

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 September 2023

Public Authority: Chief Constable of West Mercia Police
Address: Hindlip Hall Police Headquarters
Hindlip Hall
Worcester
WR3 8SP

Decision (including any steps ordered)

1. The complainant has requested from West Mercia Police (WMP) information relating to several police misconduct files. WMP initially refused the request under section 12 of FOIA which it subsequently withdrew. Having done so, WMP refused the request under sections 30(1)(a) and (b) (investigations and proceedings), 40(2) (personal information), 38(1) (health and safety), 32(1)(c) (court records) and 21 (information accessible to applicant by other means) of FOIA.
2. The Commissioner's decision is that WMP is entitled to rely on sections 30(1)(a) and (b) of FOIA. With regards to section 21, the Commissioner is satisfied that this only applies to part of the information withheld under this exemption. However, for the information which is not covered by section 21, the Commissioner's decision is that it is exempt from disclosure under section 30(1)(a) and (b) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 10 June 2023, the complainant wrote to WMP and requested information in the following terms:

“For each misconduct hearing listed in the screenshot below, please can you provide me with an electronic copy of:

1. The bundle which was before the panel
2. The text of the panel’s outcome/decision/judgement
3. A transcript or recording of the hearing.”

The screenshot listed seven police misconduct hearings/meetings.

5. WMP responded on 16 June 2023. It stated that the requested information was exempt under section 12 of FOIA as it was not available in a readily retrievable format. Advice and assistance could not be provided due to the inability to identify what information could be provided within the fees limit because of “the volume of records that would need to be transcribed”.
6. On the same day, the complainant pointed out that the request had said that a recording was acceptable.
7. WMP responded again on 28 June 2023, stating that its previous response could be ignored. In its latest response the requested information at parts one and three were refused under sections 40(2), 38, 30(1)(a)(b), and 32(1)(c) of FOIA. Part two was refused under section 21 of FOIA.
8. On 18 July 2023 the complainant requested an internal review, particularly questioning whether sections 40(2) and 38 of FOIA could be cited.
9. Following an internal review, WMP wrote to the complainant on 24 July 2023 maintaining its position.

Scope of the case

10. The complainant contacted the Commissioner on 25 July 2023 to complain about the way their request for information had been handled.
11. On 16 August 2023 WMP responded to the Commissioner’s investigation letter, citing sections 21, 30, 38 and 40(2) of FOIA as its reasons for withholding the requested information. In answer to a further query by

the Commissioner, WMP confirmed that it was continuing to rely on section 32(1)(c).

12. The Commissioner considers that the scope of his investigation is WMP's citing of the exemptions listed in the previous paragraph.

Reasons for decision

Section 21 – information accessible to applicant by other means

13. Section 21 of FOIA provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
14. When relying on section 21(1) to refuse a request on the basis that the information is publicly available, a public authority must show that:
 - the information in the public domain matches what the applicant asked for;
 - precise directions have been given to the applicant to enable them to find it without difficulty and without a great deal of searching necessary to locate it; and
 - the particular circumstances of the applicant and whether they can reasonably access the information are satisfied.
15. WMP explained to the complainant that the information they sought at part two of the request (the text of the panel's outcome/decision/judgement) was available on the WMP website. In its response to the Commissioner it provided the link: [Misconduct hearings | West Mercia Police](#). WMP seems to have interpreted this part of the request narrowly, as encompassing only the basic facts of each outcome which the complainant had already included in their screenshot. The Commissioner suggests that the scope should have included the full text of the panel's final determination.
16. Clearly the information provided at the link above is accessible to the complainant. Bearing in mind the Commissioner's wider scope, the information on WMP's website does match part two of the request regarding five of the cases listed. However, the Commissioner has been unable to find the text of the panel's outcome/ decision/judgement regarding two of these cases via the link, other than the headline details

given by the complainant and a list of 2023 cases¹ on WMP's website (though one of the dates differs slightly).

17. The Commissioner is therefore satisfied that the exemption is engaged regarding five of these cases. As this is an absolute exemption there is no requirement to consider the public interest in this matter.
18. However, WMP has failed to satisfy him that the exemption applies to two of the listed cases (both listed as "PC" with "written warning" as the outcome) because there is only the headline details of these two cases, with no more detailed outcome from the misconduct hearings. These cases have no 'link' within the 2023 list on the website, whereas the other five cases have links to text regarding the outcome.
19. The Commissioner considers that the very narrow interpretation placed on the scope of part two of the request by WMP has led to section 21 solely being cited. Although WMP did not specifically cite section 30 regarding part two of the request, the full text of the written warning outcomes for these two cases were included in the bundles provided to the Commissioner to which WMP had cited the remaining exemptions. His intention is therefore to include his wider interpretation of the requested information at part two as part of his analysis of section 30 of FOIA set out below.

Section 30 – Investigations and proceedings

20. Section 30 of FOIA states that:

"(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or..."

¹ [misconduct-proceeding--outcomes-2023.pdf \(westmercia.police.uk\)](#)

21. Section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings.
22. The exemption is class based and information which has been held at any time for the purpose of these investigations and proceedings will be exempt. If the requirements of the exemption are met it applies even if it was not obtained or generated originally for one of these purposes. The exemption continues to protect information even if it is no longer being used for investigations or proceedings as long as it has been held for those purposes at some point.
23. The investigation does not have to lead to someone being charged with, or convicted of an offence. The purpose must be to establish whether there are grounds for charging someone or, if charged, gathering sufficient evidence for a court to determine guilt. The exemption still protects information if a police investigation doesn't establish that an offence has been committed or that there is insufficient evidence to charge anyone.
24. Consideration of section 30(1) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test.
25. The first step is to address whether the requested information falls within the class specified in section 30(1) of FOIA. WMP cited this exemption in respect of parts one and three of the request. The Commissioner has explained in paragraph 19 why it can also be extended to the cases in part two that did not fall under section 21.
26. In his guidance², the Commissioner states: "Section 30 is a class based exemption. Information simply has to fit the description contained in section 30 to be exempt. There is no need for the information to prejudice, for example, the investigation or set of proceeding that it was obtained for".
27. The Commissioner accepts that WMP as a police force has a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings. In this case, the withheld information was obtained for the purposes of WMP's investigations into whether the officers concerned

² [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](#)

had committed misconduct in public office³, which is a common law offence.

28. He has seen all the withheld information and is satisfied that it falls within the definition of section 30(1)(a) and (b) of FOIA. The information contains details of investigations into police officers, including witness statements, information from/about victims, and the outcome of the investigations. The exemption is engaged.

Public interest test

29. The second step is to consider the public interest in this matter.

Public interest factors in favour of disclosure

30. WMP's view on disclosure is that "there is a public interest in the transparency of policing operations to ensure investigations are conducted appropriately". It acknowledges its role in "enforcing the law" "preventing and detecting crime" and protecting communities.

Public interest factors in favour of maintaining the exemption

31. WMP argues that disclosure -

"could hamper the Force's ability to conduct such enquiries in the future, as it would be known exactly what types of enquiries would be made to establish whether any criminality or misconduct was involved."

32. WMP contends that disclosing -

"details of witness statements in a specific inquiry, this could prevent others from coming forward with information in the future, for fear of their names and details being released into the public domain. This would harm the Force's abilities to fully investigate types of incidents".

33. WMP explains that The Association of Chief Police Officers' (the Commissioner understands that this is now the National Police Chiefs' Council) approach is that investigation information will only rarely be released under the FOIA. It may be released if there is a "tangible community benefit" and there are strong public interest reasons for doing so. WMP's view is that this is not the case here because "the

³ <https://www.cps.gov.uk/legal-guidance/misconduct-public-office>

misconduct has been dealt with and in some cases considered by the IOPC [Independent Office for Police Conduct] and it is not felt the disclosure of the requested information will serve any tangible community benefit”.

34. When WMP provided its response to the Commissioner’s investigation letter, it explained its reasons for citing section 30 when the investigations had been complete at the time of the request. The reason that it cited section 30 rather than section 31 was because there was the potential for reopening investigations should further information come to light. WMP considers that future similar investigations could be affected and describes this effect as more likely than not to occur.

Balance of the public interest

35. The Commissioner’s guidance states that the “purpose of the exemption is to protect the effective investigation and prosecution of offences and the protection of confidential sources”.

36. The guidance refers to Alan Digby-Cameron v the Information Commissioner and Bedfordshire Police and Hertfordshire Police (EA/2008/0023 and 0025 26 January 2009) which summed up the public interest factors that should influence maintaining the exemption as –

- the stage of the investigation or prosecution,
- the extent to which the same or other information is in the public domain,
- the value of information obtained from confidential sources,
- the significance of the information, particularly in terms of whether it would reveal any flaws in an investigation or set of proceedings.

37. It has already been confirmed that the investigations that are the subject of this complaint were complete. However, WMP has raised the possibility that cases may be reopened should new evidence come to light.

38. The information that the complainant used is in the public domain to the extent of what is held on WMP’s website and some of the information was significant enough to appear in news items where the officers were named, whilst other officers remained unnamed. However, the Commissioner’s guidance states that the fact of information being in the public domain and accessible to the general public can add weight to both sides of the public interest test. If the same or similar information

is known it is difficult to argue that harm would ensue from its release. Conversely, it could be argued that it reduces the importance of releasing the same/similar information.

39. The fourth bullet point in paragraph 36 relates to the significance of the information. The information all relates to police conduct and is of a serious nature, though the level of seriousness varies. The complainant has not indicated the public interest that they presumably believe there is in disclosing this information. The fact that the withheld information concerns police misconduct hearings has become a matter of national interest in recent years, due to a number of infamous and high profile cases involving police officers.
40. The Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. Allowing scrutiny of their performance and examining the decisions taken in particular cases will increase that confidence.
41. Nevertheless the purpose of section 30 is to protect the effective investigation and prosecution of offences. It is not in the public interest to jeopardise the ability of the police to investigate crime effectively and potentially increase the risk of harm to members of the public from offenders.
42. The Commissioner has taken into account WMP's arguments about harm to its investigative processes. He is particularly concerned about the release of witness statements about investigations which could lead to criminal prosecution. There is clearly a chance that witnesses could be deterred from cooperating or even coming forward. Some of the witnesses are members of the public. Despite redaction of their personal details anonymity is almost impossible to achieve. This is a factor of significance.
43. There is some information in the public domain relating to these cases, as previously mentioned. The Commissioner considers this to be sufficient to serve the public interest. Having considered the factors in favour of disclosure – the most compelling being transparency when it comes to the conduct of serving police officers, the Commissioner has decided that the weight falls on the side of non-disclosure. There is an absence of a clear public interest in disclosing any more detail than is already publicly available. The Commissioner is not persuaded that the disclosure of further sensitive details, the potential for compromising witnesses and undermining the investigation and prosecution of offenders is justified, in this instance.
44. As the Commissioner has decided that it is not in the public interest to disclose the requested information, he has not gone on to look at the

application of section 40(2), section 38 or section 32(1)(c) of FOIA.

Other matters

45. Although WMP is not obliged to carry out an internal review, the Commissioner considers the review to be perfunctory and would expect WMP to provide a more detailed response to the matters raised in the review request by the complainant. Although it may not have prevented a referral to the Commissioner in this case, a more substantive response which addresses those matters which have been raised by the complainant in their internal review request, could prevent future referrals in others.

Right of appeal

46. 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

47. 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.
48. 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

Janine Gregory
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