

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 October 2023

Public Authority: Chief Constable of Greater Manchester Police
Address: GMP Headquarters
Central Park
Northampton Road
Manchester M40 5BP

Decision (including any steps ordered)

1. The Commissioner's decision is that the information the complainant has requested about a misconduct hearing is exempt from disclosure under section 31(1)(g) of FOIA by way of section 31(2)(b). Section 31 concerns law enforcement. It's not necessary for Greater Manchester Police to take any corrective steps.

Request and response

2. The complainant made the following information request to Greater Manchester Police (GMP) on 6 June 2023:

"This request relates to the misconduct hearing whose outcome is published here [https://www.gmp.police.uk/SysSiteAssets/foi-media/greater-manchester/misconduct/outcomes/2023/outcome-pc-\[redacted\]-redacted.pdf](https://www.gmp.police.uk/SysSiteAssets/foi-media/greater-manchester/misconduct/outcomes/2023/outcome-pc-[redacted]-redacted.pdf)

Please can you provide me with an electronic copy of:

- The bundle available to the panel, and
- The transcript of the hearing (if there is no transcript, please provide the audio recording instead)."

3. GMP's final position was to withhold the requested information under section 31(1)(g) of FOIA by way of section 31(2)(b) and under section 32(1)(c) which concerns court records.

Reasons for decision

4. This reasoning focusses on GMP's reliance on section 31 to withhold the information the complainant has requested. If necessary, the Commissioner will consider GMP's application of section 32 to the request.
5. Under section 31(1)(g) of FOIA information is exempt information if its disclosure would or would be likely to prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2). The subsection GMP has specified is that under section 31(2)(b). This concerns the purpose of ascertaining whether any person is responsible for any conduct which is improper.
6. In their request for an internal review, the complainant argued that section 31 couldn't be engaged as the hearing in question took place in public. In their view, all of the requested information had therefore already been made public, voluntarily, by GMP. The complainant said, "You cannot now try to put the genie back in the lamp by arguing that the information you voluntarily disclosed is injurious to the public interest." The complainant made a similar point in their complaint to the Commissioner.
7. In its internal review response, GMP explained that the information requested in this case is relevant to other "misconducts" and disclosing it undermine the associated investigations. In addition, GMP said, disclosing the information risked prejudicing or undermining any ongoing investigation or future investigation, or both, linked to these matters. GMP advised that it's important that public authorities have the space to fully investigate any allegations of improper conduct without fear of any opinions entering the public domain and undermining the investigation.
8. In a submission to the Commissioner GMP has confirmed the same. Regarding the argument that the complainant presented in their request for a review, GMP said that, in fact, only a redacted version of the misconduct hearing was published into the public domain. It's this information to which the link in the complainant's request originally led. GMP subsequently explained to the Commissioner that GMP's Professional Standards Branch (PSB) had published that information. However, PSB is only obliged to publish any cases for 28 days. The 28 days has now expired in this case, and consequently the link was

removed from the website and the formerly published information is no longer available.

9. The Commissioner also notes that the complainant requested different, though related, information from that which had been published. They've requested the document bundle made available to the hearing panel and a transcript or recording of the hearing. It doesn't follow that because a general summary of the hearing had been published, GMP isn't entitled to withhold the more specific information the complainant has requested.
10. GMP told the Commissioner that section 31(1)(g) and 31(2)(b) apply to this request as the requested information was relevant to other misconduct matters. GMP has provided the Commissioner with more detail on those associated matters, but he doesn't intend to reproduce it in this notice.
11. However, having considered GMP's submission and the complainant's point of view, the Commissioner is satisfied that the requested information engages section 31(1)(g) of FOIA by way of 31(2)(b) of FOIA. GMP's submission suggests that it considers that disclosing the information **would** prejudice the function it has of ascertaining whether any person is responsible for any conduct which is improper, rather than would be likely to prejudice that function. GMP hasn't made a compelling case that the prejudice would be more likely to happen than not, but the Commissioner will accept that there's nonetheless a real and significant risk of the envisioned prejudice occurring ie that it would be likely to happen. He has gone on to consider the associated public interest test.
12. In their correspondence to the complainant GMP has acknowledged that there's a strong argument for increased transparency in the way it handles misconduct investigations into police officers. It said disclosure may improve public debate into this subject area and demonstrate that it investigates any allegations against officers appropriately and in line with current legislation.
13. Against disclosure, GMP noted that it has been publicly acknowledged that the named officer has been through a formal misconduct hearing following a thorough investigation that GMP undertook. To disclose any information about this particular case would undermine the investigative process stipulated within the Conduct Regulations. This would therefore hinder GMP's ability to deliver effective law enforcement (ie to ascertain whether any person is responsible for any conduct which is improper).
14. GMP also considers that disclosure would deter individuals from providing information to assist such investigations.

15. On balance, GMP considers that the public interest lies in favour of not disclosing the requested information. It says that the Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities it serves. There's a public interest in being transparent about the way misconduct investigations into police officers are handled. But, GMP says, there's a very strong public interest in safeguarding victims by protecting ongoing or future investigations that may be of a similar nature.
16. The Commissioner is satisfied the public interest in transparency about police misconduct generally and the hearing that's the focus of the complainant's request specifically, is met through relevant information that GMP publishes about misconduct hearings and which other bodies and publish, such as the Independent Office for Police Conduct. The complainant hasn't made a case for there being a public interest in disclosing the information they've requested, neither in their correspondence to GMP nor in their complaint to the Commissioner. The Commissioner has therefore not been presented with a public interest argument that is of such strength that it would justify potentially prejudicing the function GMP has under section 31(2)(b) of FOIA.
17. The Commissioner's decision is therefore that the public interest favours maintaining the section 31 exemption.
18. Since the Commissioner has found that information is exempt from disclosure under section 31(1)(g) and the public interest favours maintaining the exemption, it's not necessary to consider GMP's application of section 32 to the request.

Right of appeal

19. 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

20. 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.
21. 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

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