

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2013

Public Authority: Chief Constable of Greater Manchester Police
Address: Central Park
Northampton Road
Manchester
M40 5BP

Decision (including any steps ordered)

1. The complainant requested information relating to a road traffic accident involving a Greater Manchester Police (GMP) police officer. GMP confirmed it held some information within the scope of the request, but refused to disclose it citing section 38 (health and safety).
2. The Commissioner's decision is that GMP applied the exemption correctly. He requires no steps to be taken.

Request and response

3. The complainant wrote to GMP on 18 July 2012 and requested information in the following terms:

"Please provide any video of the police car crash on Wharfside Way in Trafford Park at around 1:45am on Thursday December 15 2011. Please also provide video of the car which crashed taken before and after the crash. I understand a police car following the Golf had a camera on board. For your information the car which crashed was a VW Golf which was being tested by the police".

4. By way of clarification, he told GMP:

"I believe the VW Golf may have been out of sight when the actual crash happened so there may not be footage of the crash itself. Never-the-less, I am asking for any footage of the Golf in the minutes before the crash, footage of the crash itself (if it exists) and of the aftermath (when the following police car caught up)".

5. GMP's response is dated 15 August 2012 although it appears that, due to an administrative error, the complainant was not provided with the response until 11 September 2012.
6. GMP confirmed that *"footage of the crash itself is not held"*.
7. With respect to other information within the scope of the request, GMP told the complainant:

"Some of the other information being requested is held by GMP".
8. However, GMP refused to provide that information citing section 38(1)(a) (health and safety) as its basis for doing so.
9. Following an internal review, GMP sent the complainant the outcome of its internal review on 9 October 2012. It upheld its original position.

Scope of the case

10. The complainant contacted the Commissioner on 29 October 2012 to complain about the way his request for information had been handled.
11. The Commissioner understands that, in the complainant's view, the police officer concerned is not a person who is likely to have his mental health put at risk if the material is published. In this respect, he told the Commissioner:

"In fact I would argue it would be unlikely that publication would place this officer's health in jeopardy".
12. By way of background to his request, he told the Commissioner:

"A VW Golf loan car being tested by the force crashed at a roundabout. No other vehicles were involved. Although the crash itself was not captured on video, I understand the movements beforehand and also the crash scene (the aftermath) were captured by a camera on board a second, following police car. It is this footage I am seeking".
13. The complainant also told the Commissioner:

"Of course, I have not seen the footage but it may be its contents could prove embarrassing to the force and GMP is simply seeking to avoid embarrassment.... I suspect the force is seeking to minimise embarrassment rather than distress".

14. The Commissioner considers the scope of his investigation to be GMP's application of section 38.

Reasons for decision

Section 38 health and safety

15. Section 38(1) of the FOIA provides that:

"Information is exempt information if its disclosure under this Act, would, or would be likely to –

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual."

16. Unlike the other exemptions in FOIA subject to the prejudice test, the word "endanger" is used in section 38 rather than the word "prejudice". However, the Commissioner does not consider that the use of the term "endanger" represents a departure from the test of prejudice to which section 38 is subject.
17. In this case GMP confirmed it is relying on section 38(1)(a). In other words, it argued that disclosure would, or would be likely to, endanger the physical or mental health of an individual.

The applicable interest

18. The Commissioner accepts that the arguments put forward by the public authority – that the outcome of disclosure in this case would be counter to the physical or mental health of an individual - are relevant to the prejudice described in section 38(1)(a).

The nature of the prejudice

19. Given the nature of the requested information, GMP explained that the knowledge that the video footage of the incident would be available for all the world to see would be likely to have a significant detrimental effect on the officer concerned, the officer's family and relatives and his colleagues.

Likelihood of prejudice

20. The Commissioner takes the view that the phrase 'would or would be likely' to endanger means that there should be evidence of a significant risk to the physical or mental health of an individual.

21. In this respect, GMP told the complainant:

"GMP consider that disclosing video footage of this incident would cause unnecessary mental anguish to the officer involved in this incident".

22. It also said that it considered that disclosure would be likely to cause *"distress and upset to his family, relatives and his colleagues"*.

23. During the Commissioner's investigation, GMP confirmed its view with respect to the likelihood of prejudice, citing the lower level of likelihood.

Is the exemption engaged?

24. The Commissioner has previously accepted an individual's mental wellbeing to fall within the scope of section 38¹. In this he includes emotional and psychological wellbeing, including the likelihood of causing significant upset or distress.

25. The Commissioner has considered the nature of the video footage to which section 38 has been applied in this case, and acknowledges that it is not in dispute that it does not show the crash. He has taken into account that disclosure under FOIA is disclosure to the world at large and, accordingly, has considered the extent to which, if disclosed, that footage would be likely to be publicised and scrutinised. In this respect he notes the extent of the media and public attention at the time of the incident. The Commissioner has also taken into account further arguments provided by GMP to support its view regarding disclosure. Those arguments are summarised in the confidential annex to this decision notice (which is provided to the public authority only).

26. Although he cannot provide an expert opinion on this matter, from the evidence he has seen, the Commissioner is satisfied that the consequence of disclosure is such that it would be likely to cause significant distress to individual(s). He is also satisfied that the effect of that disclosure upon the individual's mental health amounts to endangerment, being more than mere stress or worry. He has been provided with a medical opinion which supports this conclusion. It follows that he finds the exemption engaged.

¹ Decision notice FS50121803

The public interest test

27. Having concluded that section 38(1)(a) is engaged in respect of the withheld information, the Commissioner has gone on to consider the balance of the public interest.
28. Applying the public interest test means weighing the harm that is identified in a particular exemption against the wider public interest that may be served by disclosure.

Public interest arguments in favour of disclosing the requested information

29. In bringing his complaint to the Commissioner's attention, the complainant said:

"I believe it would be very much in the public interest to shed light on the driving standards of police officers and publication of this material would achieve this".

30. GMP accepted that disclosure of the information at issue would enable it to provide the public with:

"more awareness and a better understanding of the circumstances leading up to the incident to help inform public debate".

31. It also acknowledged, during the Commissioner's investigation, that disclosure may enable the public to hold the force accountable in respect of its policy on test driving vehicles on public roads.

Public interest arguments in favour of maintaining the exemption

32. GMP acknowledges that the incident was "widely publicised" in the North West media for several weeks after the incident. However, it told the complainant that it would be:

"immoral and unethical to subject those parties involved to further distress and anguish by the resurgence of the requested information being released into the public domain".

Balance of the public interest arguments

33. In balancing the opposing public interest factors in this case, the Commissioner has given greater weight to those factors which he considers support the maintenance of the exemption. There is a genuine and significant public interest in avoiding the significant distress which release would be likely to cause in all the circumstances of this case. On the other hand, having viewed the withheld information, the Commissioner is satisfied that disclosure would not serve the public interest to any appreciable extent. It follows that he has concluded

that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure.

Right of appeal

34. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
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SK9 5AF**