

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 November 2013

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant requested the names and details of the roles of staff working under former Chief Constable of Durham Police, Jon Stoddart on the Hillsborough investigation. He also requested copies of documents relating to Jon Stoddart's secondment arrangement to the public authority.
2. The Commissioner's decision is that the public authority was entitled to withhold the information requested on the basis of the exemption at section 40(2) FOIA.
3. The public authority does not need to take any steps.

#### Request and response

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4. On 23 May 2013 the complainant wrote to the public authority and requested information in the following terms:

*'Please provide the names of all staff working under/for or with Jon Stoddart on the Hillsborough investigation. I understand this information is held by the Home Office as Mr Stoddart is currently seconded to the Home Office. In providing the names please provide details of their roles in the investigation. [Part1]*

*Please provide copies of any documents relating to the secondment arrangement to the Home Office and later to the National Crime Agency (ref: <https://www.gov.uk/government/speeches/Theresa-mays-speech-on-the-hillsborough-investigation>) [Part 2]*

*Please provide the names of any Home Office staff liaising with Mr Stoddart.' [Part 3]*

5. The public authority responded on 21 June 2013. It claimed that the information requested was exempt on the basis of section 40(2) FOIA.
6. The complainant requested an internal review on 24 June 2013. On 22 July 2013 the public authority wrote to the complainant with details of the outcome of the internal review. It disclosed the identity of one official – the head of the relevant Home Office unit that liaises with Mr Stoddart. It maintained the application of section 40(2) to the remaining information.

### **Scope of the case**

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7. On 22 July 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically challenged the claim that the requested information is exempt on the basis of section 40(2). In his own words:

*'I believe the Home Office has put a blanket over the entire information requested (save for now releasing the name of one Home Office official) rather than consider the possibility that the names of senior staff can be named. Indeed these names are often released in high profile investigations. And I do not believe that the argument put forward for non-disclosure of names - that undue influence could be brought on them - is a sustainable argument. These are senior investigators who should not be influenced by any outside influence. The issue here is one of transparency - something which has been lacking in relation to Hillsborough for more than two decades.*

*Similarly the request for details of the employment arrangements for Mr Stoddart must be made public as it is paramount there is transparency surrounding these arrangements. It must be known how this arrangement is set-up and, most importantly, ahead of his transferral to the NCA - which will not be covered by the FOIA - it is paramount that the public are made aware of how this will work.'*

8. The scope of the investigation therefore was to consider:
  - Whether the public authority was entitled to withhold information within the scope of Parts 1, 2 and 3 of the request on the basis of section 40(2).

## Reasons for decision

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### Section 40(2)

9. Information is exempt from disclosure on the basis of section 40(2) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

10. Personal data is defined in section 1 of the DPA as follows:

*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual.'*

Is the information requested in Parts 1 and 3 personal data?

11. The names of staff working for the former Chief Constable of Durham Police, Jon Stoddart and the names of the public authority's staff liaising with Jon Stoddart are clearly the personal data of the relevant staff. It is information from which they can be identified. Details of the roles of staff working under Jon Stoddart is information which is directly linked to them and from which they can be identified. It is therefore also personal data within the meaning in section 1 of the DPA.

Would the disclosure of the information requested in Parts 1 and 3 contravene any of the data protection principles?

12. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

*Public authority's arguments*

13. The public authority considers that the first data protection principle is the most relevant principle in the circumstances of this case.

14. The first data protection principle states:

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

*At least one of the conditions in schedule 2 [DPA] is met.....'*

15. The public authority argued that the relevant members of staff would not expect their names to be disclosed under the terms of the FOIA. The individuals relevant to Part 1 of the request are police officers and civilian police staff seconded from their home forces to the public authority. There are 2 members of staff relevant to Part 3 of the request. The relevant members of staff are part of the Police Transparency Unit. One is a Senior Executive Officer (SEO) and the other a Grade 7 officer, both of which are below Senior Civil Servant (SCS) level. The identity of the head of the unit was revealed to the complainant following the internal review.
16. The public authority considers that the sixth condition in schedule 2 is the most relevant condition in the circumstances of this case. The sixth condition states:

*'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.'*
17. The public authority explained that the sixth condition creates a three part test as follows:
  - there must be a legitimate public interest in disclosing the information,
  - the disclosure must be necessary to meet that public interest, and
  - the disclosure must not cause unwarranted interference with the rights, freedoms and legitimate interests of the employee.
18. The public authority acknowledged that there is a legitimate public interest in any investigation relating to Hillsborough, including the investigation to be carried out by Mr Stoddart. It however disagreed that the interest extends to the identity of every member of staff working on the investigation. It did not consider the disclosure necessary to meet the public interests in transparency. On the other hand, it argued that there is a strong need to protect the individual members of the investigation team from any undue influence or unnecessary interference.
19. The public authority further argued that disclosure would prejudice the rights, freedoms and legitimate interests of the members of staff concerned. It may put them in the public eye in a way that was not intended when the investigation was set up.

*Commissioner's decision*

20. For the avoidance of doubt, section 40(2) is an absolute exemption and is therefore not subject to a public interest in the same way as qualified exemptions – i.e. those exemptions not listed in section 2(3) FOIA.
21. The Commissioner accepts that the first data protection principle is the most relevant in the circumstances of this case. Therefore, the initial consideration for the Commissioner is whether disclosing the information requested in Parts 1 and 3 would be fair.
22. The Commissioner accepts that given the high profile nature of the investigation, the police officers and civilian police staff seconded to work for Jon Stoddart would reasonably expect their names not to be made public whilst the investigation is ongoing. The disaster at Hillsborough understandably remains a very emotive subject for many people, especially those who have been affected whether directly or indirectly. Therefore, in order for those tasked with re-examining those events to properly carry out their investigation, it is important that they are not exposed to unnecessary interference or external pressure which may cloud their judgement in any way. The same applies to the public authority's staff liaising with Jon Stoddart. The Commissioner believes that whilst the investigation is ongoing, the legitimate public interest in ensuring that the investigation is transparent is partly met by the fact that Jon Stoddart who is in charge of, and therefore responsible for the investigation, is publicly known. He is ultimately responsible for any concerns the public may have about the direction of the investigation as well as the conduct of those working for him. It is not necessary to reveal the identity of every member of staff in order to meet this legitimate interest. Staff below SCS grade would reasonably expect their names not to be revealed pursuant to a request under the FOIA. This is especially so in this case in which there is no evidence to suggest that they were exercising a significant level of authority in relation to the investigation.
23. The Commissioner therefore finds that disclosure would be unfair to those members of staff concerned and consequently in breach of the first data protection principle.
24. In view of the above, the Commissioner finds that the public authority was entitled to withhold the information requested in Parts 1 and 3 on the basis of section 40(2).

Is the information requested in Part 2 personal data?

25. The public authority noted that the complainant did not refer to Mr Stoddart by name in this part of his request. However, it explained that

it was clear from the context and by the reference to the Home Secretary's statement<sup>1</sup> that he was referring to Mr Stoddart's individual secondment arrangement. The Commissioner agrees with the public authority's interpretation of this request.

26. The public authority supplied the Commissioner with a copy of Mr Stoddart's secondment agreement and a copy of the covering letter from the Director General of the Crime and Policing Group (CPG). It argued that the information in the agreement and the covering letter relates to an identified individual (i.e. Mr Stoddart) and so constitutes his personal data.
27. The Commissioner accepts that the secondment agreement and the covering letter from the Director of the CPG relate to Mr Stoddart. They contain the terms of his secondment to the public authority to lead the fresh investigation of the Hillsborough disaster and subsequent events relating to it. It is information from which he can be identified and is therefore personal data within the meaning in section 1 of the DPA.

Would the disclosure of the information requested in Part 2 contravene any of the data protection principles?

*Public authority's arguments*

28. The secondment agreement provides a lot more information than simply a name and the fact of involvement in the inquiry. There is a legitimate public interest in the status of Mr Stoddart as head of the inquiry and in the broad terms under which he was appointed. However, that interest is met by the information provide in the Home Secretary's statement and in particular by the following paragraph:

*'Jon Stoddart recently retired as Chief Constable of Durham Police. He is being appointed to the Metropolitan Police as an Assistant Commissioner (a rank equivalent to chief constable). This ensures that he can be re-attested as a police officer and can hold the same senior rank that he held before he retired. He will not be under the direction and control of the Commissioner of the Metropolitan Police in leading this investigation and nor would the Commissioner be responsible for any complaints raised against him. He will initially be seconded to the Home Office and then, once it exists in law, to the National Crime Agency (NCA).'*

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<sup>1</sup> <https://www.gov.uk/government/speeches/Theresa-mays-speech-on-the-hillsborough-investigation>

29. The public authority further argued that there is only a limited legitimate public interest, if any, in the more detailed arrangements set out in the secondment agreement and the covering letter and disclosure would not be necessary in order to meet such an interest. Even if it were, this would be outweighed by Mr Stoddart's legitimate interest that the detailed terms of his current employment are not disclosed to the world at large.

*Commissioner's decision*

30. As mentioned, the Commissioner has to initially consider whether disclosing the information within the scope of Part 2 of the request would be fair.
31. The Commissioner believes that Mr Stoddart would reasonably expect details of the terms of his secondment not to be disclosed to the public. They are part of his employment records and these would not normally be made available to the public.
32. Nevertheless, given the nature of his role, the Commissioner agrees with the complainant that there is a legitimate public interest in knowing the nature of the arrangement, especially in relation to his independence. He however agrees with the public authority that that legitimate public interest is largely met by the Home Secretary's statement in which Mr Stoddart's status is made very clear. He accepts that it is not necessary to disclose full details of the secondment agreement to meet that public interest. The information would be of very limited public interest in that regard or in the sense anticipated by the complainant.
33. The Commissioner therefore finds that disclosing the information within the scope of Part 2 of the request would be unfair to Mr Stoddart and consequently in contravention of the first data protection principle.
34. In view of the above, the Commissioner finds that the public authority was entitled to withhold the information within the scope of Part 2 of the request on the basis of section 40(2).

## Right of appeal

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35. 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)

36. 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.
37. 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**  
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