

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2016

Public Authority: Chief Constable of West Midlands Police

Address: Police Headquarters
Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant has requested information about a police car driven by a police officer who apprehended him for allegedly speeding. West Midlands Police ("the Constabulary") disclosed some information about the car driven by the officer named in the request, but refused to confirm or deny whether it held any further information, citing the exemption at section 40(5) (personal data).
2. The Commissioner's decision is that the Constabulary was entitled to rely on section 40(5) to neither confirm nor deny whether it held the remainder of the requested information. However, by failing to issue a response within the statutory 20 working day timescale, the Constabulary breached section 10(1). The Commissioner does not require it to take any steps.

Request and response

3. On 4 April 2015, the complainant wrote to the Constabulary and requested information in the following terms:

"Something I forgot to ask in previous emails..."

The Car [police officer] was driving on 4/4/15 accompanied by [police officer].

Can you confirm the following – What was:

- a) *The registration number of the car*
 - b) *Vehicle make*
 - c) *Vehicle Model*
 - d) *The Wheel Size on the car (IE: 16x6J).*
 - e) *The Tyre size of the wheels on the car.*
 - f) *Please confirm the tread depth of the tyres on the car. Please confirm the depth at the two safety inspections either side of my stop (I believe that [police officer] should confirm the safety of the vehicle at the beginning of each shift? Inc tyre depths etc?*
 - g) *At what date were the tyres last changed on the vehicle in question.*
 - h) *Please provide the two safety inspections from the Police Vehicle either side of my stop ([complainant's car registration number]) on 4/4/15.*
 - i) *Also, as the police claim to have witnessed me speeding, I would also expect confirmation of the make and model of the device used to capture my speed. I expect providing with a certification that the device was in full working order duly certified and inspected as required. And that the operator of such a device was also duly certified and fully trained in the operation of such device."*
4. The Constabulary initially dealt with the correspondence as a request for disclosure under the Criminal Justice Act 2003. The complainant challenged this, and on 10 June 2015 the Constabulary issued a partial refusal notice under the FOIA. It refused to confirm or deny whether it held any information which constituted the complainant's personal data (points f), h) and i) of the request), citing the exemption at section 40(1) of the FOIA.
 5. However, it disclosed information about the car that was being driven by the named officer on the date specified in the request (points a), b), c), d), e) and g) of the request).
 6. While this response constituted a partial refusal notice under the FOIA, the Constabulary informed the complainant that its response constituted

an internal review, and it directed him to complain straight to the Commissioner if he was dissatisfied with it.

7. On 22 August 2015 the complainant asked the Constabulary to conduct an internal review of its decision. The Constabulary responded on 15 September 2015 and reiterated that its response of 10 June 2015 constituted an internal review. It said that the complainant should direct any further concerns to the Commissioner.

Scope of the case

8. The complainant contacted the Commissioner on 15 September 2015 to complain about the way his request for information had been handled.
9. During the investigation the Constabulary withdrew its application of section 40(1) and substituted instead section 40(5)(a). Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
10. Therefore the scope of this decision notice is the Constabulary's application of section 40(5)(a) to neither confirm nor deny whether it held the information requested at f), h) and i) of the complainant's request.

Reasons for decision

Section 40 – personal information

11. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA (confirming whether or not the requested information is held) in relation to information which, if held by the public authority, would be exempt information by virtue of subsection 40(1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
12. Section 40(1) of FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".

13. The Data Protection Act 1998 ("the DPA") defines personal data as:

"...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."

14. For information to constitute someone's personal data, it must 'relate' to a living person and that person must be identifiable. Information will relate to a person 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.
15. The complainant requested technical information about the police car used to apprehend him for allegedly speeding. He considered the tyres of the police car to be defective and believed that this might have affected the Constabulary's reading of his speed.
16. The Constabulary explained that it interpreted the request as being for two distinct types of information: objective information about the police car driven by a named police officer on a specified day (which it disclosed); and information which related to an allegation of speeding against the complainant. It considered that the latter information, if held, could only be located by reference to an incident involving the complainant and that it therefore constituted his personal data.
17. Having considered the wording of parts f), h) and i) of the request, the Commissioner is satisfied that the complainant is, or would be, the subject of this requested information. This is because the information he has requested in those parts is, by its own definition, about or connected to the complainant.
18. It follows that the Commissioner considers that the complainant is the data subject of the information within the meaning of the absolute exemption at section 40(1).
19. In relation to such information, the provisions of section 40(5)(a) mean that a public authority is not required to comply with the duty to confirm or deny whether it holds the information, as the duty to confirm or deny does not arise in relation to information which is (or, if it were held by the public authority, would be) exempt information by virtue of subsection (1).

20. The Commissioner is satisfied that confirming or denying whether it holds any information under the terms of the FOIA means that the Constabulary would be confirming, to the world at large, whether it holds information about an allegation of a speeding offence against the complainant. He therefore considers that the section 40(5)(a) exemption is engaged and that the Constabulary was entitled to rely on it to neither confirm nor deny holding the complainant's personal information.

Section 10

21. Section 10(1) of the FOIA states that public authorities must comply with section 1(1) promptly, and within 20 working days of receiving a request.
22. In this case, the complainant submitted his request on 4 April 2015 and the Constabulary did not respond until 10 June 2015, which is well outside of the 20 working day time for compliance. The Constabulary therefore breached section 10(1) of the FOIA.

Other matters

23. The Commissioner notes that there was an exchange of correspondence between the complainant and the Constabulary after he submitted the request and prior to it issuing its partial refusal on 10 June 2015. This appears to have led the Constabulary to regard its initial response under the FOIA as being an internal review. The effect of this was that the request was referred to the ICO for investigation without any reconsideration by the Constabulary of its handling of the request, to see whether it might have been dealt with differently.
24. While in this case the failure to conduct an internal review did not materially alter the outcome of the request, the Commissioner would remind public authorities that it is good practice (and recommended in the code of practice at section 45 of the FOIA) that where an individual expresses dissatisfaction with the outcome of a request, the public authority should conduct an internal review. Doing so may present an opportunity for the requester and the public authority to informally resolve the complainant's concerns without it being necessary to involve the Information Commissioner.

Right of appeal

25. 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

26. 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.
27. 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

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