

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

### **Decision notice**

**Date:** 13 December 2022

**Public Authority:** Commissioner of Police of the Metropolis  
**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

#### **Decision (including any steps ordered)**

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1. The complainant has requested from the Metropolitan Police (the MPS) information about two particular limited companies. The MPS stated that it would neither confirm nor deny that it holds the requested information.
2. The Commissioner's decision is that the MPS has correctly cited section 40(5) of FOIA to neither confirm nor deny that it holds the requested information.
3. The Commissioner does not require the MPS to take any steps in relation to this matter.

#### **Request and response**

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4. On 19 November 2021, the complainant wrote to the MPS and requested information in the following terms:

"For the past 5 years from January 2016 to the date of this request, have you recorded any information in relation to

[name and address redacted]

[name and address redacted]"

5. The MPS responded on 16 December 2021. It stated that it would neither confirm nor deny that it holds the requested information, by virtue of section 40(5) of FOIA.
6. Following an internal review the MPS wrote to the complainant on 18 January 2022. It upheld its reliance on section 40(5).

### **Scope of the case**

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7. The complainant contacted the Commissioner on 16 March 2022 to complain about the way their request for information had been handled. In particular they argued that the requested information related to a limited company rather than any individuals.
8. The Commissioner considers the scope of his investigation to be to determine whether the MPS is entitled to neither confirm nor deny whether it holds any information within the scope of the request, in accordance with section 40(5) of FOIA.

### **Reasons for decision**

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

9. 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 (UK GDPR) to provide that confirmation or denial.
10. Therefore, for the MPS to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request 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 the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?**

11. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:-  
  
    "any information relating to an identified or identifiable living individual".
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
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. Whilst the Commissioner understands that in this case the request relates to private limited companies, it is relevant to note that those company names clearly incorporate the individual names of the sole directors of the companies.
15. The Commissioner has previously noted that information about individuals acting as sole traders, employees, partners and company directors, where those individuals are identifiable, may constitute personal data<sup>1</sup>.
16. In the circumstances of this case, the Commissioner considers that whilst the private limited companies are separate legal persons, any information falling within the scope of the request would be the personal data of the sole directors. This is because the company names clearly identify the sole directors. As such, the Commissioner is satisfied that, if the MPS were to confirm or deny holding any information within the scope of the request, doing so would relate to and identify the sole directors, and therefore would be considered to be third party personal data as defined by the DPA.
17. For the reasons set out above the Commissioner is satisfied that, if the MPS confirmed whether or not it held the requested information, this would result in the disclosure of a third party's personal data. The first criterion set out above is therefore met.
18. The Commissioner also considers it appropriate to consider whether confirming or denying whether it holds the requested information would

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<sup>1</sup> <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/what-is-personal-data/what-is-personal-data/#pd7>

result in the MPS's disclosure of criminal offence information relating to a third party.

19. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK 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; and
  - (b) proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings, including sentencing.
20. In their request for an internal review to the MPS, the complainant explains that the information is required for the purpose of court proceedings.
21. The request clearly relates to an allegation about the data subjects. Confirming or denying whether the requested information is held would therefore result in disclosure of information relating to an alleged offence involving the data subjects.
22. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held in response to a request for information under FOIA, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.
23. The Commissioner has considered each of these conditions and whether any of them could be relied on by the MPS to confirm or deny whether it held criminal offence data falling within the scope of this request. The Commissioner has considered these on his own merit and finds that, having regard for the restrictive nature of the Schedule 1, Parts 1 to 3 conditions, none of the conditions can be met.
24. As none of the conditions required for processing criminal offence data are satisfied there can be no legal basis for confirming whether or not the requested information is held; providing such a confirmation or denial would breach data protection principle (a) and therefore the second criterion of the test set out above is met. Therefore, the Commissioner finds that the MPS was entitled to rely on section 40 (5) of FOIA to neither confirm nor deny whether it holds the requested information in this case. He does not require any further steps to be taken.

## Right of appeal

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25. 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](mailto:grc@justice.gov.uk)

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

26. 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.
27. 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 .....**

**Catherine Fletcher**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**