the disclosure of personal data, the definition of personal data is given in section 1(1) of the DPA:

“‘personal data’ means data which relate to a living individual who can be identified:

 - (a) from those data, or
 - (b) from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller”.
13. Section 1(1) of the DPA refers to identifiability either directly through the information itself, or through that information combined with other information available to the data controller. In the case of a disclosure made through the FOIA, the data controller is potentially any member of the public. The issue is, therefore, whether confirmation or denial could be linked to the subject of the request by any member of the public, including the requester, even without that individual being named in the request.
14. The complainant did not actually name the person to whom the request relates in their request. However, it is clear from contextual information provided to North Wales Police with the initial request that the complainant would be able to identify the individual concerned. Complying with section 1(1)(a) in this case would effectively confirm or deny to the public at large whether the requested information is held in connection with the individual referred to in the request. It is also likely that family and friends of the individual referred to in the request would also be able to identify them. The Commissioner therefore considers that the information requested, if held, would both relate to and identify a living individual and so would be their ‘personal data’.
15. Section 2 of the DPA sets out what categories of personal data are classed as ‘sensitive’ for the purposes of that Act. These include personal data as to the commission or alleged commission by the data subject of an offence. Based on the wording of the request, the personal data in question here, if held, would constitute sensitive personal data. A particular requirement in relation to processing sensitive personal data (which includes its disclosure) is that at least one of the conditions in Schedule 3 of the DPA is met.

16. The next step is to address whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which requires that personal data is processed fairly and lawfully.
17. Covering first whether disclosure would be fair, the Commissioner's view is that cases where it will be considered fair to disclose into the public domain sensitive personal data are likely to be extremely rare. Sensitive personal data has, by its very nature, been deemed by the DPA to be the most private information about identifiable individuals. As disclosure of this type of information is likely to have a detrimental or distressing effect on the data subject, the Commissioner will generally take the view that it would be unfair and in breach of the first data protection principle to disclose a confirmation or denial.
18. In conclusion, the Commissioner has found that confirmation or denial in response to the complainant's request would involve the disclosure of personal data and that this disclosure would be in breach of the first data protection principle. The exemption provided by section 40(5) is, therefore, engaged and North Wales Police is not obliged to confirm or deny whether it holds the requested information.

Right of appeal

19. 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

20. 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.
21. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF