

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 July 2015

Public Authority: Independent Police Complaints Commission
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant requested a copy of a referral made to the IPCC in relation to the death of an infant. The IPCC refused to disclose this information under the exemptions provided by sections 40(2) (personal information) and 44(1)(c) (contempt of court) of the FOIA.
2. The Commissioner's decision is that these exemptions were cited correctly and so the IPCC was not obliged to disclose this information.

Request and response

3. On 16 January 2015 the complainant wrote to the IPCC and requested information in the following terms:

"Please disclose the date of a referral sent by Cumbria police to the IPCC in relation to the death of Poppi Worthington;

Please disclose the date an IPCC investigation began into matters raised by the referral;

Please disclose a copy of the referral;

Please disclose the name of the senior investigator in the case and the name of the commissioner overseeing the investigation;

Please disclose the number of witnesses spoken to by the investigation;

Please disclose the number of people questioned under caution."

4. The IPCC responded on 13 March 2015, outside 20 working days from receipt of the request. All of the information was provided, other than the referral, which was withheld under the exemptions provided by the following sections of the FOIA:
 - 31(1)(b) (apprehension or prosecution of offenders)
 - 31(1)(c) (administration of justice)
 - 31(2)(b) (ascertaining whether any person is responsible for any conduct which is improper)
 - 40(2) (personal information)
5. The complainant responded on 23 March 2015 and requested an internal review. The IPCC responded with the outcome of the review on 29 April 2015. The conclusion was that the refusal of the request was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 29 April 2015 to complain about the refusal of his request for a copy of the referral. The complainant argued that disclosure of this information would be in the public interest.
7. During the investigation of this case, the IPCC cited section 44(1)(c), a further exemption to those it had relied on previously. The IPCC wrote to the complainant on 15 June 2015 and advised him that this exemption was now also relied upon.

Reasons for decision

Section 17

8. Section 17(1) of the FOIA requires that a response refusing a request must be sent within 20 working days of receipt of the request. In this case the IPCC failed to respond within 20 working days of receipt and, in so doing, breached section 17(1) of the FOIA.

Section 44

9. The IPCC cited section 44(1)(c). This section provides an exemption for information the disclosure of which would constitute or be punishable as a contempt of court. Consideration of this exemption involves only a

single stage – if disclosure of the information would be in contempt of court, it is exempt from the obligation to disclose.

10. The reasoning of the IPCC for the citing of this exemption was based on a notice given in a family court judgment relating to the infant death referred to in the request:

"This judgment was delivered in private. It is NOT to be published without the permission of the court. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court."

11. The information in question here consists of a document titled "IPCC – Referral Form". Within the content of this form it is noted that the majority of it is drawn from the family court judgment.
12. In relation to the contents of this form that are taken from that judgment, the conclusion of the Commissioner on the basis of the wording quoted above is that disclosure of that information would constitute a contempt of court. It is, therefore, exempt by virtue of section 44(1)(c) of the FOIA and the IPCC was not obliged to disclose it. In relation to any content of the form that was not taken from that judgment, the Commissioner has gone on to consider section 40(2).

Section 40

13. The IPCC cited section 40(2), which provides an exemption for information that is the personal data of an individual aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process. First, the information must constitute the personal data of a third party and, secondly, disclosure of that personal data must be in breach of at least one of the data protection principles.
14. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) 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 other information which is in the possession of, or is likely to come into the possession of, the data controller".

15. Included within the referral form is information that clearly both identifies and relates to individuals other than the complainant. That information is, therefore, the personal data of those individuals according to section 1(1) of the DPA.
16. The next step is to consider 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 data protection principle, which requires that personal data is processed fairly and lawfully, and in particular on whether disclosure would be, in general, fair.
17. In forming a conclusion on this point, the Commissioner has taken into account what the reasonable expectations of the data subjects would be, as well as any consequences that disclosure may have for them. He has also considered whether there is any legitimate public interest in the disclosure of this information. Out of the necessity of not revealing the nature or content of the withheld information, this analysis does not go into detail about that content.
18. On the issue of the expectations of the data subjects, of significance here is that some of the information constitutes *sensitive* personal data as defined in section 2 of the DPA. The view of the Commissioner is that typically a data subject will hold a strong expectation of confidentiality in relation to information that is sensitive personal data. In relation to the information in question that does not constitute sensitive personal data, the view of the Commissioner is that, due to the nature of this information, those data subjects would also hold a strong expectation that this information would not be disclosed.
19. On the issue of the consequences of disclosure upon the data subjects, having found that they would hold a strong expectation of confidentiality, it follows from this that disclosure counter to that expectation would be distressing to the data subjects.
20. Turning to whether there would be any legitimate public interest in the disclosure of this information, whilst section 40(2) is not a qualified exemption in the same way as some of the other exemptions in Part II of the FOIA, it is necessary for there to be a public interest element for disclosure to be compliant with the first principle. The question here is whether any legitimate public interest in disclosure outweighs the factors against disclosure covered above.
21. The view of the Commissioner is that there is some legitimate public interest in the disclosure of this information owing to its subject matter – it concerns the death of an infant in circumstances that are publicly unexplained. However, the Commissioner believes that the main public interest relating to that subject matter is in preserving a safe space for

an effective investigation into those circumstances, which was the reason why the family court judgment was delivered in private. The Commissioner does not, therefore, believe that there is a legitimate public interest in favour of disclosure that outweighs the factors against disclosure covered above.

22. The complainant advanced a particular argument relating to a specific provision: the Data Protection (Processing of Sensitive Personal Data) Order 2000 and the processing of personal data for the 'special purposes' set out in section 3 of the DPA. One of these is the purposes of journalism. The view of the Commissioner, however, is that the processing of personal data in question here would be for the purpose of complying with section 1(1)(a) of the FOIA, rather than for journalism. It is not the case that journalists have additional privileges under the FOIA to any other requester.
23. In conclusion, the Commissioner has found that the information in question is the personal data of an individual other than the requester and that the disclosure of this information would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) is, therefore, engaged.
24. This conclusion and that above on section 44(1)(c) mean that the IPCC was not obliged to disclose any of the referral form.

Right of appeal

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

26. 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.
27. 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