

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2014

Public Authority: Chief Constable of North Wales Police
Address: Police Headquarters
Glan-y-Don
Abergele Road
Colwyn Bay
LL29 8AW

Decision (including any steps ordered)

1. The complainant has requested information in respect of a named individual. North Wales Police cited section 40(5) of the FOIA, refusing to either confirm or deny whether it held relevant information. The Commissioner's decision is that North Wales Police has correctly relied on section 40(5) of the FOIA. The Commissioner does not require the public authority to take any steps.

Request and response

2. On 28 June 2013, the complainant wrote to North Wales Police (NWP) and requested the following information in respect of a named individual:

"I need to know if he ever carried out work on behalf of Mold Police as this may represent a conflict of interest if he is to be questioned by a Police Force that he has worked for.

I would also like to know if he contacted Mold Police on or after 21st May 2012 regarding a complaint I made against him..."

3. NWP responded on 3 July 2013. It stated that the information he had requested relates to a third party and in accordance with section 40(5) of the FOIA that it could neither confirm nor deny that this information is held by NWP.

4. Following an internal review NWP wrote to the complainant on 16 July 2013. It stated that it was continuing to rely on section 40(5) of the FOIA as confirmation or denial that it held this information would be in breach of the first principle of the Data Protection Act 1998 ('the DPA').

Scope of the case

5. The complainant contacted the Commissioner on 28 July 2013 to complain about the way his request for information had been handled.
6. The complainant informed the Commissioner that he had made a complaint against the named individual to NWP, and believes that the same individual may also have worked for NWP, which he is concerned may represent a conflict of interest.
7. The Commissioner wishes to highlight that he cannot take into account the purpose of the request, as it has long been established that the FOIA is both applicant and purpose blind. Additionally, the Commissioner's remit does not extend to a consideration of the robustness or otherwise of an investigation undertaken by a public authority (otherwise than under FOIA).
8. The Commissioner's investigation will therefore be restricted to whether NWP correctly cited section 40(5) of the FOIA to neither confirm nor deny whether it holds information relevant to the request.

Reasons for decision

Section 40(5)

9. Section 1 of the FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not the requested information is held and, if so,
 - the duty to communicate that information to the applicant.
10. Section 40(5) states that:

"The duty to confirm or deny

(b) does not arise in relation to other information if or the extent that either-

(i) The giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded,"

11. Therefore, for NWP to be correct in relying on section 40(5) to neither confirm nor deny whether it holds information falling within the scope of the complainant's request the following conditions must be met:

- confirming or denying whether information is held would reveal personal data of a third party; and
- to confirm or deny whether information is held would contravene one of the data protection principles.

12. Section 1(1) of the Data Protection Act 1998 ("DPA") defines personal data 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 intentions of the data controller or any other person in respect of the individual'.

13. The Commissioner notes that the request is whether a named individual ever worked for Mold Police and whether the same individual contacted Mold Police on or after 21 May 2012 in connection with a complaint the complainant had made against him. The Commissioner's view is that providing confirmation as to whether the requested information is held would constitute the disclosure of personal data. He has therefore gone on to consider whether such disclosure would breach the first principle of the DPA.

Would confirming or denying that the requested information is held breach a data protection principle?

14. The first data protection principle says that personal data should be processed fairly and lawfully, subject to further conditions for processing set out in the DPA.
15. In considering whether disclosure of personal data would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has considered the following factors:
 - The data subject's reasonable expectations of what would happen to their personal data.
 - The consequences of disclosure.
 - The balance between the rights and freedoms of the data subject and the legitimate interests of the public.

The reasonable expectations of the data subject

16. NWP has informed the Commissioner that it has a policy of neither confirming nor denying whether it currently or has previously employed any named individual. It has further explained that although it is the choice of individuals to become a police officer, the force maintains a duty to protect the right to privacy of both serving and non serving officers, police staff and their families against potential harassment and targeting.
17. The Commissioner is therefore satisfied that it is reasonable that an individual would have an expectation that information revealing whether or not they have ever been employed by NWP would not be disclosed under the FOIA.
18. Similarly, NWP has a policy of neither confirming nor denying whether information is held in relation to complaints made against named individuals, as it believes that to do so would be disclosing personal information in breach of principle one of the DPA.
19. The Commissioner considers it reasonable that a member of the public would have an expectation that information revealing whether or not NWP has received/investigated complaints against them would not be disclosed under the FOIA.

The consequences of such a confirmation or denial

20. The Commissioner has considered the consequences of NWP confirming or denying whether the named individual has ever been employed by Mold Police. NWP has maintained that there are organised criminal gangs and career criminals working on a daily basis to cause violence

and commit other forms of serious crime within its boundaries. It has argued that current or former employees of NWP could be prime targets for attacks from such groups.

21. Additionally, NWP considers that any confirmation or denial that information is held regarding the employment of a named individual could result in the personal safety of that individual or their family being put at risk by such groups.
22. Further, the compromising of the safety of current and former staff would reduce the efficiency of NWP, as it would divert important resources from other key policing responsibilities to protect those named current or former officers. This would be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public.
23. Similarly, the consequences of confirming or denying the existence of information in respect of a complaint against a named individual would reveal to the general public whether a complaint had been made against an individual. The Commissioner considers that such a confirmation or denial would result in damage or distress to the data subject.

The legitimate public interest in disclosure

24. Notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to confirm or deny whether the information is held, if it can be argued that there is a more compelling public interest in disclosure.
25. The Commissioner acknowledges that there is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities.
26. In this particular case, although the complainant has a personal interest in the confirmation or denial of the existence of such information, it is difficult to see a more specific public interest in disclosure.
27. In view of the absence of a compelling public interest in disclosure, combined with the reasonable expectations of the data subject and the consequences of disclosure, the Commissioner has concluded that it would be unfair for NWP to confirm or deny whether it holds any relevant information. The Commissioner is therefore satisfied that NWP correctly relied on section 40(5) of the FOIA and it is not required to confirm or deny whether it holds information of the type requested.

Right of appeal

28. 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: GRC@hmcts.gsi.gov.uk

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

29. 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.

30. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF