

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **31 January 2023**

Public Authority: **Chief Constable of Leicestershire Police**
Address: **Police HQ**
St Johns
Leicester
LE19 2BX

Decision (including any steps ordered)

1. The complainant has requested details of crimes reported at 28 separate commercial premises. The above public authority ("the public authority") relied on section 40(5B) of FOIA (third party personal data) to refuse to confirm or deny that the information is held.
2. The Commissioner's decision is that the public authority is not entitled to rely on section 40(5B) of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Confirm or deny whether it holds information in respect of each of the 28 premises and, if it does, it must either provide the information or issue a refusal notice that complies with section 17 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 the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 February 2022, the complainant wrote to the public authority and requested information in the following terms:

"Please provide the total number of incident calls (CAD) and alleged crimes reported (CRIS) for the period from the 01/01/2021 to 31/12/2021 associated with each of the following 28 premises."
6. The public authority responded on the following day. It relied on section 40(5B) of FOIA to refuse to confirm or deny that any information was held. It upheld this stance following an internal review.

Reasons for decision

7. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny holding information if the mere act of confirming or denying that the information was held would, in itself, disclose the personal data of a third party in breach of data protection legislation.
8. The Commissioner notes that all 28 premises are commercial premises. None of them appear to be residential. The Commissioner also notes that many of the premises appear to be part of well-known big high street chains such as Gregg's, Costa and Ladbrokes.
9. Even if any of the premises belonged to sole traders (and the public authority has provided no evidence that any of them are), the Commissioner is not persuaded that issuing a confirmation or a denial would indicate that the owner was or was not involved in a crime (either as the victim of the crime or the perpetrator of it).
10. Simply revealing that some information is held does not reveal anything about the people involved in any individual crime or alleged crime. More importantly, it does not identify any individual. As no individual is identifiable, the public authority is not entitled to rely on section 40(5B).

Other matters

11. Whilst he makes no formal decision on the matter at this stage, the Commissioner considers it likely that, even if only one crime (or alleged crime) is associated with a particular premises, it is unlikely that that information will be personal data. The only people able to identify an individual will be those who already know that a crime (or alleged crime) took place.

Right of appeal

12. 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

13. 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.
14. 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

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