

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2017

Public Authority: Chief Constable West Midlands Police
Address: PO Box 52
Colmore Circus
Queensway
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant requested information relating to an alleged assault in which he was involved. West Midlands Police refused to confirm or deny holding the requested information citing section 40(5) of the FOIA (personal information).
2. The Commissioner's decision is that the section 40(5)(a) exemption is engaged.
3. The Commissioner does not require West Midlands Police to take any steps as a result of this decision.

Request and response

4. On 20 June 2016, the complainant wrote to West Midlands Police and requested information under the FOIA in relation to an assault on himself in September 2015:

"...the full name and addresses of, and alias/es of Jake who assaulted myself on the above date [13 September 2015]

... copies of my statements made by myself, and those married to the case file above [Crime number provided]

And, also the statement made to West Midlands Police, by Jake to Detective [name redacted] who assaulted [sic]".

5. West Midlands Police responded on 27 June 2016, refusing to confirm or deny that it held information within the scope of the request.
6. Following an internal review West Midlands Police wrote to the complainant on 12 July 2016 upholding that view.

Scope of the case

7. The complainant provided the Commissioner with the relevant documentation on 7 November 2016 to complain about the way his request for information had been handled.
8. He disputed West Midlands Police's response to his request, telling the Commissioner that he had a crime number to confirm the assault.
9. 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 while 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.
10. During the course of the Commissioner's investigation, West Midlands Police confirmed that it considered section 40(5)(a) of the FOIA applied because the requested information, if held, would constitute the complainant's personal data.
11. The analysis below considers West Midland Police's application of section 40(5) of the FOIA to the requested information.

Reasons for decision

12. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the 'duty to confirm or deny'. However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.

Section 40 personal information

13. The exemption at section 40(5) of the FOIA provides that a public authority does not have to confirm or deny whether requested

information is held if to do so would constitute a disclosure of personal data.

14. Section 40(5)(a) provides that the duty to confirm or deny does not arise in relation to information that falls, or would fall if it were held, within the scope of section 40(1) of the FOIA. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA.
15. Section 40(1) of the FOIA is an absolute exemption, meaning that if it applies there is no requirement to go on to consider whether disclosure would nevertheless be in the public interest.
16. In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under the FOIA. This is because individuals may request their personal data under a separate legislative access regime, namely the right of subject access under section 7 of the Data Protection Act 1998 (DPA).

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

17. Section 1(1) of the DPA defines personal information 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 likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual".

18. The two main elements of personal data are that the information must 'relate' to a living person and that the 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.
19. In this case, the requested information related to an alleged assault on the complainant.
20. In its submission to the Commissioner, West Midlands Police told her that, if any data were held, it would be regarding an allegation of assault with the requester as victim. It explained:

"Therefore, although the request itself contains a request for third party personal data, to approach that aspect of the request we

would have to confirm or deny that the requester had been the victim of a crime (or not)".

21. The Commissioner has issued guidance on requests involving personal data of both the requester and others¹. That guidance states:

"In cases where the requested information comprises the personal data of more than one individual, all the individuals are to be regarded as data subjects for the purposes of section 40 [FOIA] and regulations 5(3) and 13 [EIR]. Where one of these individuals is the requester, it will be necessary to consider the extent to which the information is the personal data of the requester and so falls within section 40(1) or regulation 5(3). It is also necessary to consider whether the personal data of all the data subjects is inextricably linked or whether it can be clearly differentiated".

22. The Commissioner's guidance also states:

"In circumstances where the personal data of the applicant is very closely linked to the personal data of other data subjects, there is no requirement to assess the relative extent and/or significance of the different sets of personal data in order to establish the 'dominant' data subject. This is because there is no basis for regarding the individual whose data is more extensive or significant than the others as being the only data subject".

23. The Commissioner considers that the complainant is a data subject within the meaning of the section 40(1) FOIA exemption.
24. In relation to such information, the provisions of section 40(5) mean that the public authority is not required to comply with the duty to confirm or deny that the information is held, 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).
25. The Commissioner must decide whether confirmation or denial that the requested information is held should be in the public domain. The Commissioner recognises that the complainant has personal reasons for making his request. However, disclosure under the FOIA is a disclosure to the world at large.

¹ <https://ico.org.uk/media/for-organisations/documents/1209/personal-data-of-both-the-requester-and-others-foi-eir.pdf>

26. In this case, the Commissioner is satisfied that even confirming whether it holds any information under the terms of the FOIA means that West Midlands Police would be confirming, to the world at large, whether or not it holds relevant information involving an assault on this complainant. She therefore considers that the section 40(5) exemption was relied upon correctly by West Midlands Police in this case.

Other matters

27. In the Commissioner's view, this decision will not disadvantage the applicant. She considers that an applicant wishing to access their own personal data will still be able to pursue this right under the DPA.
28. Furthermore, she considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act.
29. In this respect, she is satisfied that the West Midlands Police advised the complainant in its internal review correspondence:

"The most appropriate way to request personal information is to complete a Data Protection Subject Access request. I have provided a useful link on the most appropriate way to gain access to information from West Midlands Police. This link also provides guidance in relation to civil proceedings, as you mentioned a court case within your request".

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: 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF