Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2017

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

Decision (including any steps ordered)

1. The complainant has requested information about a recent promotion to Chief Inspector campaign from West Midlands Police ("WMP"). WMP provided most of the information but refused the name of a police force on the basis that it was personal information and therefore exempt by virtue of section 40(2) (personal information) of the FOIA. The Commissioner's decision is that the WMP has incorrectly applied the exemption for personal data at section 40(2) of the FOIA as the withheld information is sufficiently anonymised to take it out of the definition of personal data. She therefore requires WMP to take the following steps to ensure compliance with the legislation:

    - disclose the information withheld under section 40(2).

2. WMP 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 Act and may be dealt with as a contempt of court.

Request and response

3. On 22 January 2017 the complainant wrote to WMP and requested information in the following terms:

"With reference to the recent Inspector to Chief Inspector promotion process run by West Midlands Police (Autumn 2016). Please can you provide details of:

1) The number of internal candidates who made an application.

2) The number of external candidates who made an application (external candidates are those from other forces and please list which forces these candidates were from and how many candidates from each force respectively)

3) The number of internal candidates who were invited to interview

4) The number of external candidates who were invited to interview (external candidates are those from other forces and please list which forces these candidates were from and how many candidates from each force respectively)

5) The number of internal candidates who passed interview and were offered a position of Chief Inspector

6) The number of external candidates who passed interview and were offered a position of Chief Inspector (external candidates are those from other forces and please list which forces these candidates were from and how many candidates from each force respectively)".

4. WMP responded on 14 February 2017. It provided most of the information but refused to provide some at parts (4) and (6). It cited section 40(2) (personal information) of the FOIA as its reason for doing so.

5. Following an internal review WMP wrote to the complainant on 13 March 2017. It maintained its position.

6. During the Commissioner's investigation some further information was disclosed to the complainant. This meant that all the requested information had been provided except for the force of an unsuccessful candidate.

Scope of the case

7. The complainant contacted the Commissioner on 18 March 2017 to complain about the way his request for information had been handled. He asked the Commissioner to consider the citing of section 40 of the

FOIA as he did not agree that any individual would be identifiable from disclosure of the requested information.

8. Following the further disclosure during the course of this investigation the Commissioner contacted the complainant again. He confirmed that he still wished her to consider the withholding of the remaining information, reiterating that he did not think that disclosure of the information would enable anyone to be identified. He also advised the Commissioner that full disclosure of comparable information had been provided to him by two other police forces.

9. The Commissioner will consider the citing of section 40(2) below.

Reasons for decision

Section 40 – personal information

10. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data 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.

11. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 1998 (the 'DPA'). If it is not personal data then section 40 cannot apply.

12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that WMP considers that disclosure would breach the first data protection principle.

13. In order to rely on section 40(2) of the FOIA the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as:

> *" …data which relate to a living individual who can be identified*
> *a) From these 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. 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.

15. From the definition above, it follows that information or a combination of information, that does not relate to and identify an individual, is not personal data.

Is the information personal data?

16. The first question for the Commissioner to consider is whether the requested information is personal data as defined in section 1 of the DPA.

17. The complainant has argued:

> *"The two other forces who were subjected to the same FOI request have provided answers in full (Avon and Somerset and Cleveland).*
>
> *It would still be impossible to identify an individual from the request made as it is too bland. If further biographic detail was requested such as age, gender, field of specialization, length of service etc it might be possible to narrow down to an individual, but this level of detail wasn't requested.*
>
> *Even if there was one applicant from a small force then if that individual had kept knowledge of their application to themselves then nobody else would know they had even applied, let alone the outcome. If they had made details of their application public and even posted it on social media it would be obvious that they were unsuccessful because they would still be working in their home force and not with WMP. Either way there would be no breach of data protection principles because there is no identifiable person at the end of it unless they chose to be".*

18. The remaining withheld information consists of the name of the force of one candidate. Of the two external candidates invited to interview at part (4) of the request, only one was successful. From the disclosure made we know that he/she was of Inspector rank at that time and that he/she was from one of the forces disclosed in respect of part (2) of the request.

19. Although it was not necessary to do so, WMP advised the complainant that this candidate: *"… was unsuccessful at interview"*. WMP did not need to provide such an explanation as there may have been a different

reason for their not succeeding at the interview, for example they may have declined to attend or been unable to attend; there was no requirement to provide a reason as this was not part of the request.

20. WMP went on to advise the complainant that: *"The requested information specifically refers to a failed interview and so the information relates to the career and personal development of an individual and not to the taking up of a public facing role. The reasonable expectations of someone in such circumstances would be that their personal information would not be placed in the public domain"*. It is unfortunate that WMP put this potential barrier in the way of disclosure by disclosing information which is not part of the request.

21. In any event, the Commissioner must first decide whether or not disclosure of the force name from which the Inspector originated would allow for their reidentification. A test used by both the Commissioner and the First–tier Tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of reidentification of an individual from information which, on the face of it, appears truly anonymised.

22. The ICO's Code of Practice on Anonymisation[1] notes that:

> *"The High Court in [R (on the application of the Department of Health) v Information Commissioner [201] EWHC 1430 (Admin)] stated that the risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA".*

23. In summary, the motivated intruder test is that if the risk of identification is "*reasonably likely"* the information should be regarded as personal data.

24. The Commissioner was able to locate current statistics covering the number of officers holding the rank of Inspector, on the police.uk website[2] - she believes these figures will reasonably reflect the situation

[1] https://ico.org.uk/media/fororganisations/documents/1061/anonymisation-code.pdf

[2] https://www.police.uk/

for autumn 2016, as referred to in the request. She has ascertained the following for the relevant forces named in part (2) of the request:

Warwickshire and West Mercia = 44 and 113 respectively
West Midlands Police = 271
British Transport Police = 162
Greater Manchester Police = 296
Dyfed Powys Police = 68
Leicestershire Police = 77
Thames Valley Police= 183

25. The information requested in part (2) of the request also refers to the College of Policing. Data for the College of Policing was not readily available so the Commissioner contacted the College and was provided with the following helpful information. It confirmed that police officers are always there on secondment only and will be seconded from a UK force or policing organisation such as British Transport Police. In was also able to advise that, approximately a year ago, the College had 11 seconded Inspectors and 2 seconded Detective Inspectors. It also confirmed that there is no standard duration for these secondments, they would be entirely dependent on the area of work and the budget for the post.

26. It is not known whether the Inspector is male or female, nor is this a requirement of the request. Their specific role at the originating force is not known, neither is it known whether they have changed roles or moved forces since applying for the Chief Inspector post. In respect of the College of Policing, it is not known whether the Inspector was at the beginning or end of their secondment and they could be at the College from any policing body in the UK.

27. The Commissioner accepts WMP's argument that only a small percentage of these Inspectors will at any time be attempting to gain promotion to Chief Inspector. However, even where the numbers of individuals involved may be low, the Commissioner does not consider that this in itself means that the information is personal data.

28. She also notes WMP's argument that, because of the small numbers, fellow officers may be able to identify the individual in question. However, fellow officers will only be able to identify that party if they already know about their application. If this is the case then, as argued by the complainant, it can be presumed that they will also already know that the party was unsuccessful as they will have necessarily remained in post. Furthermore, in the Commissioner's view it is at least equally feasible to argue that an applicant is likely to keep a job application private, particularly when this involves moving from one force to

another. In any event, WMP has not provided any evidence to support its view.

29. The Commissioner accepts that it is not possible to know for certain whether other data is available from a variety of sources which could allow re-identification by a third party to take place. However, the level of likelihood required when considering whether an individual may be re-identified from anonymised data (and therefore whether it is actually "personal data") is that re-identification should be "reasonably likely".

30. In light of the large numbers of Inspectors involved, and the lack of any other identifying factors in the public domain which could be used to identify the party concerned, the Commissioner does not consider that it is reasonably likely that any individual could be identified from disclosure of the withheld information.

31. Consequently, she has determined that the withheld information does not constitute personal data and that the exemption in section 40(2) is not engaged.

Right of appeal

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
    Website: 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 ……

Carolyn Howes
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