

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 March 2021

Public Authority: Chief Constable of Bedfordshire Police
Address: Bedfordshire Police Headquarters
Woburn Road
Kempston
Bedford
MK43 9AX

Decision (including any steps ordered)

1. The complainant has requested a full copy of an investigation report from Bedfordshire Police (BP). BP directed him to information published about the investigation but refused to provide a copy of the full report, citing section 40(2) (Personal information) of the FOIA.
2. The Commissioner's decision is that section 40(2) is properly engaged. No steps are required.

Request and response

3. On 4 May 2020, the complainant wrote to BP and requested information in the following terms:

"Please send an electronic copy of IOPC report 2018/112181".
4. BP responded on 2 June 2020 and cited section 21 (Information accessible by other means) of the FOIA, advising that the information

was available online; it provided a link to a summary of the related investigation¹.

5. The complainant requested an internal review on 2 June 2020. When doing so he suggested:

" ... the possibility of redacting personally identifiable information from the report so as to release an anonymous version".

6. On 2 July 2020, BP provided an internal review in which it advised that the unpublished parts of the report were withheld under section 40(2) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 2 July 2020 to complain about the way his request for information had been handled. Although invited to do so, he did not provide any specific grounds of complaint. The Commissioner has therefore considered the application of section 40(2) of the FOIA to the request below.
8. The Commissioner has viewed the requested investigation report.

Reasons for decision

Could identifying details be redacted from the withheld information?

9. The complainant suggested, when requesting an internal review, that any personal information which would make the parties identifiable could be redacted. Were the report to be redacted to prevent this, the Commissioner is satisfied that the amount of data that would need to be removed would result in the remaining information being rendered meaningless; this is on the basis that the parties concerned would still be able to recognise themselves. Therefore, having viewed the report and considered this option, the Commissioner does not consider redaction to be a viable option. She will therefore consider disclosure of the actual report.

¹ <https://www.policeconduct.gov.uk/recommendations/stop-and-search-bedfordshire-police-october-2018>

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 one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
11. In this case the relevant condition is contained in section 40(3A)(a)². This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (DPA). If it is not personal data then section 40 of the FOIA cannot apply.
13. 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 DP principles.

Is the information personal data?

14. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
17. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
18. BP has advised the Commissioner:

² As amended by Schedule 19 Paragraph 58(3) DPA

"We consider this to be the personal data of the subjects the report is on as well as the police officers involved.

... This is a report which talks about particular individuals and the stop and search process which involved them, therefore this is their personal data. The report also contains images of the suspects and officers".

19. In the circumstances of this case, having considered the withheld report which both names the parties and contains their photographs, the Commissioner is satisfied that the information relates to the officers and individuals involved in the stop and search actions. She is satisfied that this information both relates to and identifies those concerned. The report therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
20. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
21. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

22. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

23. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
24. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
25. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the GDPR.

Is the information criminal offence data?

26. Information relating to criminal convictions and offences is given special status in the GDPR.
27. Article 10 of the GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of

the DPA personal data relating to criminal convictions and offences includes personal data relating to:

- a) the alleged commission of offences by the data subject; or
- b) proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.

28. BP has explained to the Commissioner that:

"... the Report contains criminal offence data as it is reporting on a stop and search for a potential criminal offence.

... which was carried about due to the belief the individuals involved had carried out a criminal offence".

29. Within the closing paragraphs of the report the Commissioner notes that it says the following (which BP has agreed can be cited):

"171. On receipt of the report, the decision maker must decide if there is an indication that a criminal offence may have been committed by any person to whose conduct the investigation related.

172. If they decide that there is such an indication, they must decide whether it is appropriate to refer the matter to the CPS".

30. Having considered the wording of the request, and viewed the withheld information, the Commissioner finds that the requested information does include criminal offence data. She has reached this conclusion on two bases. Firstly, as cited above, the necessary consideration as to whether a police officer has committed a criminal offence. Secondly, that the requested information relates to the alleged commission of a criminal offence by identifiable suspects.

31. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.

32. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under the FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject) or Part 3 paragraph 32 (data made manifestly public by the data subject).

33. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.

34. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data in order to disclose it under the FOIA would therefore breach principle (a) and so this information is exempt under section 40(2) of the FOIA.

Other matters

35. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Information Notice

36. As BP failed to respond to the Commissioner's enquiries in a timely manner it was necessary for her to issue an Information Notice in this case, formally requiring its response. The Information Notice will be published on the Commissioner's website.
37. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy³ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy⁴.

³ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁴ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

38. 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@justice.gov.uk

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

39. 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.
40. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF