



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**Case No. EA/2014/0136**

**ON APPEAL FROM:**

**The Information Commissioner's  
Decision Notice No: FS50533491  
Dated: 27 May 2014**

**Appellant: DAVID BEAVER**

**1<sup>st</sup> Respondent: INFORMATION COMMISIONER**

**2<sup>nd</sup> Respondent: CHIEF CONSTABLE OF LANCASHIRE  
CONSTABULARY**

**On the papers on: 23 SEPTEMBER 2014**

**Date of decision: 16 OCTOBER 2014**

**Before**

**ROBIN CALLENDER SMITH**  
Judge

and

**ANNE CHAFER and MALCOLM CLARKE**  
Tribunal Members

**Representations:**

For the Appellant: Mr D Beaver  
For the 1<sup>st</sup> Respondent: Mr R Bailey, Solicitor for the Information Commissioner  
For the 2<sup>nd</sup> Respondent: Mr C Melling, Information Manager Lancashire  
Constabulary

**Subject matter: FOIA 2000**

Absolute exemptions

- Personal data s.40

Qualified exemptions

- Law enforcement s.31
- Health and safety s.38

**Cases:** *Cobain v IC and CPS* [2012] 1 Info LR 349.

The Tribunal upholds the decision notice dated 27 May 2014 and dismisses the appeal.

**REASONS FOR DECISION**

Introduction

1. Mr David Beaver (the Appellant) wrote to the Independent Police Complaints Commission (IPCC) on 13 December 2013 wanting to know the names of four police officers who had been dismissed for gross misconduct in relation to what had been described in the media as a “car-buying scam”.
2. The request followed from a *Lancashire Evening Post* article published on 9 December 2013 headlined: “Police sacked in car-selling ‘scam’”.
3. That article stated that a Detective Chief Inspector, a Detective Inspector, a Detective Sergeant and a Detective Constable – all from the Lancashire Constabulary’s specialist covert unit based at the Hutton headquarters – had been dismissed after being found guilty of gross misconduct.

4. The article went on to say that Lancashire Constabulary had said that the four officers, some of whom had decades of experience, had “brought discredit to the force” and had failed to display vital characteristics needed by police officers.
5. The scam involved the purchase of unmarked police cars for use in covert operations. In a bid to stop the cars being identified by criminals, they were changed frequently and sold by Lancashire Constabulary to the public at heavily-reduced prices, most cars being around 6 to 12 months old.
6. The officers who were subject to the investigation and dismissal had ordered cars for police work with particular specifications which they wanted for themselves, knowing that the cars would soon be available to buy personally at a reduced cost.
7. The case had been referred to the IPCC who supervised the investigation which resulted in the officers being charged with gross misconduct and being dismissed after a nine-day hearing.
8. The Crown Prosecution Service subsequently decided not to prosecute the officers.

#### The request for information

9. The IPCC refused the Appellant’s request on 15 January 2014 relying on the sections 31 (1) (a) and (b) FOIA – prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders – and maintained the refusal following an internal review on 28 February 2014.
10. The IPCC, when the matter was being considered by the Commissioner, relied additionally on the FOIA exemptions provided by section 38 (1) (a) and (b) – endangerment to health and safety – and section 40 (2) in relation to personal information.

## The complaint to the Information Commissioner

11. The Commissioner considered that section 40 (2) FOIA – personal data – was engaged. The request was for the names of the police officers and providing the information would both relate to and identify the police officers referred to in the request. That information was personal data as defined by section 1 (1) of the Data Protection Act 1998 (DPA).
12. As the information was personal data the Commissioner had considered the first data protection principle that it was processed fairly and lawfully and – in particular – on whether disclosure would be fair to the individuals in question.
13. That involved consideration of whether those individuals had a reasonable expectation that the information would be revealed and a consideration of the consequences of disclosure upon them as well as whether there was a legitimate public interest in the disclosure of information.
14. The Commissioner had also concluded that the information was sensitive personal data as defined in section 2 of the DPA. That was relevant when considering the expectations of the officers in question and the consequences of disclosure on them. The Commissioner concluded that the officers would hold strong expectation that the information would not be disclosed by the IPCC and that disclosure – in the face of that expectation – would result in distress to the individuals.
15. Sensitive personal data covered the most private information about individuals and the Commissioner stressed that their former occupation as police officers was not relevant to the decision. The key factor was that the information that had been requested was sensitive personal data.
16. Cases where it would be considered fair to disclose such sensitive personal data publicly were extremely rare.

17. On that basis the Commissioner found the exemption engaged by section 40 (2) FOIA was engaged and the IPCC was not obliged to disclose the requested information.
18. Because of that finding, the other exemptions claimed were not considered.

### The appeal to the Tribunal

19. The Appellant's position in the appeal was summarised succinctly in his Grounds of Appeal: "The IPCC have not provided a reason why the officers involved need to have their names kept out of the public domain. These people are no longer police officers and the public have a right to know who they are."
20. He elaborated further in an email to the Tribunal dated 14 August 2014. He stated that the police had not provided any evidence about why releasing the names of the disgraced ex-officers would be unlawful. They were no longer police officers and should not be protected. The public had a right to know the names of corrupt police officers who wasted public money for their own gain. No evidence had been provided about which clause would be a breach of the Data Protection Act 1998.

### Evidence

21. In addition to the open material provided to the Appellant and the Tribunal, including correspondence relating to the Commissioner's investigation and the Lancashire Evening Post article (summarised at the beginning of this decision), the Tribunal also considered a small amount of closed, confidential material provided by the IPCC to the Information Commissioner and from Lancashire Police to the Information Commissioner.

22. The Tribunal, when dealing with any closed confidential information, is always conscious that it has not been made available to the Appellant. It scrutinises such material rigorously and, where possible, seeks to make public as much of such information as may be appropriate.
23. In this case the key document was a redacted version of the IPCC letter to the Information Commissioner dated 2 May 2014. The Tribunal considered the redactions carefully and decided that they were both appropriate and proportionate in the circumstances of this appeal.
24. The information provided from Lancashire Police was brief and factual. The Tribunal did not consider that it would be fair, proportionate or in the public interest to put this information – provided in confidence – into the public domain.

#### Conclusion and remedy

25. The Tribunal, having seen all the documentary evidence considered by the Information Commissioner, agrees that the information requested in relation to these four police officers is sensitive personal data falling within the definition of section 2 of the Data Protection Act 1998. Specifically, when read in the context of the request, it falls within the definition of section 2 (g) DPA as it relates to “the commission or alleged commission....of any offence”.
26. This puts the data into a category where it needs to be treated with particular care and where it is not normally disclosed unless there is a justifiable reason for doing so.
27. Although the case was not quoted to us, the Tribunal considered one of the significant decisions in relation to the revelation of sensitive personal data during the course of its deliberations. That was the case of *Cobain v IC and CPS*. That case related to the CPS prosecution of the BNP leader Nick Griffin in 1998.

28. Briefly, Mr Griffin had been convicted of publishing material likely to stir up racial hatred, contrary to s.19 of the Public Order Act 1986 in relation to material which had been published in a right wing periodical "The Rune". Although the CPS had confirmed that it held material which fell within the terms of the request, it declined to disclose the material on the basis that the information was exempt (among other reasons) because it was sensitive personal data.
29. The Commissioner upheld the CPS's finding that the information sought was sensitive personal data. There was no dispute that much of the information sought constituted Mr Griffin's sensitive personal data, as it contained his political opinions and information relating to the commission of an offence. However, such information could still be disclosed to a third party applicant under FOIA where the disclosure was fair and lawful *and* one of the relevant conditions of the DPA was satisfied.
30. What distinguishes the *Cobain* case from the current appeal is Condition 5 of Schedule 3 of the DPA which covers the information being made public as a result of steps deliberately taken by the data subject.
31. Mr Griffin had put such information into the public domain.
32. Also, Section 3 of the Data Protection (Processing of Sensitive Personal Data) Order 2000 covered the situation where disclosure of personal data was in the substantial public interest, was in connection with the commission of any unlawful act or dishonesty, malpractice or seriously improper conduct by, or the unfitness or incompetence of, any person, *was sought for the purposes of journalism and there was an intention to publish the information in circumstances where the data controller reasonably believed that such publication was in the public interest* [emphasis added].
33. The Tribunal ruled that disclosure of Mr Griffin's personal data was fair and lawful as he had made significant efforts to publicise his account of

the trial and his claims as to the principles of free speech. In circumstances where he had courted publicity and held a prominent and sensitive political role, disclosure to the world at large would be fair and lawful. Some of the information which Mr Cobain sought had been deliberately placed in the public domain by Mr Griffin, for example during the course of his evidence or by offering the records of his police interviews for sale. The information which fell within this category was therefore covered by Condition 5 of Schedule 3 and could therefore be lawfully disclosed.

34. The Tribunal also ruled that a broader justification for disclosure however was offered by s.3 of the Data Protection (Processing of Sensitive Personal Data) Order 2000. The sensitive data was in connection with the commission of an unlawful act, seriously improper conduct and whether Mr Griffin was unfit for political office. It was sought for the purposes of journalism and subsequent publication in a newspaper or book. Given the issues involved – racial and/or religious hatred and the right to express even extreme views - disclosure would be in the substantial public interest.
35. In this appeal none of the police officers have placed any information in the public domain and the information request is not one that is being sought *for the purposes of journalism* and in the context of the additional requirements for publication.
36. Here the information is sensitive personal data. Any legitimate interest the public may have in having access to the information requires balancing against the possible consequences of disclosure – in the face of the reasonable expectations of the four police officers – and their rights as individual data subjects.
37. This requires an assessment of fairness. The information would be regarded by the individuals as most private so there would be a reasonable expectation that the information would not be disclosed.



38. The police officers would also have a reasonable expectation that when the IPCC received information in respect of an investigation it would hold that confidentially and not disclose it. There is a public interest in the IPCC being able to receive information, neutrally, in such situations otherwise it would be difficult for that body to conduct its duties and responsibilities effectively.
39. Additionally, the police officers had not consented to the disclosure of this sensitive personal data nor had the Lancashire Constabulary ever sought to release their names into the public domain. The individuals were no longer serving officers so that any public need to know who they were – which might exist if they had continued to serve within the Constabulary – has gone.
40. Finally, the CPS had been made aware of the situation in relation to these four officers and had decided not to prosecute them.
41. For all these reasons the Appellant's information request was properly refused on the basis that it would be unfair to reveal such sensitive personal data when there was a reasonable expectation that it would remain private.
42. It follows that the Appellant's appeal cannot succeed.
43. Our decision is unanimous.
44. There is no order as to costs.

Robin Callender Smith  
Judge  
16 October 2014

Re-promulgated 20 October 2014