Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 April 2016

Public Authority: Independent Police Complaints Commission
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant requested information relating to a murder case. The Independent Police Complaints Commission (IPCC) disclosed some of the requested information, but withheld the remainder under the exemption provided by section 40(2) (personal information) of the FOIA.

2. The Commissioner's decision is that section 40(2) was cited correctly in relation to some of the withheld content, but that the remainder of the withheld content was not exempt. The IPCC is now required to disclose the non-exempt content.

3. The Commissioner requires the IPCC to take the following steps to ensure compliance with the legislation.

    - Disclose the non-exempt information, which is specified in an annex supplied to the IPCC with this notice.

4. The IPCC must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 14 October 2015 the complainant wrote to the IPCC and requested information in the following terms:

"Please provide copies of all referrals relating to the Georgia Williams case;

Please provide copies of all assessments carried out by the IPCC into the referrals;

Please provide copies of all assessments of the Devon and Cornwall Police report into the case. This includes copies of all decisions made by the IPCC following the D&C report."

6. The IPCC responded on 10 November 2015. Some of the requested information was disclosed, with the remainder withheld under the exemption provided by section 40(2) (personal information) of the FOIA. The IPCC also referred to section 21 (information accessible by other means) and stated that some information relevant to the request was available in the *"Jamie Reynolds Serious Case Review"*[1].

7. The complainant responded on 11 November 2015 and requested an internal review. The IPCC responded with the outcome of the review on 25 January 2016. The conclusion of this was that the part refusal of the request under section 40(2) was upheld.

Scope of the case

8. The complainant contacted the Commissioner initially on 14 January 2016 to complain about the failure at that stage of the IPCC to respond with the outcome of the internal review. The ICO contacted the IPCC to ensure that it replied promptly with the review outcome.

9. Following the outcome of the review, the complainant contacted the ICO again on 25 January 2016 to complain about the part refusal of his information request. The complainant indicated that he did not agree that any of the information he had requested should have been withheld.

10. During the investigation of this case, the IPCC confirmed that, whilst it had referred to section 21 of the FOIA in the refusal notice, it was not relying on that exemption and cited only section 40(2) in relation to the withheld content.

[1] http://www.telfordsafeguardingboard.org.uk/lscb/downloads/download/32/

Reasons for decision

Section 40

11. The IPCC cited section 40(2), which provides an exemption for information that is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process. First, the information must constitute the personal data of a third party and, secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.

12. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

> *"'personal data' means 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"*.

13. The withheld information consists of several documents headed *"IPCC – Referral Form"*. Included within the referral forms is information that clearly both identifies and relates to individuals other than the complainant. That information is, therefore, the personal data of those individuals according to section 1(1) of the DPA.

14. However, other information that has been redacted is not the personal data of any individual. This information is telephone numbers, fax numbers and email addresses for West Mercia Police and the IPCC. This information relates to West Mercia Police or the IPCC and does not identify any individual. It is not, therefore, the personal data of any individual and so section 40(2) does not apply to it. This information and other information in relation to which the Commissioner has found that section 40(2) does not apply is identified in an annex provided to the IPCC with this notice. At paragraph 3 above, the IPCC is required to disclose the information identified in that annex.

15. The next step is to consider whether disclosure of the redacted content that does constitute 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, and in particular on whether disclosure would be, in general, fair.

16. In forming a conclusion on this point, the Commissioner has taken into account what the reasonable expectations of the data subjects would be, as well as any consequences that disclosure may have for them. He has also considered whether there is any legitimate public interest in the disclosure of this information.

17. On the issue of the expectations of the data subjects, of significance here is that some of the information constitutes *sensitive* personal data as defined in section 2 of the DPA. The view of the Commissioner is that typically a data subject will hold a strong expectation of confidentiality in relation to information that is sensitive personal data.

18. In relation to the information in question that does not constitute sensitive personal data, the view of the Commissioner is that, due to the nature of this information, some of the data subjects would also hold a strong expectation that this information would not be disclosed.

19. However, in relation to other data subjects, specifically those who are named within this information solely in relation to their professional capacity and the performance of whose roles is not covered in the redacted content, the Commissioner does not accept that these individuals could reasonably hold a strong expectation of confidence. These individuals are police officers or IPCC staff members.

20. On the issue of the consequences of disclosure upon the data subjects, in relation to the individuals where the Commissioner has found that they would hold a strong expectation of confidentiality, it follows from this that disclosure counter to that expectation would be distressing to those data subjects. For those individuals in relation to whom the Commissioner does not believe there would be a strong expectation of non-disclosure, he does not believe that disclosure would be of any notable consequence.

21. Turning to whether there would be any legitimate public interest in the disclosure of this information, whilst section 40(2) is not a qualified exemption in the same way as some of the other exemptions in Part II of the FOIA, it is necessary for there to be a public interest element for disclosure to be compliant with the first principle. The question here is whether any legitimate public interest in disclosure outweighs the factors against disclosure covered above.

22. The view of the Commissioner is that there is legitimate public interest in the disclosure of this information owing to its subject matter – it concerns whether police failed to take steps that could have prevented a

murder. However, the Commissioner believes that there is also a strong public interest in the IPCC being able to preserve confidentiality in some areas, particularly in relation to personal data in some circumstances. In relation to the information where the Commissioner has stated above that he believes the data subjects would hold a strong expectation of confidentiality, the Commissioner does not believe that there is a legitimate public interest in favour of disclosure that outweighs the factors against disclosure covered above.

23. In relation to this content, which is all the information that the Commissioner finds is personal data and which does not only relate to its subject in their professional capacity without relevance to how they performed in that capacity, the Commissioner's conclusion is that the exemption provided by section 40(2) of the FOIA is engaged. The IPCC was not, therefore, obliged to disclose that information.

24. Turning to the remainder of the withheld information, which concerns the data subjects solely in their professional capacities and without relevance to their performance in those capacities, the Commissioner's view is that the public interest in preserving confidentiality does not apply. In relation to that content, therefore, the legitimate public interest in disclosure mentioned above is not outweighed.

25. For disclosure to be in line with the first data protection principle, disclosure must be *necessary* in order for the legitimate interests identified above to be satisfied. This is required by Schedule 2 Condition 6 of the DPA. The Commissioner's published guidance[2] on this matter states that disclosure should be necessary in order to satisfy a pressing social need. It also states that:

> *"…the general need for transparency regarding public bodies may constitute a sufficiently 'pressing social need'".*

26. In this case, as well as the general need for transparency, the Commissioner is of the view that there is a specific need for transparency in relation to this information for the same reasons as referred to previously when covering the public interest.

27. A second issue that must be addressed when considering necessity is whether the information may already be available elsewhere. In this

[2] https://ico.org.uk/media/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf

case the Commissioner relies on the refusal of the IPCC to disclose the information as evidence that it is not available elsewhere.

28. For the first data protection principle to be satisfied, disclosure must be lawful, as well as fair. The approach of the Commissioner to the issue of lawfulness under the first data protection principle is that he will find that disclosure would be lawful unless the public authority has advanced convincing arguments as to why disclosure would be unlawful. In this case the IPCC has advanced no arguments on the issue of lawfulness and the Commissioner has no reason to believe that disclosure would not be lawful.

29. The Commissioner has found that disclosure of the information in question would be both fair and lawful and, therefore, would satisfy the first data protection principle. As there would be no breach of the first data protection principle through the disclosure of this information, the overall conclusion of the Commissioner is that the exemption provided by section 40(2) is not engaged. At paragraph 3 above the IPCC is now required to disclose the content that is identified in the annex provided to it with this notice.

Right of appeal

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

31. 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.

32. 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 ……

Ben Tomes
Senior Case Officer
Information Commissioner's Office
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