

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2014

Public Authority: Chief Constable of Merseyside Police
Address: Canning Place
Liverpool
L69 1JD

Decision (including any steps ordered)

1. The complainant requested information concerning whether police officers had been charged with assault in relation to a specific incident. Merseyside Police refused to confirm or deny whether it held the information requested and cited the exemption provided by section 40(5) of the FOIA.
2. The Commissioner's decision is that Merseyside Police applied section 40(5) correctly and so it was not obliged to confirm or deny whether the requested information was held.

Request and response

3. On 22 October 2013 the complainant wrote to Merseyside Police and requested information in the following terms:
"I should like to enquire as to whether the officers involved [in the arrest of a named individual] have been charged with assault occasioning actual bodily harm, contrary to s. 47 of the Offences Against the Person Act 1861 [and] if not, I should like to know why."
4. Merseyside Police responded initially on 19 November 2013. At this stage it stated that it was considering the balance of the public interest in relation to section 30 (information relating to an investigation) of the FOIA. It also referred in this response to sections 40 (personal information) and 44 (statutory prohibitions).

5. Merseyside Police responded substantively on 3 December 2013. At this stage it stated that it was refusing to confirm or deny whether it held information falling within the scope of the complainant's request under the exemption provided by section 40(5) (personal information) of the FOIA. No mention was made in this response of sections 30 or 44.
6. The complainant responded on 4 December 2013 and requested an internal review. Merseyside Police responded with the outcome of the internal review on 19 December 2013 and stated that the refusal to confirm or deny under section 40(5) was upheld.

Scope of the case

7. The complainant contacted the Commissioner on 1 January 2014 to complain about the refusal of his information request. He also contacted the ICO again on 9 February 2014 and indicated that he did not believe that section 40(5) had been applied correctly.

Reasons for decision

Section 40

8. Section 40(5) of the FOIA provides an exemption from the duty to confirm or deny where to do so would involve the disclosure of personal data and that disclosure would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process: first, addressing whether confirmation or denial would involve the disclosure of personal data, and secondly whether that disclosure of personal data would be in breach of any of the data protection principles.
9. Covering first whether confirmation or denial would disclose personal data, section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as follows:

"personal data' means data which relate to a living individual who can be identified:

 - a. *from those data, or*
 - b. *from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller".*
10. The view of the Commissioner is that it is clear from the wording of the request without it being necessary to go into detailed analysis that the

confirmation or denial would disclose information that relates to the individuals referred to in the request. As to whether these individuals would be identifiable, this is less clear as they are not named in the request. However, brief research reveals that the police officers in question have been named in media coverage and so these individuals would be identifiable. Confirmation or denial would therefore disclose information that constitutes the personal data of the police officers referred to in the request according to the definition given in section 1(1) of the DPA.

11. The next step is to address whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first principle, which requires that personal data is processed fairly and lawfully, and in particular on whether disclosure would be fair to the individuals named in the request. In forming a view on whether disclosure would be fair the Commissioner has taken into account the reasonable expectations of the data subjects, the consequences of disclosure upon the data subjects and whether there is legitimate public interest in the disclosure of this confirmation or denial.
12. Section 2 of the DPA lists what is to be considered sensitive personal data for the purposes of that Act. Included in this list is information concerning the commission or the alleged commission of an offence by the data subject.
13. Any relevant information that Merseyside Police does hold would concern allegations of criminal offences by the police officers referred to in the request. This information would therefore be the sensitive personal data of the data subjects, as defined in section 2 of the DPA.
14. That this information would be the sensitive personal data of those officers is relevant here when considering their expectations about and the consequences of disclosure upon these individuals. The view of the Commissioner is that it is highly likely to be the case that the data subjects would hold a strong expectation that this information would not be disclosed by Merseyside Police and that disclosure despite this expectation would result in distress to those individuals.
15. Sensitive personal data is, by its very nature, information that individuals regard as the most private information about themselves. As disclosure of this type of information is likely to have a detrimental or distressing effect on the data subjects, the Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose the confirmation or denial in this case.

16. The Commissioner would stress that the occupation of the data subjects as police officers is not relevant to this decision. The key factor here is that the information that has been requested is *sensitive* personal data. The view of the Commissioner is that cases where it would be considered fair to disclose into the public domain sensitive personal data are likely to be extremely rare.
17. In conclusion, the Commissioner finds that the confirmation or denial would disclose personal data of individuals other than the complainant and that the disclosure of that personal data would be unfair and in breach of the first data protection principle. The exemption provided by section 40(5) of the FOIA is, therefore, engaged and Merseyside Police was not obliged to confirm or deny whether the requested information was held.

Right of appeal

18. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

19. 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.
20. 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

Jon Manners
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