

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 10 August 2022

**Public Authority:** Chief Constable of West Yorkshire Police  
PO Box 9  
Laburnum Road  
Wakefield  
WF1 3QP

#### **Decision**

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1. The complainant has requested, from West Yorkshire Police (WYP), information about himself. The Commissioner's decision is that WYP was correct to rely on section 40(5) of FOIA to neither confirm nor deny (NCND) holding any information. No steps are required.

#### **Request and response**

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2. In his grounds of complaint to the Commissioner, the complainant specified that the following request to WYP was what he wished to have considered:

"I seek the service numbers of all personnel who have accessed my PND [Police National Database] or PNC [Police National Computer] within the last two year period from August 2019 to August 2021".
3. WYP refused to confirm or deny holding the requested information, relying on sections 31(3) (Law enforcement) and 40(5) (Personal information) of FOIA.

#### **Scope**

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4. The correspondence provided by the complainant, and dates given, are unclear and incomplete. The actual date of the request being considered has not been ascertained from the information provided.

5. However, WYP provided an internal review on 13 October 2021, which clearly refers to the wording as provided by the complainant. It would NCND the information, in reliance on sections 30(3) and 40(5).
6. As the Commissioner considers this to be a clear request by the complainant for his own personal data, if held, he has not deemed it necessary to delay his decision whilst gathering this additional detail; it would not affect his findings.

## **Reasons for decision**

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### **Section 40 – Personal information**

7. Section 40(1) of FOIA states that:

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject”.

8. Section 40(5A) of FOIA states that:

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)”.

9. In other words, while section 40(1) of FOIA provides an exemption from the right to information if the requested information is the requester’s personal data, section 40(5A) of FOIA provides an exemption from the duty to confirm or deny whether requested information is held, if to do so would disclose personal data of which the applicant is the data subject.

### **Would the confirmation or denial that the requested information is held constitute the disclosure of personal data?**

10. Section 3(2) of the DPA defines personal data as “any information relating to an identified or identifiable living individual”.
11. The two main elements of personal data, therefore, are that the information must relate to a living person, and that the person must be identifiable.
12. 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 or an online identifier; or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

13. 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.
14. The Commissioner acknowledges that the context of the request in this case concerns whether or not any searches have been undertaken about the complainant on two police information systems. Therefore, if held, any such searches would necessarily include the complainant's personal details. They would also most likely include details about the person who had undertaken any such search.
15. Given the wording of the request, the Commissioner is satisfied that the requested information, if held, relates to the complainant. He is further satisfied that the individual is identifiable from that information. The information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
16. In his guidance<sup>1</sup> entitled 'Neither confirm nor deny in relation to personal data', the Commissioner states:

"If the requested information is the requester's personal data, it is exempt under section 40(1) of FOIA. Furthermore, under section 40(5A), you are not required to confirm or deny if you hold the information. You can therefore respond to the freedom of information (FOI) request by saying that you neither confirm nor deny that you hold the personal data. This applies whether or not you do actually hold it. The issue to consider is not whether you hold it but rather, if you did hold it, would confirming or denying that it was held in itself disclose personal data relating to the requester?

... Therefore, if you receive an FOI or EIR request where confirming or denying whether you hold the information would involve disclosing the requester's personal data, you should treat this as a data protection subject access request. You should tell the requester that you will deal with the request under the data protection legislation, rather than FOIA or the EIR. You should carefully word any refusal notice to avoid implying whether you do or do not hold the information and to avoid inadvertently disclosing any personal data".

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/2021/2619041/s40-neither-confirm-nor-deny-in-relation-to-personal-data-section-40-5-and-regulation-13-5-final-version-21.pdf>

17. In this case, the Commissioner is satisfied that disclosure, by way of confirmation or denial, would reveal whether or not the requester was the subject of searches on the named police systems.
18. There is no right of access to an individual's own personal data under FOIA. The information, if it were held, would be exempt from disclosure under section 40(1) and therefore, under section 40(5A), the public authority is not required to confirm or deny that they hold it.
19. The Commissioner has therefore decided that WYP was entitled to refuse to confirm whether or not it holds the requested information on the basis of section 40(5A) of FOIA.
20. In light of that decision, the Commissioner has not considered whether the information, if held, also comprises the personal information of any third party. However, in the context of the request and mindful of its wording, he considers it likely that, if held, the information comprises mixed data, with the requester's personal data inextricably linked to that of other data subjects.
21. As he has determined that WYP was entitled to rely on section 40(5) the Commissioner has not found it necessary to consider the applicability of section 30 to the request.

## Right of appeal

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22. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

23. 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.
24. 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**