

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 October 2017

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

### Decision (including any steps ordered)

---

1. The complainant has requested information relating to evidence that a named person had left their employment with the Independent Police Complaints Commission (IPCC). The IPCC provided the date of the person's last day of employment and a screenshot of the person's employment record but withheld further evidence, citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the IPCC has correctly applied this exemption.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

### Request and response

---

4. On 23 March 2017, the complainant wrote to the IPCC and requested information in the following terms:

*"I now request evidence that would substantiate, without any doubt, of what date [name redacted] left her employment with the IPCC. What would satisfy me without a doubt would be evidence, which would illustrate that she has left and once such evidence would be seen and written within the IPCC's records/ manifest, of which the IPCC can provide a snippet image of that. I also ask the IPCC to provide a second*

*and or third piece of evidence that would go on to support the one example given.*

*The aim of my request is for the IPCC to provide evidence in which would fully satisfy my request and not infringe [name redacted] Data Protection.*

*The way in which the IPCC can fulfil my request would be by way of when providing copies/a snippet image, will make sure to black out any data that could infringe [name redacted] Data Protection.*

*Seeing as I have already been told by the IPCC that [name redacted] has left the IPCC etc. and since I have already had contact with [name redacted] by phone and in correspondence, I cannot see any reason of why you cannot provide my request. Therefore, should I not receive the above, I will continue to challenge this."*

5. The IPCC responded on 18 April 2017. It stated that it could "confirm the IPCC holds the information relating to your request". The IPCC confirmed the person's last date of employment and also provided a computer screenshot of the person's online employment record.
6. On the 20 April 2017 the complainant requested an internal review as she was not satisfied that the information already provided was legitimate. The complainant said that "the image must be from an original paper document" and have [name redacted] signature.
7. Following an internal review the IPCC wrote to the complainant on 17 May 2017. It stated that they upheld the original decision. It also confirmed that the IPCC held a signed letter of contract termination but that it was unable to disclose any part of that document by virtue of section 40(2) of the FOIA.

## **Scope of the case**

---

8. The complainant contacted the Commissioner on 18 May 2017 to complain about the way her request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if the IPCC has correctly applied section 40(2) to the withheld information.

## **Reasons for decision**

---

### **Section 40(2) – third party personal data**

10. This exemption provides that any third party personal data is exempt from disclosure, if that disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1988 (DPA)

### **Is the withheld information personal data?**

11. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
12. 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, has them as its main focus or impacts on them in any way.
13. The withheld information in this case is the named person's letter of resignation from the IPCC. In the Commissioner's view it is clear that this withheld information 'relates' to a living individual who is the focus of the request and it is therefore their 'personal data'.

### **Would disclosure breach the Data Protection Principles?**

14. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, which is the most relevant one in this case, states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focussed on the issue of fairness.
15. In considering fairness the Commissioner finds it useful to balance the reasonable expectation of the individuals, the potential consequences of the disclosure and whether there is a legitimate public interest in the disclosure of the information in question.

### **Reasonable expectations**

16. In its submission to the Commissioner the IPCC stated that as the withheld information is a resignation letter it wholly constitutes the personal and private information of the former employee as it relates to the private circumstances of that individual.
17. Although the information does relate to IPCC business it does not relate to customer facing, policy, business position or public relation matters.

18. The IPCC has confirmed that the named person was not in a senior role and that the reasonable expectations of the person would be that this information was not disclosed and certainly not to the world at large.
19. The IPCC has not asked the named person whether they are willing to consent to the disclosure of their personal data as the person is no longer employed by them.

### **Consequences of disclosure**

20. Disclosure is unlikely to be fair if it would have an unjustified adverse effect on the named person.
21. The IPCC argued that *"to disclose this information may cause damage and distress to the individual involved...Although the IPCC is keen to foster openness and transparency we have to weigh this matter against the need to have good working relationship with our employees and create a safe space where employees can converse with HR in relation to matters of their contract."*
22. The Commissioner accepts that disclosure would be distressing for the named person.

### **Balancing the rights and freedoms of the individual with the legitimate interests in disclosure**

23. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a compelling interest in disclosure which would make it fair to do so.
24. The complainant's belief is that the exemption at section 40(2) does not apply in this case as the IPCC told her that the person had left and she already has in her possession the named person's signature. Therefore the complainant believes providing a letter containing the named person's signature would not breach the DPA.
25. In this case, whilst the Commissioner accepts that the information requested may be of interest to the complainant, she is not convinced that the information requested is of sufficient interest to the general public to warrant overriding the protection of third party personal data of the person concerned.

## **Conclusion**

---

26. In view of the above, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individual concerned. The Commissioner upholds the IPCC's application of the exemption provided at section 40(2) of the FOIA.

## Right of appeal

---

27. 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: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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 .....**

**Alun Johnson**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**