

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 December 2023

Public Authority: Chief Constable of Sussex Police
Address: Sussex Police Headquarters
Church Lane
Lewes East
Sussex
BN7 2DZ

Decision (including any steps ordered)

1. The complainant requested from Sussex Police, information relating to reports about the action for parking on zig-zag lines at a specific pedestrian crossing in Buxted. Sussex Police disclosed some information within scope of the request, but withheld the remaining information; the report numbers, as it considered this to be third party personal data and therefore cited section 40(2) of FOIA.
2. The Commissioner's decision is Sussex Police was entitled to rely on section 40(2) of FOIA to withhold the remaining information. However, Sussex Police 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. The Commissioner does not require Sussex Police to take any further steps as a result of this decision.

Request and response

3. On 20 October 2022 the complainant wrote to Sussex Police and requested information in the following terms:
 1. "For January to December 2021 how many Reports were received by Crackdown for "Parking on Zig-zag Lines" at the pedestrian crossing in Buxted.

- a) For these reports how many motorists received an Advisory Letter for Unnecessary Obstruction"?
 - b) How many reports were "Retained for intelligence"?
 - c) Please provide the Report Number for the ones retained"
2. From January 2022 to date how many Reports were received by Crackdown for "Parking on Zig-zag Lines" at the pedestrian crossing in Buxted.
- a) For these reports how many motorists received an Advisory Letter for "Unnecessary Obstruction"?
 - b) How many reports were "Retained for intelligence"?
 - c) Please provide the Report Number for the ones retained
3. I would like to know who is responsible for the policy decision that prevents Crackdown, SSRP, and Sussex Police from taking any action against the motorists who continue to park on the above zig-zags. Please provide a copy of this policy which they refer to."
4. On 19 April 2023 Sussex Police responded. It confirmed that the information requested is partly held by Sussex Police under section 1(1)(a) of FOIA. However, it withheld information to parts 1(c) and 2(c) and applied section 40(2) (personal information) of FOIA.
5. On 20 April 2023 the complainant asked Sussex Police for an internal review. On 9 August 2023 Sussex Police provided its review response and maintained its original response.

Reasons for decision

6. This reasoning covers why Sussex Police was entitled to rely on section 40(2) of FOIA to refuse to provide information to parts 1(c) and 2(c) of this request.

Section 40 – personal information

7. Section 40(2) of FOIA provides that information is exempt from disclosure if it's 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 disclosure of the information to the world at large 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. Firstly, for section 40(2) to apply the withheld information must constitute personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
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 is 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 this case, the information withheld under section 40(2) of FOIA is the report numbers for those retained for intelligence purposes. These reports were received by Crackdown for "Parking on zig-zag lines" at a specific pedestrian crossing in Buxted.
16. Sussex Police considers the withheld information to be the personal data of the drivers of the vehicles subject of the reports and the individual(s) that made the report.

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

17. Sussex Police argued that the disclosure of the information requested (the report numbers) when combined with local knowledge or publicly available information, would make the drivers of those vehicles that were subject of the reports, identifiable. It said "the identification of drivers subject to those reports would be very simple for a recipient of this data, if it was the recipient themselves who had made the reports."
18. Sussex Police further argued that the disclosure of the information would lead to identifying individuals and place information pertaining to them into the public domain. It said the report numbers of those that have been retained for intelligence purposes would, if combined with other information which the reporter of the incident may have, together with any local knowledge, render those individuals identifiable, especially given the small cohort numbers.
19. As is explored in the Commissioner's guidance on determining what is personal data, he considers it is necessary to consider whether individuals would be identifiable "by a determined person with a particular reason to want to identify individuals."²
20. In this case, Sussex Police argued that because of the small cohort numbers of those that have been retained for intelligence purposes, disclosure of the requested information would render those individuals identifiable, if linked with other information and any local knowledge.
21. In the Commissioner's guidance on anonymisation,³ he explains that "removing numbers relating to five or 10 individuals or fewer may be a reasonable rule of thumb for minimising the risk of identification". This is particularly the case with regard to a known geographical location.
22. The Commissioner has had sight of the withheld information, and is satisfied Sussex Police hold information on the report numbers for those retained for intelligence purposes, which is a small number. The Commissioner considers the individuals involved (person(s) that made the report and person(s) reported) could potentially be identified by "a determined person" from the requested information, owing to the small number of reports made. This could be, for example, a local resident that has existing awareness of the zig-zag lines parking issues at the

² <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/personal-information-what-is-it/what-is-personal-data/can-we-identify-an-individual-indirectly/#pd4>

³ <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

pedestrian crossing in question, and the identity of the drivers of those vehicles that were subject of the reports.

23. The Commissioner is satisfied the risk of identification is sufficient that the information falls within the definition of "personal data" in article 4(1) of the UK GDPR.
24. 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.
25. The most relevant DP principle in this case is set out at Article 5(1)(a) of the UK GDPR and is known as principle (a).

Would disclosure contravene principle (a)?

26. 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".

27. 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.
28. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

29. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"⁴ .

⁴ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

30. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is, therefore, necessary to consider the following three-part test:-

i) Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;

ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

31. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

32. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

33. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

34. Sussex Police stated there is no legitimate interest. It said there is no valid policing or law enforcement interest in disclosing information which could identify drivers subject to reports of alleged offences. Sussex Police further argued that this information does not add any value to the

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

requester in understanding the scale and nature of the violations of parking on zig-zag lines at this location, nor the police reaction to it. The only value to the requester, Sussex Police said, "is to use the information to identify whether the information about those drivers he has reported to the police for an alleged parking offence, has been retained for intelligence purposes."

35. The Commissioner accepts the argument by Sussex Police that the request is motivated by a private interest. However, as he recognises that a requester's own interest may be legitimate interests, he considers gathering information about reported numbers relating to parking on zig-zag lines in a specific location is a legitimate interest. In cases where the requester is pursuing a purely private concern unrelated to any broader public interest, this will be taken into account in the balancing test.

Is disclosure necessary?

36. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
37. The Commissioner is satisfied that the disclosure of the withheld information is necessary to meet the legitimate interest in gathering information about the reported numbers relating to parking on zig-zag lines at the pedestrian crossing in question.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

38. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
39. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and

- the reasonable expectations of the individual.
40. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
 41. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
 42. Sussex Police stated that "as the crime concerned is relatively trivial, the impact of disclosing their involvement in that crime would have little impact other than embarrassment." However, it argued that the individuals do have an expectation of privacy, and it would be distressing to know that privacy was breached. Sussex Police further argued and said it is possible the issue could result in conflict or escalation, if any recipients of this information intended to approach or confront those individuals concerned.
 43. Sussex Police said the right of individuals to retain privacy in their dealings with police, is important to maintain public trust and confidence in the police. Also, to encourage individuals to engage with the police in matters of crime. This, it said, "is a very specific and localised matter, and so the likelihood that all concerned are known to each other in some capacity, is increased." Sussex Police reiterated its argument and said, as there is an expectation that dealings with the police would not be disclosed into the public domain, disclosure would bring a breach to the right of privacy. It further argued that the data subjects would not expect their dealing with the police to be disclosed in this way.
 44. The Commissioner's established position is that where a requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate.
 45. The Commissioner accepts there is no legitimate interest in disclosure. He believes that this information does not add any value to the requester in understanding the level of the violations of parking at this location.
 46. Based on the above factors, the Commissioner has determined there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing, and so the disclosure of the information would not be lawful.

47. Given the above conclusion that disclosure would be unlawful, the Commissioner deems he does not need to go on to separately consider whether disclosure would be fair or transparent.

The Commissioner's decision

48. The Commissioner's decision is Sussex Police was entitled to withhold some of the information to the request (number of reports) under section 40(2) by way of section 40(3A)(a) of FOIA.

Procedural matters

49. Section 10(1) of FOIA provides that, 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.
50. Sussex Police did not notify the complainant within the statutory twenty working days, that the information was held. It took almost six months to provide the complainant with its initial response to the request, responding on 19 April 2023 when the request was made on 20 October 2022. The Commissioner finds that Sussex Police breached section 10(1) of FOIA in this case.
51. 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.
52. As Sussex Police did not issue a refusal notice to parts 1(c) and 2(c) of this request within the statutory twenty working days, the Commissioner finds that it breached section 17(1) of FOIA.

Right of appeal

53. 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

54. 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.
55. 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

Joanna Marshall
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF