

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2022

Public Authority: Chief Constable of West Yorkshire Police

Address: PO Box 9
Laburnum Road
Wakefield
WF1 3QP

Decision (including any steps ordered)

1. The complainant has requested information from West Yorkshire Police in relation to one of its police vehicles. West Yorkshire Police applied section 40(5) of FOIA to the requested information as it refused to either confirm or deny whether it held that information.
2. The Commissioner's decision is that West Yorkshire Police has incorrectly applied section 40(5) of FOIA to the requested information.
3. The Commissioner therefore requires West Yorkshire Police to take the following steps to ensure compliance with the legislation:
 - To issue a fresh response to the complainant's request without relying upon the NCND provisions of section 40(5) of FOIA.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 2 July 2021 the complainant made the following request for information under FOIA:

"I am requesting information in connection to one of your West Yorkshire Police vehicles please. That would be who was driving the vehicle. Also any other officers who were in the vehicle. On 9th June 2021 at 16.57hrs, on Roberttown Lane Roberttown, travelling away from the A62, there was a WYP 4x4 police car. The police car passed an obstruction in the road in its own carriageway just as cyclist that being myself, passed in the opposite direction. There were no other police vehicles on that road at that time. Again, I would like to know who was driving the vehicle."

6. West Yorkshire Police responded on 26 July 2021. It refused to confirm or deny that it held the requested information, citing section 40(5) (personal information).
7. West Yorkshire Police provided an internal review on 24 August 2021 in which it maintained its original position and also stated that section 30(3) (NCND in relation to information held for investigations/proceedings conducted by public authorities).

Scope of the case

8. The complainant contacted the Commissioner on 13 September 2021 to complain about the way their request for information had been handled.
9. The Commissioner has considered the way in which West Yorkshire Police have handled the request, in particular its application of section 40(5) of FOIA. In subsequent correspondence with the Commissioner, West Yorkshire Police withdrew their reliance upon section 30(3) so the Commissioner has not considered that exemption.

Reasons for decision

Section 40 – personal data

10. Under section 1(1)(a) of FOIA anyone who requests information from a public authority is entitled to be told whether or not the authority holds the information – this is known as 'the duty to confirm or deny'.
11. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether the authority holds the information does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation EU2016/679 ('GDPR')

12. For West Yorkshire Police to be entitled to rely on section 40(5B)(a)(i) the following two criteria must be met:
- confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - providing this confirmation or denial would contravene one of the data protection principles.

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

13. Section 3(2) of the Data Protection Act 2018 defines personal data as "any information relating to an identified or identifiable living 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.
15. 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.
16. West Yorkshire Police consider that confirming or denying if the requested information is held would disclose to the world at large information about individuals who were in a police vehicle at the time and place specified in the complainant's request.
17. The Commissioner is not convinced, from reviewing the request, that if West Yorkshire Police were to either confirm or deny it held the information, it would involve the disclosure of personal data.
18. The Commissioner's guidance on NCND in relation to personal data states that disclosure means that it is the case that simply confirming or denying whether information within the scope of the request is held would disclose personal data. It is not about the content of the information. The criterion for engaging section 40(5) is not whether disclosing the information would contravene principle (a) but rather whether confirming or denying that it is held would do so.
19. West Yorkshire Police's submissions to the Commissioner have focused on the content of the information itself and the potential effects of disclosure of that information. However, it has not demonstrated, beyond a reference to 'tactically' applying NCND, that confirming or denying whether the information is held would either disclose personal data or contravene any of the data protection principles.

20. For the reasons set out above the Commissioner has concluded that if West Yorkshire Police confirmed whether or not it held the requested information this not would not result in the disclosure of a third party's personal data. Therefore, the first criterion set out above is not met and West Yorkshire Police cannot rely on section 40(5B) of FOIA in the circumstances of this case to refuse to confirm or deny whether the requested information is held.

Right of appeal

21. 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

22. 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.
23. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF