

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2021

Public Authority: Chief Constable of Staffordshire Police

Address: Police Headquarters

Weston Road

Stafford

ST18 0YY

Decision (including any steps ordered)

1. The complainant requested information relating to the removal of his relative's computer following their death. Staffordshire Police denied holding some information and refused to provide the remainder, citing section 38(1)(a) (health and safety) of FOIA.
2. The Commissioner's decision is that the exemption is engaged and that the public interest lies in maintaining the exemption. Therefore Staffordshire Police is entitled to rely upon section 38(1)(a) as a basis for refusing to disclose the requested information.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. On 8 March 2021, the complainant wrote to Staffordshire Police and requested information in the following terms:

"To understand why [my relatives]'s PC [personal computer] was removed from his property after he died in 2009. His next of kin were approached by the police to remove his PC and digital picture frame. I would like to understand why the PC was removed as it contained historical family photographs".

5. Staffordshire Police responded on 10 March 2021. It denied holding some of the requested information, namely the computer, confirming that it has been disposed of. Staffordshire Police refused to provide the reason for the original removal of the computer, citing section 38(1)(a) (health and safety) of FOIA.
6. Following an internal review, Staffordshire Police wrote to the complainant on 23 March 2021, confirming the application of section 38(1)(a) to the withheld information – the reason for removing the computer. It also confirmed that neither the computer, nor its contents, are held and additionally clarified that Staffordshire Police does not hold any information in relation to a digital picture frame.

Scope of the case

7. Following earlier correspondence, the complainant provided the Commissioner with the relevant documentation, on 19 May 2021, to support his complaint about the way his request for information had been handled.
8. In correspondence with the Commissioner he confirmed that the computer itself is not the important issue. He explained that he is seeking to understand why it was removed in the first place.
9. He disputes that Staffordshire Police is unable to provide the reason for removing the computer.
10. While it is not the Commissioner's role to broker private agreements, where possible the Commissioner prefers complaints to be resolved by informal means. In the absence of an informal resolution in this case, the Commissioner continued with his investigation.
11. During the course of the Commissioner's investigation, Staffordshire Police confirmed its application of section 38(1)(a) in this case.
12. The analysis below considers Staffordshire Police's application of section 38(1)(a) to the withheld information, namely the reason for removing the computer.

Reasons for decision

Section 38 health and safety

13. Section 38(1)(a) of FOIA states that:

"Information is exempt information if its disclosure under this Act would be likely to –

(a) Endanger the physical or mental health of any individual".

14. Section 38 provides an exemption from disclosing information if it would endanger any individual (including the applicant, the supplier of the information or anyone else). Section 38(1)(a), the limb cited in this case, focuses on endangerment to any individual's physical or mental health.
15. The Commissioner's guidance '*Section 38 - Health and Safety*'¹ states:

"The use of the phrase "any individual" in section 38 includes any specific individuals, any member of the public, or groups within society".
16. In order to satisfy the Commissioner that this exemption is engaged, the public authority must demonstrate that there is a causal link between the endangerment and disclosure of the information.
17. The public authority must also show that disclosure would, or would be likely to, have a detrimental effect on the physical or mental health of any individual. The effect cannot be trivial or insignificant. In the context of section 38, even if the risk falls short of being more probable than not, it needs to be such that there may very well be endangerment.
18. In correspondence with the complainant, Staffordshire Police told him:

"It has to be remembered that there are remaining family members and friends of [name redacted]. To release this information would have a detrimental effect on the well-being of those individuals".
19. In its submission to the Commissioner, Staffordshire Police recognised that, if the information was to be shared through FOIA, it would become available to the wider world. It argued that disclosure would be likely to endanger the mental health of relatives, friends and colleagues of the deceased.
20. It told the Commissioner:

¹ <https://ico.org.uk/for-organisations/section-38-health-and-safety/>

"SP have a duty in safeguarding the mental wellbeing of the other relatives/friends/colleagues..."

21. Staffordshire Police also argued:

"The death occurred in 2009 which is now some 12 years ago and the relatives/friends/colleagues have moved on with their lives"

The applicable interests

22. The Commissioner accepts that the actual harm which Staffordshire Police alleges would, or would be likely to, occur if the withheld information was disclosed relates to the applicable interests which the exemption is designed to protect.

The nature of the endangerment

23. The Commissioner's guidance states:

"Endangering mental health... means it must have a greater impact than causing upset and distress."

24. The Commissioner must consider if there is a causal link between the requested information and the endangerment that section 38(1)(a) is designed to protect. In order to do so, the Commissioner has reviewed the withheld information.

25. The Commissioner recognises that a public authority will not necessarily be able to provide evidence in support of a causal link, because the endangerment relates to events that have not occurred. However, there must be more than a mere assertion or belief that disclosure would lead to endangerment: there must be a logical connection between the disclosure and the endangerment in order to engage the exemption.

26. In this case, he accepts that Staffordshire Police explained that disclosure to the world at large, and re-opening bereavement issues, would be likely to have a significant detrimental effect on surviving members of family and friends.

Likelihood of endangerment

27. The Commissioner takes the view that the phrase '*would be likely to endanger*' is a lower threshold than '*would endanger*'.

28. In its correspondence with the complainant, Staffordshire Police variously cited '*would*' and '*would be likely to*'. However, in its submission to the Commissioner, it confirmed that it considers that the lower threshold of endangerment - '*would be likely to*' - applies.

Is the exemption engaged?

29. The Commissioner cannot give an expert opinion on whether disclosure of the information would be likely to endanger the physical or mental health of the applicant or any other individual.
30. However, he recognises that re-opening matters, by way of disclosure of information to the world at large, has the potential to endanger the wellbeing of those who have suffered a bereavement, even if this happened some time ago.
31. Having considered the submissions provided by Staffordshire Police, and the likely consequences of the disclosure of this information into the public domain, the Commissioner is satisfied that Staffordshire Police has demonstrated the extent of distress necessary to engage section 38(1)(a).
32. Having concluded that section 38(1)(a) is engaged, and satisfied that the lower level of 'would be likely to endanger' has been demonstrated, the Commissioner has gone on to consider the balance of the public interest.

The public interest test

33. The public interest test involves identifying the appropriate public interests and assessing the extent to which they are served by disclosure or by maintaining an exemption.
34. The Commissioner recognises that the complainant has a specific interest in the requested information. He also recognises that the complainant told Staffordshire Police that, if disclosed, he would not pass the information on if he believed it is detrimental to health.
35. The Commissioner's guidance on the public interest test² addresses the question of the private interests of the requester. It recognises that the requester's private interests are not in themselves relevant to the public interest test and that there would only be a public interest argument if it could be shown that there is a wider public interest that would be served by disclosing the information.

² https://ico.org.uk/media/for-organisations/documents/1183/the_public_interest_test.pdf

Public interest arguments in favour of disclosing the requested information

36. The Commissioner recognises the general public interest argument in ensuring transparency in the activities of public authorities. The Commissioner notes that transparency is a fundamental objective of FOIA and accepts that this is a factor in favour of disclosure in most cases.
37. Staffordshire Police acknowledged that disclosure in this case:

"... would show openness and transparency by Staffordshire Police".

Public interest arguments in favour of maintaining the exemption

38. In favour of maintaining the exemption, Staffordshire Police argued that the police service is charged with protecting individuals and would never divulge any information likely to have a detrimental impact on an individual's wellbeing. It argued that to do so could potentially harm its relationship with the public.
39. In its submission to the Commissioner, while recognising the complainant's personal interest in the information, Staffordshire Police argued that there is no wider public interest in the requested information being disclosed.

The balance of the public interest

40. The Commissioner will invariably place significant weight on protecting individuals from risk to their physical and mental wellbeing. The natural consequence of this is that disclosure under FOIA will only be justified where a compelling reason can be provided to support the decision.
41. Clearly in any such situation where disclosure would be likely to lead to endangerment to health, there is a public interest in avoiding that outcome.
42. In reaching a decision in this case the Commissioner must take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the world at large, without conditions. The wider public interest issues and the fairness to those parties involved must therefore be considered when deciding whether or not the information requested is suitable for disclosure.
43. He is also mindful that, although the information clearly matters to the complainant, the public interest in disclosure of this information, to the world at large, is limited.
44. The Commissioner acknowledges that, generally speaking, the public interest in maintaining an exemption will diminish over time. However,

he recognises in his guidance that this is not necessarily true in every case.

45. In this case, in weighing up the risks to the physical or mental health of an individual or group against the public interest in disclosure, the Commissioner has given greatest weight to those factors which he considers support the maintenance of the exemption.
46. In other words, he gives greater weight to avoiding endangerment to any individual's physical or mental health which, in all the circumstances of this case, he considers release would be likely to cause. It follows that the Commissioner has concluded that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.

Right of appeal

47. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

48. 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.
49. 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

Laura Tomkinson
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