

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 November 2015

Public Authority: Office of the Police & Crime Commissioner for Humberside

Address: Tower Grange Police Station
Holderness Road
Hull
HU8 9HP

Decision (including any steps ordered)

1. The complainant has requested information relating to an investigation about complaints made by him against others. He also asked for Home Office guidance from 1998. The Office of Police & Crime Commissioner for Humberside withheld the information under section 40(1) and 40(2) of the FOIA and explained that it did not hold any Home office guidance from 1998.
2. The Commissioner's decision is that the Office of Police & Crime Commissioner for Humberside was correct to withhold the information. He considers that the requested information was the complainant's personal data and should all be withheld under section 40(1). The Commissioner also considers that, on the balance of probabilities, the Office of Police & Crime Commissioner for Humberside was correct to state that it does not hold the Home Office guidance.
3. The Commissioner does not require the Office of Police & Crime Commissioner for Humberside to take any steps as a result of this decision.

Request and response

4. On 10 December 2014, the complainant wrote to the Office of the Police & Crime Commissioner for Humberside (OPPC) and requested information in the following terms:

"I enclose for your information a copy of a letter dated 15 September 1998 from [redacted name], Clerk to Humberside Police Authority. The purpose of this letter is to request you to supply me with a copy of the 'Home Office Guidance' to which [redacted name] referred and to inform me what documentary evidence the Committee used prior to reaching their decisions i.e. from the parties complained against, and myself."

5. The OPCC responded on 16 January 2015. It denied holding the Home Office guidance referred to by the complainant but did confirm that it had located the minutes of the meeting and a report outlining his complaint. It disclosed the minutes but refused to provide the report, citing the following exemptions:
 - section 40(1) – his own personal data
 - section 40(2) – third party personal data
6. The OPCC also explained that it might be able to provide the complainant with the information that directly referred to him if he made a subject access request under the Data Protection Act 1998 (the DPA), but that any information in relation to third parties would be redacted.
7. Following an internal review the OPCC wrote to the complainant on 5 February 2015. It upheld its original position but did provide him with a redacted copy of the report it had referred to in its original response of 16 January 2015.

Scope of the case

8. The complainant contacted the Commissioner on 9 March 2015 to complain about the way his request for information had been handled. He explained that he wanted to know whether the report referred to by OPCC could still be exempt as it was drafted in 1998. He also explained that he considered that the fact that the report had been given to the Committee referred to in his request, was illegal. The complainant also pointed out various things that he felt were wrong with the original investigation. The Commissioner cannot consider what happened in the original investigation as this is outside of his remit.
9. Having viewed the withheld information the Commissioner notes that it consists of a report which relates solely to complaints and issues raised by the complainant. Whilst other parties are referred to in the report, they are only included as a result of information provided by the complainant. The Commissioner therefore considers that all of the requested information is the complainant's personal information.

10. The Commissioner considers that the OPPC can rely on the section 40(1) exemption and therefore will not consider the application of section 40(2). He will also consider whether, on the balance of probabilities, the OPCC was correct to state that it does not hold the Home Office Guidance in question.

Reasons for decision

11. Under the FOIA, an individual can make a request for information held by a public authority. However, an individual's own personal information is exempt from the FOIA. It should be dealt with according to subject access rights established under the Data Protection Act 1998 (DPA).

Section 40 – personal information

12. The Commissioner acknowledges that, in the context of requests for information relating to complaints, in some cases the requested information may include the personal data of several data subjects.
13. His guidance '*Personal data of both the requester and others (section 40) FOIA and regulations 5(3) and 13 EIR*'¹ explains how to deal with requests for information involving multiple data subjects including the requester and states:

"In cases where the requested information comprises the personal data of more than one individual, all the individuals are to be regarded as data subjects for the purposes of section 40 and regulations 5(3) and 13. Where one of these individuals is the requester, it will be necessary to consider the extent to which the information is the personal data of the requester and so falls within section 40(1) or regulation 5(3). It is also necessary to consider whether the personal data of all the data subjects is inextricably linked or whether it can be clearly differentiated..."

In circumstances where the personal data of the applicant is very closely linked to the personal data of other data subjects, there is no requirement to assess the relative extent and/or significance of

¹ <https://ico.org.uk/media/for-organisations/documents/1209/personal-data-of-both-the-requester-and-others-foi-eir.pdf>

the different sets of personal data in order to establish the 'dominant' data subject. This is because there is no basis for regarding the individual whose data is more extensive or significant than the others as being the only data subject".

14. Section 40(1) of the FOIA provides that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject."

15. As section 40(1) is an absolute exemption there is no need to consider the data protection principles or conduct a public interest test.

Is the requested information personal information?

16. Section 1(1) of the 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 intention of the data controller or any other person in respect of the individual."

17. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

18. Having considered the withheld information the Commissioner is satisfied that it constitutes information that falls within the definition of 'personal data'. He is satisfied that it relates to a living individual who may be identified from that data and that it constitutes their personal information. The withheld information contains information relating to the complainant, including references to his name. The complainant is identifiable from those references and the information relates to him.

19. The withheld information also includes the personal data of other individuals, including those for whom the complainant made complaints. Where requested information constitutes the personal data of more than one individual, all of the individuals are data subjects for the purposes of section 40. In situations where a request is made by one of the data subjects, the Commissioner's approach is to consider the information under the section 40(1) exemption.

20. Taking the above into account, the Commissioner is satisfied that the information is the complainant's own personal data. This is because the requested information consists of complaints the complainant has personally raised and also complaints he made on behalf of third parties, against others. The Commissioner is satisfied that the complainant has personally raised issues which he asked to be considered, rather than some of the issues being raised by the parties themselves.
21. The Commissioner is satisfied that section 40(1) is engaged and that it can be applied to all of the requested information.
22. As the Commissioner considers that section 40(1) applies to all of the requested information, he has not considered the application of the section 40(2) exemption.
23. The Commissioner will go on to consider whether the OPPC holds the requested Home Office guidance.

Section 1 – held/not held

24. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have the information communicated to him.
25. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held. In addition, the Commissioner will consider any reason why it is inherently likely or unlikely that the information is not held.
26. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.
27. The complainant argued that the OPPC must hold the guidance. The OPPC explained to the Commissioner that it was not clear which Home Office guidance the complainant was referring to. The OPPC also explained that the complainant was making this request to a different organisation to the one he had dealt with previously, which had been Humberside Police Authority. Furthermore, the OPCC explained that all Police Authorities were abolished in 2012 and confirmed that both electronic and paper records had been transferred to it by Humberside Police Authority.

28. The Commissioner enquired whether the information had ever been held, and about the scope, quality, thoroughness and results of the searches carried out by the OPPC. The Commissioner also enquired whether the information had ever been held but deleted and whether copies of information may have been made and held in other locations.
29. The OPCC confirmed that it had searched the transferred manual files and the remaining electronic folder held on its network. It explained that it did not hold any Home Office guidance of any sort dating back to 1998. The OPPC also explained that it had used the following terms to search its electronic files: "complaints", "committees", "Home Office correspondence", and "guidance", and had found nothing.
30. With regard to whether the information had ever been held and subsequently destroyed, the OPPC explained that, as it had never held the guidance, it could not confirm whether it had been destroyed.
31. The Commissioner also asked whether there was any legal requirement or business need for the OPPC to hold the information. The OPPC explained that there was no business purpose or statutory requirement for it to hold the requested guidance.
32. Taking everything into account, the Commissioner does not consider that there is any evidence that show that the OPPC holds any relevant Home Office guidance from 1998, or the specific guidance requested in this case. Accordingly, he does not consider that there is a breach of section 1 of the FOIA.

Other matters

33. The Commissioner notes that the OPPC explained to the complainant that he could make a subject access request for his personal information. The Commissioner considers that the OPPC was correct to advise the complainant of his right to make a subject access request.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF