

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 October 2022

**Public Authority:** Chief Constable of Wiltshire  
**Address:** Wiltshire Police Headquarters  
London Road  
Devizes  
Wiltshire  
SN10 2DN

### Decision

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1. The complainant has requested, from Wiltshire Police, information about an officer misconduct hearing. Wiltshire Police confirmed holding the information but withheld it, citing sections 21(1) (Information accessible to the applicant by other means), 38(1) (Health and safety) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that section 40 is properly engaged. No steps are required.

### Request and response

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3. On 28 October 2021, the complainant made the following request for information under FOIA:

"I am writing to make a freedom of information request for (i) the transcript, (ii) the panel's full written findings, and (iii) the panel's decision on sanction, in relation to the disciplinary hearing of [name redacted] (if there is no transcript, the audio recording will be acceptable as an alternative), and (iv) any information about whether the hearing was open to and attended by the press.

Can you also provide copies of any disclosures made by the Constabulary in connection with these proceedings including any

releases of information to the press and copies of any agreements or contractual terms about onward transmission.

I have read your responses to a previous similar request but believe that there is now a strong public interest in favour of greater transparency in relation to Police conduct and culture in connection with sexual misconduct by serving officers.

I am not interested in the identity of the officer who was subjected to the offending behaviour so you can read my request to exclude her name and number".

4. On 16 November 2021, Wiltshire Police responded. It refused to provide the requested information, citing the following FOIA exemptions as its basis for doing so: sections 21(1) (Information accessible to the applicant by other means), 38(1) (Health and safety) and 40(2) (Personal information).
5. On 18 November 2021 the complainant requested an internal review.
6. On 15 December 2021, Wiltshire Police responded. It provided a link to some media information to evidence its application of section 21 FOIA. In respect of the remainder of the request it maintained its position.

### **Scope of the case**

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7. The complainant wrote to the Commissioner on 2 January 2022. He disagreed with the exemptions cited. He also said: "An additional ground of complaint is that the Authority claims that the person who dealt with the internal review is independent of the original decision maker but there [sic] does not appear to be the case".
8. The Commissioner will consider the citing of exemptions below. He has commented on internal reviews in "other matters" at the end of this notice.
9. As the Commissioner considers this complaint to be almost identical to a complaint that he has just considered<sup>1</sup>, he has not deemed it necessary

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4021431/ic-127412-p1r1.pdf>

to undertake a full investigation in this case. He considers that to do so would not affect his previous findings on this subject matter.

10. However, there was one part of this request which differed slightly from the case which the Commissioner has just considered; this concerned the complainant's views regarding the citing of section 21 FOIA.
11. When requesting an internal review, the complainant stated that the information already in the public domain was not the same as what he had requested. He said: "[t]he information requested was the information disclosed to the press and others and any information about conditions applied to the disclosures. This information will help inform whether the disclosures made were proportionate, balanced and fair and what further information might be compatible with those disclosures and the other information in the public domain".
12. In this respect, the Commissioner enquired about what information might have been disclosed to the press. He was advised that, although it was open for the press and public to attend the hearing, as far as Wiltshire Police were aware none had done so. It confirmed that a verbal anonymity order was made by the Chairman of the Hearing at the commencement of the hearing. This was reflected in the document containing the Panel's findings (which the Commissioner has viewed).
13. Following the hearing, Wiltshire Police had issued one press release, which had no restrictions. The Commissioner can confirm that the press release reflects the information which exists in the public domain.

## **Reasons for decision**

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14. The withheld information in this case consists of an audio recording and the panel findings.
15. The Commissioner has not found it necessary to listen to the recording, which he understands to be seven days' worth of footage. He has viewed the Panel findings.

## **Section 40 – Personal information**

16. The Commissioner's detailed rationale for determining whether or not the recorded information is the personal information of those concerned, and the further categorisation of the types of personal information, can be read in the decision notice referred to in paragraph 9 above.

17. There has been no change in circumstances since those findings and the complainant has not offered any stronger reasoning to support disclosure of the personal information being considered here.
18. The Commissioner does not consider it necessary to repeat his earlier findings, but he fully relies on them again.

### **The Commissioner's view**

19. The Commissioner has therefore decided that Wiltshire Police was entitled to withhold all of the information under section 40(2) of FOIA.
20. He has not found it necessary to consider the other exemptions cited.

### **Other matters**

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#### **Section 45 - Internal review**

21. The complainant was unhappy with the person who undertook the internal review on the grounds that they were not independent of the original decision maker.
22. The refusal was issued by a "Force Disclosure Decision Maker".
23. The internal review was issued by a "Principal Decision Maker".
24. The Commissioner has no specific authority to specify who should undertake an internal review within a public authority. However, it is his view that, ideally, it should be carried out by someone senior to the person who dealt with the original request. Where this is not possible it should be undertaken by someone trained in, and who understands, the FOIA.
25. In the Commissioner's opinion the person conducting the review in this case was therefore appropriate.

## Right of appeal

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26. 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)

27. 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.
28. 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**