

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 March 2023

Public Authority: Chief Constable of Gloucestershire Police

Address: 1 Waterwells, Waterwells Drive,
Quedgeley
Gloucestershire
GL2 2AN

Decision (including any steps ordered)

1. The complainant requested information from Gloucestershire Police regarding a particular incident including the personal data of any officer in attendance and their supervisor.
2. The Commissioner's decision is that Gloucestershire Police correctly relied on section 40(5B)(a)(i) of FOIA to refuse to confirm or deny whether it held information falling within the scope of the request.
3. The Commissioner does not require any further steps.

Request and response

4. On 8 August 2022, the complainant made the following request for information under FOIA:

"I am writing to you under the Freedom of Information Act 2000 to request the following information from the Northamptonshire Police:

"All information concerning incident 151 of 31 May 2013 including the full name rank and number of the officer responding and the full name rank and number of their supervising officer."

5. Gloucestershire Police responded on 9 August 2022 stating the it was applying Section 40(5) of FOIA as the information requested was related to personal data and it was unable to confirm or deny whether it held it. Therefore the duty under Section 1(1)(a) of FOIA did not apply. However, in so far as the any information held related to the complainant, Gloucestershire Police stated they would deal with his request under the Data Protection Act 2018 (DPA).
6. On 8 September 2022 Gloucestershire Police issued a response to the complainant under the DPA.

Reasons for decision

7. The following analysis explains why the Commissioner is satisfied that Gloucestershire Police was entitled to neither confirm nor deny holding the information that had been requested.
8. Section 40(5B)(a)(i) of FOIA allows a public authority to refuse to confirm or deny that it holds particular information if the mere act of confirming (or denying) that information is held would, in itself, reveal personal data about an identifiable individual – unless there is a lawful basis for doing so.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:
“any information relating to an identified or identifiable living individual”.
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. As the request references an incident attended by an officer of Gloucestershire Police and their supervisor, the Commissioner is satisfied that confirmation or denial of the requested information would involve the disclosure of personal data.
12. The next step is to consider whether such confirmation or denial would contravene any of the data protection principles. The Commissioner has focused here on principle (a) which states:
“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”

13. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed – or as in this case, the public authority can only confirm whether or not it holds the requested information – if to do so would be lawful, fair and transparent.
14. When considering whether confirmation or denial of the requested information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individual whose personal information it is.
15. The Commissioner considers that the complainant is pursuing a legitimate interest and that confirmation or denial of whether the requested information is held is necessary to meet that legitimate interest.
16. However, the Commissioner also considers that for Gloucestershire Police to confirm or deny that the requested information is held, would be disclosing personal information, as the data subjects had been referenced within the wording of the request. Therefore there is insufficient legitimate interests to outweigh the fundamental rights and freedoms of the data subjects. Hence, to confirm or deny if the requested information was held would be in breach of principle (a).
17. The Commissioner's decision is that Gloucestershire Police was entitled to rely on section 40(5B)(a)(i) of FOIA to neither confirm nor deny it held the requested information.

Right of appeal

18. 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

19. 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.
20. 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.....

Laura Tomkinson
Group Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF