

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 June 2016

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

#### Decision (including any steps ordered)

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1. The complainant requested a copy of a report into the way Wiltshire Police dealt with complaints about the handling of sexual abuse allegations. The Independent Police Complaints Commission (IPCC) refused to disclose this information and relied on the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the IPCC cited section 40(2) correctly in relation to the majority of the content of the report. However, he also finds that, by redacting names, some of the content of the report is rendered not personal data of any individual and so section 40(2) is not engaged in relation to that content. The IPCC is now required to disclose that content, with the names of individuals redacted.
3. The Commissioner requires the IPCC to take the following steps to ensure compliance with the legislation.
  - Disclose the content from the report specified at paragraph 31 below, with the names of individuals redacted.
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

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5. On 17 September 2015, following a press release by the IPCC<sup>1</sup>, the complainant wrote to the IPCC and requested information in the following terms:

*"Please provide a copy of the full report into the way Wiltshire Police dealt with complaints about the handling of sexual abuse allegations. The IPCC announced today it had found failings in the way the force handled such allegations."*

6. The IPCC responded on 2 October 2015. It refused the request and cited the exemption provided by section 40(2) (personal information) of the FOIA.
7. The complainant requested an internal review and the IPCC responded with the outcome of the review on 3 December 2015. The conclusion of the review was that the refusal of the request was upheld, with the exemption provided by section 31(1)(b) (prejudice to the apprehension or prosecution of offenders) of the FOIA now cited, as well as section 40(2).

## Scope of the case

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8. The complainant contacted the Commissioner on 20 January 2016 to complain about the refusal of his information request. The complainant indicated that he did not agree with the reasoning of the IPCC for the refusal of his request.
9. In correspondence with the ICO, the IPCC withdrew the citing of section 31(1)(b) and reverted to relying only on section 40(2).

## Reasons for decision

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### Section 40

10. The IPCC cited section 40(2). This provides an exemption from the duty to disclose in relation to information that constitutes the personal data
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<sup>1</sup> <http://www.ipcc.gov.uk/news/ipcc-identifies-failings-wiltshire-police-complaints-handling>

of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of section 40(2) involves two steps: first, whether the information within the scope of the request constitutes personal data, and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

11. On the issue of whether the information within the scope of the request constitutes the personal data of an individual other than the requester, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (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”.*

12. The information identified by the IPCC consists of a report about how Wiltshire Police dealt with complaints about its handling of sexual abuse allegations. The report, which the Commissioner has had sight of as part of his investigation, makes clear that those allegations related to a specific individual who was convicted of multiple offences. This report is not about the handling of sexual abuse allegations in general by Wiltshire Police.
13. The case made by the IPCC is that this report is the personal data of the perpetrator of the offences and the police officers whose actions are covered in the report. This report clearly identifies all of these individuals and so that aspect of section 1(1) of the DPA is satisfied. In relation to all of those individuals, parts of the report also clearly relate to them. Therefore, the report contains the personal data of the perpetrator and police officers according to the definition in section 1(1) of the DPA.
14. 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. The Commissioner has considered the perpetrator and the police officers separately.

## The perpetrator

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 by the data subject of an offence. The personal data in question here is, therefore, sensitive.
16. 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. Generally when considering this exemption the Commissioner will focus primarily on the general fairness requirement. When considering sensitive personal data the particular issue of whether a DPA Schedule 3 condition could be satisfied must also be covered.
17. Covering first whether disclosure would be fair, the Commissioner's view is that cases where it would be 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 for it to be disclosed.
18. In this case many would argue that the data subject has been convicted of multiple serious offences and, given that fact, can have no reasonable expectation of non-disclosure of their personal data relating to those offences. However, even if the Commissioner found that disclosure would be generally fair, this would not impact on the outcome of the complaint if he found that no Schedule 3 condition could be satisfied. Given this, he has proceeded on the basis that he accepts that in the circumstances of this case disclosure could reasonably be considered to be fair, and he has gone on to consider the applicability of the Schedule 3 DPA conditions.
19. The Commissioner's general view is that the two conditions in Schedule 3 that might apply in relation to disclosures made under the FOIA are the first condition, which is that the data subject has consented to disclosure, and the fifth condition, which is that the data subject has already deliberately made the personal data public.
20. The Commissioner is aware of no evidence that either the first or fifth condition is met and so, in conclusion, the Commissioner can see no grounds for finding that a Schedule 3 condition could be satisfied. Therefore, disclosure of this sensitive personal data would be in breach of the first data protection principle. The finding of the Commissioner is, therefore, that the exemption provided by section 40(2) is engaged and

that the IPCC was not obliged to disclose the content from the report that is the personal data of that individual.

### **The police officers**

21. Covering first the expectations of these data subjects, the IPCC concluded that three officers had a misconduct case to answer. Of these three officers, two went through misconduct proceedings, in which one was fully exonerated and the other partly exonerated. The third officer retired before the commencement of misconduct proceedings.
22. The Commissioner considers this relevant to the expectations of these individuals about their personal data. Had any of these individuals been found, or found in relation to all charges, culpable of misconduct, it could have been argued that they could not hold a strong expectation that this information should not be disclosed. In the event, his view is that these individuals could hold at least some reasonable expectation that their personal data would not be disclosed.
23. The level of expectation of privacy that these individuals could hold would vary. The officer that was fully exonerated of misconduct could legitimately hold the strongest expectation of non-disclosure. That individual was not found to be at fault and could reasonably expect that information about allegations from which they were cleared would not be disclosed into the public domain. The officer who was partly cleared could hold a similar expectation in relation to the charges that were not upheld, but could hold at most a lesser expectation in relation to information relating to the charges that were upheld.
24. The third individual is the officer who retired prior to misconduct proceedings and who was also at a very senior level. An argument could be made that this individual should hold at least some expectation of disclosure due to the seniority of the position they held and the wider controversy over police officers avoiding misconduct charges by retiring before facing charges.
25. As to what impact disclosure may have on these individuals, it follows that, where those individuals hold a strong expectation that their personal data would not be disclosed, disclosure counter to that expectation would be distressing to them. In line with his comments above about the level of expectation of non-disclosure, it follows from this that disclosure would be most distressing where the level of expectation of confidentiality is strongest.
26. Were the Commissioner to make a decision solely on the basis of the level of expectation that these individuals hold that their personal data will not be disclosed, he may have concluded that at least some of this

personal data could be disclosed. However, in order for disclosure to be compliant with the first data protection principle, there must be a public interest element in disclosure. The question is whether any legitimate public interest that there is in disclosure would outweigh the arguments against disclosure covered above.

27. The Commissioner recognises that there is public interest in this report on the basis of its subject matter; it concerns possible failings in the police investigation of a child abuser. However, taking into account that this public interest would be at least partly satisfied by disclosure of the information that he has found below must be disclosed, he does not believe that it is necessary for this personal data to be disclosed into the public domain.
28. His conclusion in relation to the information that is the personal data of police officers is, therefore, that disclosure of this information would be unfair and in breach of the first data protection principle. This means that section 40(2) was engaged in relation to this information and so the IPCC was not obliged to disclose it.

### **Anonymisation**

29. In relation to some of the content of the report, the Commissioner's view is that this could be effectively anonymised so that it would not constitute personal data and section 40(2) would not apply to it. Whilst the IPCC may argue that anonymisation would not be effective in relation to the perpetrator of the crimes as the complainant and others would be aware that the disclosed content was from a report relating to his crimes, the Commissioner's view is that the sections he has ordered disclosure of do not have the perpetrator as their focus. Instead the focus is on the investigations by the police and by the IPCC and, therefore, that content is not the personal data of the perpetrator.
30. In its correspondence with the ICO, the IPCC referred to the concerns of the individuals who had lodged the complaint about the police investigation with the IPCC. It stated that they strongly opposed any disclosure that could lead to the identification of them or their children. The Commissioner agrees that disclosure of information that would lead to identification of those individuals should not take place and is satisfied that the content of the information he has ordered disclosed will not lead to the identification of those individuals.
31. In relation to the contents specified below, the view of the Commissioner is that, following anonymisation, this information would not constitute personal data and so section 40(2) is not engaged in relation to it. At paragraph 3 above, the IPCC is now required to disclose the following contents, with the names of individuals redacted:

Reference: FS50613242

Contents list and paragraphs 1 to 24, 56 to 86, 201 to 207, 470 to 487 and 520.

## Right of appeal

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32. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

33. 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.
34. 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** .....

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**