

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 November 2015

Public Authority: West Yorkshire Police
Address: PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested copies of police interviews with William Cornick who admitted killing a schoolteacher. West Yorkshire Police withheld the information and cited sections 30 (investigations), 38 (health and safety) and 40 (personal information).
2. The Commissioner's decision is that West Yorkshire Police have applied section 40(2) (personal information) appropriately.
3. The Commissioner does not require West Yorkshire Police to take any steps.

Request and response

4. On 6 January 2015 the complainant wrote to West Yorkshire Police (WYP) and requested information in the following terms:
"Please provide copies of the police interviews with William Cornick."
5. WYP responded on 16 January 2015. It refused to provide the requested information citing the following exemptions:
Section 30(1)(a) (investigations)
Section 40(2)(personal information)
6. Following an internal review on 20 February 2015, WYP upheld its original application of sections 30(1)(a) and 40(2) and also applied

sections 38(1)(a) and (b) (health and safety).

Scope of the case

7. The complainant contacted the Commissioner on 20 February 2015 to complain about the way his request for information had been handled. He pointed out that had William Cornick not pleaded guilty, the full transcript of the police interview would have been read out in open court.
8. The complainant also explained that this was a unique case as there had never been a murder of a teacher by a pupil in a classroom before. He also pointed out that other police interview tapes had been disclosed previously and gave the example of the case of Cyril Smith. The complainant also explained that when sentencing William Cornick, Justice Coulson had stated that this case was exceptional and that public interest had been huge.
9. Furthermore, the complainant explained that he considered that disclosure would help to understand why William Cornick acted as he did. The complainant also pointed to the Data Protection (Processing of Sensitive Personal Data) Order 2000 as a source of authority for disclosure of sensitive personal information in this case.
10. The Commissioner will consider whether WYP applied sections 30(1)(a), 38 and 40(2), appropriately.

Reasons for decision

Section 40 – personal data

11. Section 40 (2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and its disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).

Is the information personal data?

12. The definition of personal data is set out in section 1 of the DPA:

" ...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

13. The two main elements of personal data are that the information must 'relate' to a living individual and the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
14. In this case, WYP told the complainant that it considered that the police interviews with William Cornick constituted his personal data and that it would be unfair to disclose them.
15. The Commissioner has considered the withheld information. He is satisfied that it constitutes information which falls within the definition of 'personal data' as set out in section (1) of the DPA as the information comprises personal data relating to William Cornick and other individuals.

Is the information sensitive personal data?

16. Sensitive personal data is defined in section 2 of the DPA. It is personal information which falls into one of the categories set out in section 2 of the DPA. Of relevance in this case is that section 2 relates to personal data consisting of information as to:
 - (g) the commission or alleged commission by him of any offence, or*
 - (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.*
17. The Commissioner is satisfied that the withheld information in its entirety is sensitive personal data. This is because it relates to William Cornick, who committed an offence which led to his conviction and others who were identified in the police interviews.
18. In light of this finding Commissioner will go on to consider whether disclosure of William Cornick's personal data would breach one of the data protection principles.
19. He will also consider whether disclosure of the personal data of the other third parties would breach the data protection principles.

Would disclosure breach one of the data protection principles?

20. WYP told the complainant that it considered that disclosure of the requested information would contravene the first data protection principle. The Commissioner agrees that the first data protection principle is relevant in this case.

Would disclosure contravene the first data protection principle?

21. The first principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".

22. 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 fair, lawful and would meet one of the DPA Schedule 2 conditions and, in this case, one of the Schedule 3 conditions for sensitive personal data. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

23. When considering whether disclosure of personal information is fair, the Commissioner takes into account the following factors:
- the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
24. Under the first principle, the disclosure of the information must be fair to the data subject. Assessing fairness involves balancing the data subject's rights and freedoms against the legitimate interest in disclosure to the public.

25. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.

Has the data subject consented to the disclosure?

26. The Commissioner is not aware of anything to suggest that consent has been given for disclosure of the requested information by any party concerned.

Has the data subject actively put some or all of the requested information into the public domain?

27. Where the data subject has put some or all of the requested information into the public domain, the Commissioner considers that this weakens the argument that disclosure would be unfair.
28. In this case the Commissioner has not seen any evidence that any of the data subjects have actively put some or all of the requested information into the public domain.

Reasonable expectations

29. In order to reach a view on whether the disclosure of this information would be fair in this case, the Commissioner has placed specific emphasis on the nature of the information itself.
30. The requested information, if disclosed, would reveal information about William Cornick and other pupils, teachers and family members. The Commissioner does not accept that disclosing this information would be fair and considers that it would be very likely to cause distress to the individuals involved or have an unfair impact on them.
31. The Commissioner notes the complainant's point about police interviews being read out in open court. This did not happen in this case as William Cornick pleaded guilty. However, even if it had, the Commissioner considers that although they would have formed part of a 'public trial', this is a necessary part of the court process. The Commissioner considers that this is an entirely different situation to the disclosure of sensitive personal information into the public domain via the FOIA after a court case has ended. At the time of the request the Commissioner finds that none of the data subjects, including William Cornick, had a reasonable expectation of disclosure. During a trial the need for open justice would have created a different expectation.

32. The Commissioner also notes the complainant's comments about interviews tapes being disclosed previously, including interview transcripts of Cyril Smith. WYP explained that it understood that there had only been one previous instance of an interview transcript being disclosed under the FOIA and that was a transcript of an interview with Jimmy Saville. WYP explained that this had been disclosed because of the overwhelming public interest in a man who had been a public figure and because of the failings of the police service in that instance. WYP went on to explain that Jimmy Saville had been able to abuse many victims over a number of years and this had been left mainly unchallenged.
33. WYP explained that when making a comparison with the William Cornick case, there was no requirement to understand whether the police had asked relevant questions, as he had admitted to the murder of a school teacher. It was also highly publicised that he had told school friends of his intentions and that the murder was clearly premeditated. WYP also pointed out that it had not known about this prior to the murder and that it had not been criticised for its handling of the case. The Commissioner accepts that the context of this case does not create a pressing need to understand the actions of the police.

Consequences of disclosure

34. In looking at the consequences of disclosure on the data subjects, the Commissioner has considered what they might be.
35. WYP explained that it considered that disclosure of the information would have a significant impact on others involved. For example some of these persons were school children who will have to live with the fact that they did not raise concerns about William Cornick's comments with anyone. Disclosure of this information into the public domain would therefore be likely to cause further distress to those individuals and could also lead to repercussions specifically targeted at them for not raising the alarm about what he intended to do. Disclosure of the information about these third parties could clearly have very detrimental consequences.
36. The consequences for William Cornick would be to re-open a matter for which he has pleaded guilty and has been sentenced for.

Conclusion

37. The Commissioner considers that there is some legitimate public interest in the disclosure of the requested information, especially as the murder was committed in a school by a student who was 15 years old. However, the Commissioner considers that there is already a large amount of

information in the public domain and this meets the public interest. The legitimate public interest is not pressing in terms of understanding the actions of the police and the process of bringing William Cornick to justice has completed.

38. The Commissioner notes that the requested information is considered to be 'sensitive' personal data in terms of William Cornick. Disclosure of sensitive personal data must have justification, whatever the circumstances of the individual. It is clearly possible for the disclosure of sensitive personal data to be fair. Individuals who have been charged or convicted of crimes will often have to expect disclosure of some information about them and their actions, particularly during the judicial process and sometimes after it. However, in the circumstances of this case the Commissioner accepts that it would be unfair to disclose the information requested, in terms of it being William Cornick's personal data and would contravene the first data protection principle.
39. The Commissioner also finds that it would clearly be unfair to the other individuals concerned to disclose the withheld information related to them and to do so would contravene the first principle.
40. He has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 DPA conditions is met.
41. The Commissioner considers that the section 40(2) exemption is engaged and will therefore not consider the other exemptions cited.
42. The Commissioner notes that the complainant has pointed to the Data Protection (Processing of Sensitive Personal Data) Order 2000 (the Order) as an authority for the disclosure of sensitive personal data. This Order provides that in some circumstances, sensitive personal data can be disclosed. The complainant argued that because he was a journalist, the sensitive personal data in this case should be disclosed to him. The Commissioner has not considered this condition as he has found the disclosure to be unfair and would breach the first principle. This is in contrast to the judgment of the First-tier Tribunal in the case of Wall, cited by the complainant; where the Tribunal found that disclosure would be fair and then went on to consider the Order. The Commissioner also reserves his position as to whether the Order is relevant to any disclosure under FOIA.

Right of appeal

43. 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

44. 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.
45. 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

Steve Wood
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