

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2023

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

Decision (including any steps ordered)

1. The complainant has requested information from the Metropolitan Police Service (MPS) about Operation Snap. MPS disclosed some information within the scope of the request, but withheld the remaining information in accordance with section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that MPS was correct to rely on section 40(2) to withhold the remaining information. However, MPS breached sections 10(1) and 17(1) of FOIA as it failed to provide its response to the request within the statutory 20 working days.
3. The Commissioner does not require MPS to take any further steps.

Request and response

4. On 22 February 2023, the complainant wrote to MPS and requested information in the following terms:

"Please provide the dataset (the whole spreadsheet or database) in which you record the submissions and outcomes of for your operation

snap (or operation with the purpose of receiving and acting on public submissions of video evidence from the roads).

I would expect the dataset to include individual reports and include the time, date, location, type of offence and outcome but I would like all other data stored other than that which is exempt by law (index, names, personal comments).

I would like data from the period 1st Jan 2020 – 1st Feb 2023”

5. MPS responded on 1 June 2023. It disclosed a spreadsheet containing the Operation Snap data, but explained that it had withheld the full incident dates (only disclosing the month and year) and the precise time of each incident. It cited section 40(2) of FOIA as its basis for doing so.
6. Following an internal review MPS wrote to the complainant on 26 June 2023. It maintained its reliance on section 40(2) to withhold the remaining information.

Reasons for decision

Section 40 – personal information

7. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
8. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
9. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.

¹ As amended by Schedule 19 Paragraph 58(3) DPA

10. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

11. Section 3(2) of the 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. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
14. Information will relate to a person if it about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
15. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the data subjects. Whilst a time and date alone would be unlikely to constitute personal data, when pieced together with the rest of the information in the spreadsheet about each reported incident the Commissioner is satisfied that its disclosure could lead to the identification of the data subjects.
16. Most obviously this identification could occur from those who submitted the dashcam or video footage to MPS. Whilst these witnesses clearly already have knowledge of the incident from their footage, they are unlikely to be aware of any resulting charges or action taken by MPS against the individuals captured in the footage. As such the witnesses would be learning new personal information as a result of the disclosure.
17. The Commissioner is further satisfied that identification is not restricted to only those who have submitted footage to MPS, but could also occur where any other individual had related knowledge of the incidents for which footage was submitted to MPS. The information therefore falls within the definition of ‘personal data’ in section 3(2) of the DPA.
18. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

19. The most relevant DP principle in this case is principle (a).
20. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.
21. 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 if to do so would be lawful, fair and transparent.

Is the information criminal offence data?

22. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of the UK GDPR defines ‘criminal offence data’ as being personal data relating to criminal convictions and offences or related security measures. Section 11(2) of the DPA provides that the following personal data is also included in the Article 10 definition of criminal offence data:
 - (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.
23. In this case, each of the incidents listed in the spreadsheet relates to a criminal offence, whether alleged or proven, and as such meets the definition of criminal offence data. Therefore the Commissioner is satisfied that disclosure of the withheld information would constitute the disclosure of criminal offence data.
24. In order for a public authority to disclose criminal offence data lawfully under Article 10 of the UK GDPR in response to a FOIA request, in addition to an Article 6 basis for processing, it must also meet one of the stringent conditions of Schedule 1 of the DPA.
25. Due to its sensitivity, the conditions for processing criminal offence data are very restrictive and generally concern specific stated purposes. Consequently, only two are relevant to allow a public authority to lawfully disclose criminal offence data under FOIA. These are:
 - consent from the data subject; or
 - the processing relates to personal data which has clearly been made public by the individual concerned.
26. The Commissioner is satisfied that neither of the above conditions can be met in this case. As none of the above conditions required for

processing criminal offence data can be met, there is no legal basis for disclosure of the withheld information. Disclosure would be unlawful and therefore in contravention of DP principle (a).

27. The Commissioner finds that MPS was entitled to withhold the remaining information by virtue of section 40(2) of FOIA. He does not require MPS to take any further steps on this matter.

Procedural matters

28. Section 10(1) of FOIA provides that, subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
29. Section 17(1) of FOIA provides that a public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
30. In this case, MPS took over 3 months to provide the complainant with its initial response to the request. Therefore the Commissioner finds that MPS breached sections 10(1) and 17(1) of FOIA.

Right of appeal

31. 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

32. 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.
33. 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
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