

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 July 2012

**Public Authority:** Chief Constable of Kent Police  
**Address:** Kent Police Headquarters  
Sutton Road  
Maidstone  
Kent  
ME15 9BZ

#### Decision (including any steps ordered)

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1. The complainant has requested the date and reason for departure from Kent Police (Police) of a particular officer who had been involved in the forensic work in relation to a specific road traffic accident in 2002. The Police confirmed that the officer in question had left its employment, but refused to disclose the date and reasons of departure on the basis of section 40(2) of the Freedom of Information Act. The Commissioner has concluded that the Police are entitled to withhold the requested information on this basis.

#### Request and response

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2. On 12 February 2012 the complainant wrote to Kent Police (the Police) and requested information in the following terms:

*'This is a formal request for information under the Freedom of Information, regarding [a named officer] a Forensic Officer of the Kent Police who attended a FRTA[fatal road traffic accident] scene and carried out part of the forensic work regarding it.'*

[The request went on to identify the date and location of the accident and the name of individual who died. The Commissioner has not included this information as it could be used to identify the name of the complainant in this case.]

*I am the deceased husband and Executor of herEstate and in that capacity I would appreciate you informing me when [the named officer] a Forensic Kent Police Officer who attended the scene and carried out most of the forensic work involved left the Kent Police Force and for what reason'.*

3. The Police responded on 28 February 2012 and confirmed that the officer was no longer a serving officer. However the Police also explained that the date and reason for his departure from the Police constituted his personal data and this information was exempt from disclosure under section 40(2) of FOIA.
4. The complainant contacted the Police on 1 March 2012 and asked it to undertake an internal review of this decision.
5. The Police informed the complainant of the outcome of the review on 19 March 2012; the review upheld the decision to withhold the requested information on the basis of section 40(2).
6. The complainant contacted the Police again on 24 March 2012 in order to express his continued dissatisfaction with its decision not to provide him with the information he requested.
7. The Police responded on 29 March 2012 and explained to the complainant that if he remained dissatisfied with its handling of his request he should submit a complaint to the Commissioner.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 31 March 2012 in order to complain about the Police's decision to withhold the information that he had requested. The complainant highlighted a number of reasons why he believed that this information should be disclosed and the Commissioner has referred to these arguments in his analysis below.

### **Reasons for decision**

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9. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act (the DPA). The Police argued that disclosure of the requested information would be unfair and thus breach the first data protection 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.'

10. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by 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.'

11. The Commissioner is satisfied that the date that the named officer left the Police and the reasons for his departure is data that relates to an identifiable individual and are of biographical significance to that individual. The requested information is therefore personal data.

12. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
  - what the public authority may have told them about what would happen to their personal data;
  - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
  - the nature or content of the information itself;
  - the circumstances in which the personal data was obtained;
  - particular circumstances of the case, e.g. established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.

- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
  - whether information of the nature requested is already in the public domain;
  - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

13. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
14. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

#### *The Police's position*

15. The Police argued that the officer in question would have had a clear expectation that information of the nature requested would not be disclosed to the public at large. Furthermore the Police argued that disclosure of the information in question would constitute an invasion of the officer's privacy because the date of his departure, and reasons for it, relate not only to his public role as a police officer but also his private life as it reveals something about his personal circumstances. Disclosure of the information would therefore represent an intrusion into the officer's private life. Moreover, the Police argued that there was no legitimate reason for disclosure of the requested information which could be used to justify such any intrusion.

#### *The complainant's position*

16. The Commissioner understands that in the complainant's opinion the officer in question made serious errors in compiling the crash investigation report relating to the collision identified in the request. The complainant believes that the officer's departure from the Police may have been as a result of this alleged incompetence. The complainant

argued that as these alleged actions were those of a public official, not a private individual, the Police's emphasis on the need to protect the officer's personal privacy was flawed. Furthermore, the complainant suggested that any distress or intrusion caused to the officer was insignificant given the nature of the information requested, i.e. simply the date and reasons for his departure from the Police. Moreover, the complainant argued that the distress or intrusion caused to the officer as a result of disclosing the requested information should not be considered in the circumstances of this case, i.e. a fatal traffic accident and the consequences which that accident had for the complainant and his family.

### *The Commissioner's position*

17. The Commissioner agrees with the Police that the officer would have had a strong expectation that details of his date of departure and reasons for his departure from the force would not be disclosed under FOIA. This is on the basis that such data is generally considered part of an employee's personnel record and even for employees who work for public sector organisations, such as police forces, it is clearly established custom and practice that information of this nature would not be publicly disclosed. In such circumstances the Commissioner accepts that the officer's expectation that this information would not be disclosed is a reasonable one.
18. With regards to the consequences of disclosure, the Commissioner accepts the complainant's suggestion that the requested information relates, to a notable degree, to his public role whilst employed by the Police as a serving officer. However, in the Commissioner's opinion the information also relates directly to the officer's private life. The date an individual left a previous employer, and the reasons for that departure, are of significant biographical relevance to an individual's personal life. In reality, the nature of the information requested in this case could be said to be intrinsically linked between the individual's previous 'professional' life as a serving police officer and to his private life. Therefore in considering whether disclosure would be fair the Commissioner cannot ignore the degree to which disclosure would invade the privacy of the officer in question. In the Commissioner's view disclosure of the information would represent a reasonable interference into the private life of the officer as it would reveal to the public something about the nature of his relationship with a previous employer.
19. With regards to the reasons for disclosing the requested information, the Commissioner fully respects the complainant's motivation for seeking information about the accident in question. However, he agrees with the Police that there would appear to be no legitimate reason for disclosing the information which is the subject of this request. Whilst the

complainant's view maybe that the officer in question may have made errors in compiling the accident report it is difficult to see how disclosure of the information could serve any particular public interest, especially after such a significant amount of time has elapsed since the accident in question. (The Commissioner has of course had the benefit of viewing the withheld information in question in reaching this conclusion, which the complainant has obviously not.) This is not to understate the complainant's reasons for wanting this information. However, allied to the officer's reasonable and weighty expectations that the information would not be disclosed, and the consequences of doing so, the Commissioner is satisfied that disclosure of the requested information would be unfair and thus it is exempt from disclosure on the basis of section 40(2) of FOIA.

## Right of appeal

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20. 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)

21. 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.
22. 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** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**