

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 August 2012

**Public Authority:** Chief Constable of West Yorkshire  
**Address:** West Yorkshire Police Headquarters  
PO Box 9  
Wakefield  
WF1 3QP

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the release of information by West Yorkshire Police in relation to a letter written by a convicted burglar to his victim(s). West Yorkshire Police confirmed it holds information within the scope of the request but refused to provide it citing the personal information exemption of FOIA (section 40(2)).
2. The Commissioner's decision is that West Yorkshire Police has correctly applied section 40(2) to the majority of the withheld information. However, he finds that in the circumstances of this case some of the information should be disclosed.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - disclose the withheld information relevant to point 3 of the request – namely the full list of items which were stolen during the burglary.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. The complainant wrote to West Yorkshire Police on 2 December 2011 and requested information relating to the release of information by West Yorkshire Police on 23 and 24 November 2011 about a letter written by a convicted burglar to his victim(s). The complainant's request was for further information in relation to the burglary – in relation both to the offence itself and the offender.
6. The request comprised eight points:  
“...
  1. *Please disclose the date of the burglary in the Moortown area of Leeds committed by the offender who wrote the letter;*
  2. *Please supply the road name of the property burgled;*
  3. *Please supply a full list of items and their estimated value, if known, which were stolen during the burglary;*
  4. *Please disclose when the offender was arrested and charged;*
  5. *Please disclose when the matter first came to court, which court and any subsequent hearings West Yorkshire Police attended and/or are aware of;*
  6. *Please disclose, if known, how the offender pleaded and information held in relation to any punishment handed out;*
  7. *Please disclose the age of the offender (giving date of birth if possible);*
  8. *Please state whether to West Yorkshire Police's knowledge the offender has since been charged with any other offence and, if so, please detail those offences and the dates they occurred.”*
7. West Yorkshire Police responded on 27 January 2012. It cited section 40(2) (personal information) as its reason for refusing to disclose the requested information. West Yorkshire Police explained that the requested information constitutes third party personal information in relation to both the victim and the suspect.
8. Following an internal review West Yorkshire Police wrote to the complainant on 21 February 2012 upholding that position.

## Scope of the case

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9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. By way of background, he explained that his request for information was made subsequent to a press release by West Yorkshire Police on 23 November 2011 which gave details of a letter written by a burglar to his victim as well as some information about the burglar and the burglary.

10. Arguing in favour of disclosure, he told the Commissioner:

*"The points I made above indicate what may be perceived as contrary behaviour in that WYP has released some information, but is unwilling to release any more. What data protection principles were applied in the various releases by WYP (both by press release and by press office) in relation to the information handed out and why is it felt that information is any different from the information I have requested?"*;

and

*"I would argue that the public does indeed have a legitimate interest in disclosure so that the information given out by a public authority (WYP) can be scrutinised and fully checked."*

11. During the course of the Commissioner's investigation, having reconsidered the request, West Yorkshire Police confirmed that some of the withheld information was, and remains, in the public domain. It acknowledged the existence of a number of press articles about the letter written by the burglar and accepted that they were available at the time of the request. In particular, West Yorkshire Police acknowledged that those articles include information relevant to parts 3, 6 and 7 of the request. Accordingly it confirmed that it should have cited section 21 (information accessible by other means) in relation to that information.

12. The Commissioner is disappointed to note that it was not until during his investigation that West Yorkshire Police recognised that information within the scope of the request is in the public domain. However, the Commissioner is satisfied that such information is clearly already known to the complainant. For example, in correspondence with the Commissioner, the complainant said:

*"In the press release WYP stated several details in relation to the burglar/burglary, including that he was 16 at the time and that he received a 12-month Intensive Supervision and Surveillance Plan".*

13. The complainant also referred to press reports that include information about details of the items stolen.
14. The Commissioner therefore considers the scope of his investigation to be West Yorkshire Police's citing of the personal information exemption in relation to the withheld information that was not in the public domain at the time of the request.

## Reasons for decision

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15. Section 40 of FOIA provides an exemption from the disclosure of personal 'data' where the information is the personal information of a third party and its disclosure would breach one of the data protection principles of the Data Protection Act (DPA).

*Is the information personal data?*

16. Personal data is defined in section 1(1) of the DPA as:

*"data which relate to a living individual who can be identified-*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."*

17. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
18. West Yorkshire Police has argued that the requested information constitutes third party personal information in relation to both the victim and the suspect.
19. Having considered the withheld information, the Commissioner is satisfied that, in the context of the request, the withheld information constitutes information that falls within the definition of 'personal data' as set out in section 1(1) of the Data Protection Act 1998, as it comprises personal data relating to the defendant. He has come to this

conclusion because the information is clearly linked to the individual who committed the burglary.

20. He has next gone on to consider whether it also constitutes the personal information of other individuals.
21. The Commissioner acknowledges that sometimes it is not immediately obvious whether an individual can be identified or not. In this respect, he refers to Recital 26 of the European Data Protection Directive 95/46/EC which states that whether or not the individual is identifiable will depend on:

*"all the means likely reasonably to be used either by the controller or by any other person to identify the said person".*

22. When considering identifiability, the Commissioner's view is that:

*"it should be assumed that you are not looking just at the means reasonably likely to be used by the ordinary man in the street, but also the means that are likely to be used by a determined person with a particular reason to want to identify individuals".*

23. In this case, the Commissioner is satisfied that it is plausible that the victim of the burglary would be able to identify themselves. He also considers it plausible for those who have some knowledge of the burglary to recognise the victim either directly or indirectly as a result of the content and context of the withheld information.

*Is the information sensitive personal data?*

24. Sensitive personal data is personal data which falls into one of the categories set out in section 2 of the DPA. The Commissioner considers the relevant categories in this instance are:

*"g) the commission or alleged commission by him of any offence*

*h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings".*

25. In this case, given the fact that it relates to a burglary, subsequent arrest and proceedings, the Commissioner is satisfied that the requested information falls under sub-sections 2(g) and (h) in relation to the offender.

*Will disclosure breach one of the Data Protection principles?*

26. Having accepted that the information requested constitutes the personal data, and in some cases the sensitive personal data, of a living

individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles.

27. The Commissioner has considered whether disclosure of the requested information would breach any of the data protection principles as set out in schedule 1 of the Data Protection Act (DPA). He considers that the most relevant principle in this case is the first principle, which states that:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".*

*Would it be fair to disclose the requested information – the offender?*

28. The complainant argued that, in relation to other crimes and incidents, West Yorkshire Police provides more detailed information in its press releases. He provided the Commissioner with extracts from press releases to evidence that point.

29. With respect to the information he is requesting in this case, he told the Commissioner:

*"these are all details which are regularly released by WYP in relation to crimes in its force area".*

30. In response, West Yorkshire Police told the Commissioner that it regularly releases information to the media and public *"as part of our ongoing process of keeping them informed"*. However, it also said that:

*"the level of detail will vary depending upon the circumstances".*

31. In the Commissioner's view, the application of the first data protection principle in respect of fairness involves striking a balance between competing interests, the arguments around which are now well rehearsed. In summary, the Commissioner will be guided by the following factors when weighing up these competing interests:

*(i) a data subject's reasonable expectations of what would happen to their personal data;*

*(ii) the consequences of disclosure; and*

*(iii) the balance between the rights and freedoms of the data subject and the legitimate interests of the public.*

32. The Commissioner accepts that the request in this case is not for the names of those involved. The complainant told him:

*"I am not requesting names but it would allow checking the court case details if WYP can provide these details as they are permitted to do so".*

33. Arguing against disclosure, West Yorkshire Police told the complainant that release of the court details:

*"would enable you to check court case details which in turn would identify the name of the offender if not the name of the victim".*

34. The Commissioner is therefore satisfied that one likely consequence of disclosure of information within the scope of the request is that the offender could be identified.

35. Furthermore, the Commissioner considers that, in most cases, the very nature of sensitive personal data means it is more likely that disclosing it will be unfair. The reasonable expectation of the data subject is that such information would not be disclosed and that the consequences of any disclosure could be damaging or distressing to them.

36. The Commissioner recognises that the request for information was made in response to a press release that attracted media attention. The fact that the information at issue was not disclosed at the time of that press release is, in his view, likely to contribute to the data subject's expectations at the time of the request that, having not been made public at that time, the information would not be made public in the future.

*Would it be fair to disclose the requested information – the victim?*

37. The Commissioner accepts that every individual has the right to some degree of privacy. Indeed, this right is enshrined in Article 8 of the European Convention on Human Rights which protects the right to a private and family life.

38. The Commissioner considers the nature of the information itself and the consequences of it being released are factors which will help shape the expectations of the data subject as to whether their personal data would be disclosed to the public. In this case, the Commissioner considers their expectation would be that it would not be disclosed to the world at large.

*Conclusion*

39. Having considered all the circumstances of the case, the Commissioner has concluded that it would be unfair to the individuals concerned to disclose most of the withheld information to the world at large and to do so would contravene the first principle of the DPA. As disclosure of that information would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 or Schedule 3 DPA conditions is met. However, his initial view is that no such condition would be met.
40. However, with respect to the information withheld in relation to point 3 of the request, the Commissioner is not satisfied that it would be unfair to disclose that information. It is clear that the information is already substantially in the public domain and that any possible harm from disclosure which might occur is already possible, irrespective of whether the information is disclosed under FOIA. The Commissioner therefore accepts that disclosure in this case would not be unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
41. He therefore orders disclosure of the information within scope of that part of the request that is not already in the public domain.



## Right of appeal

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42. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

43. 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.
44. 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** .....

**Jon Manners**  
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