

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 May 2016

Public Authority: Chief Constable of West Midlands Police
Address: Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant requested copies of referrals from West Midlands Police (WMP) to the Independent Police Complaints Commission (IPCC) relating to the 1974 Birmingham Pub Bombings. WMP identified a single referral form within the scope of the request and withheld it from disclosure under the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that WMP cited section 40(2) correctly so it was not obliged to disclose this information. WMP did, however, breach section 17(1) of the FOIA by failing to respond to the request within 20 working days of receipt.

Request and response

3. On 29 October 2015 the complainant wrote to WMP and requested information in the following terms:
"Please provide copies of all referrals to the IPCC in relation to the Birmingham Pub bombings."
4. After a delay, WMP responded on 22 December 2015. It refused the request and cited the exemptions provided by sections 30(1)(a) and (b) (information held for the purposes of an investigation) and 40(2) (personal information) of the FOIA.

5. The complainant responded on 4 January 2016 and requested an internal review. WMP responded with the outcome of the review on 3 February 2016, which concluded that the refusal on the basis of the exemptions cited previously was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 3 February 2016 to complain about the refusal of his information request. The complainant indicated that he did not agree with the reasoning for the refusal of his request given the strength of the public interest in information relating to the Birmingham Pub Bombings. The complainant also suggested that, in any event, it should not have been necessary to withhold the entire documentation within the scope of the request, instead it should have been disclosed with redactions if necessary.
7. During the investigation of this case, WMP changed its position and withdrew the citing of section 30(1) and instead cited section 31(1)(g) (prejudice to law enforcement). It maintained the citing of section 40(2). The analysis below covers the exemptions cited by WMP, as well as the breach of the FOIA through the delay in responding to the request.

Reasons for decision

Section 17

8. Section 17(1) requires that a response refusing a request must be sent within 20 working days of receipt of the request. In this case WMP failed to meet this requirement and in so doing breached section 17(1) of the FOIA.

Section 40

9. WMP cited section 40(2). This section provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption therefore involves two stages; first the information must constitute the personal data of an individual other than the requester and, secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.

10. Covering first whether the withheld information constitutes the personal data of any individual, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

“personal data’ means 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”.

11. The information in question here is a single IPCC referral form concerning a complaint about a police officer. This complaint relates indirectly to the Birmingham Pub Bombings. The Commissioner’s view is that this information clearly both relates to and identifies the police officer who was the subject of the complaint. This information is, therefore the personal data of that individual according to the definition in section 1(1) of the DPA.
12. As to whether disclosure of that personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which states that personal data shall be processed fairly and lawfully and in particular on whether disclosure would be, in general, fair. In forming a conclusion here the Commissioner has taken into account the reasonable expectations of the data subject and any consequences that disclosure may have upon them. He has also considered whether there is any legitimate public interest in the disclosure of this personal data.
13. On the issue of the reasonable expectations of the data subject, an important factor here is that the allegation was investigated and not upheld; it was found that this police officer had no case to answer. Given this, the Commissioner believes that this officer would hold a strong and legitimate expectation that this information, which details an allegation against them which was found unsubstantiated, would not be disclosed into the public domain.
14. As to any consequences of disclosure upon the data subject, disclosure would associate them with the investigation into the Birmingham Pub Bombings, a matter that remains of considerable sensitivity. The Commissioner is of the view that this would be counter to that person’s reasonable expectation of confidentiality and would be likely to be distressing to that individual. As mentioned above, disclosure would also place into the public domain details of an allegation about them that was

not upheld, with possible harm to their professional reputation as a consequence.

15. As to whether there is any legitimate public interest in the disclosure of this personal data, the Commissioner is of the view that there is some public interest in the disclosure of this information as it relates to the Birmingham Pub Bombings. However, in relation to the specific information in question here, which relates to the bombings only indirectly and concerns a complaint that was not upheld, the Commissioner is of the view that this public interest would not be served by disclosure to any significant extent. Certainly the weight to be attached in the context of this withheld information is not sufficient to outweigh the factors against disclosure covered above.
16. Whilst the general approach of the Commissioner is that it will be far less likely for disclosure of information that relates to a data subject's professional life to be unfair than would be the case for information about private life, in this case he recognises that, whilst this personal data concerns professional life, it also relates to a particularly sensitive matter. For these reasons, his conclusion is that disclosure of this personal data would be unfair and in breach of the first data protection principle.
17. As noted above, the complainant argued that WMP should have disclosed a redacted version of the form, rather than withhold it entirely. The Commissioner notes that some parts of the form are not the personal data of the police officer who was the subject of complaint when that content is viewed in isolation.
18. However, the Commissioner also notes that the form includes information that relates to and identifies the witnesses who made the complaint. Those parts of the form are the personal data of those individuals. His view in relation to that personal data is again that the data subjects would hold a strong expectation that this information would not be disclosed into the public domain. The Commissioner considers it clear that those individuals would have held an expectation of confidence when they made their complaint and disclosure contrary to that expectation would be distressing to them.
19. Once the personal data of the police officer and of the witnesses had been fully redacted, no meaningful parts of the referral form would remain to disclose. The Commissioner does not, therefore, find that WMP should have disclosed any part of the withheld information.
20. The overall conclusion of the Commissioner is that the withheld information constitutes the personal data of individuals other than the complainant and that its disclosure would breach the first data

protection principle. The exemption provided by section 40(2) is, therefore, engaged in relation to this information and WMP was not obliged to disclose it.

Other matters

21. As well as the finding above that WMP breached section 17(1), a separate record has been made of the delay that occurred in WMP's handling of the complainant's request. WMP and the ICO have been in communication over issues concerning the ability of WMP to respond to requests within appropriate time scales. WMP has improved its performance in this regard and must continue to do so.

Right of appeal

22. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

23. 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.
24. 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

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