

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2015

Public Authority: College of Policing
Address: 10th Floor Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Decision (including any steps ordered)

1. The complainant requested information relating to the misconduct figures published by the College of Policing (the College). The College refused the request, citing section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that the College has incorrectly applied the exemption for personal data at section 40(2) of the FOIA as the withheld information is sufficiently anonymised to take it out of the definition of personal data. The Commissioner requires the College to disclose the withheld information.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

4. The website of the College of Policing - the professional body for all who work in policing in England and Wales - states that:

"The College of Policing 'Disapproved Register' became effective from 1st December 2013. Since then police forces have been providing details of those officers who have been dismissed from the service or who either resigned or retired while subject to a

gross misconduct investigation where it had been determined there would have been a case to answer".¹

5. A redacted version of the Register is published via the College².

Request and response

6. On 11 March 2015, using the 'whatdotheyknow' website, the complainant wrote to the College of Policing and requested information in the following terms:

"Could you please provide me with a further breakdown of your 'Misconduct Figures Report' that you recently published in your 'Disapproved Register?'

I am looking for a breakdown of the data to identify each Police Force and the number of officers from that force on the Disapproved Register?"

7. The College provided its substantive response on 14 May 2015. It confirmed that it holds the requested information but refused to provide it, citing sections 40(2)(a)(b) and (3)(a)(i) of FOIA (personal information) as its basis for doing so.
8. Following an internal review, the College responded on 3 June 2015. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 16 June 2015 to complain about the way his request for information had been handled.

¹ <http://www.college.police.uk/News/College-news/Documents/Disapproved%20Register.pdf#search=disapproved%20register>

² <http://www.college.police.uk/News/College-news/Documents/Disapproved%20Register.pdf>

10. He disputes the application of section 40 in this case on the basis that he is not asking for any individual officer(s) to be identified.
11. The analysis below considers the College's application of section 40(2) to the requested information – the 'per force' statistics.

Reasons for decision

Section 40 (personal information)

12. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
13. The first step for the Commissioner to determine is whether the withheld information constitutes personal data as defined by the DPA. If it is not personal data then section 40 cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the College considers that disclosure would breach the first data protection principle.

Is the information personal data?

15. The definition of personal data is set out in section 1 of the DPA. Section 1 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."

16. 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.

17. From the definition above, it follows that information or a combination of information, that does not relate to and identify an individual, is not personal data.

The College's view

18. The College told the complainant:

"At this time, police gross misconduct hearings are not generally open to the public (except in exceptional circumstances). While this remains the case, information that may lead to the identification of individual officers or staff (which may be an unjustifiable infringement of their Article 8 rights under the European Convention on Human Rights and a breach of the Data Protection Act 1998, etc.) is removed. The College is working with the Home Office, to allow police disciplinary hearings to be held in public. Depending on the outcome, the College may be in a position to name those officers on the Disapproved Register in a fair, lawful, and proportionate way in future".

19. In the circumstances of this case, it acknowledged:

"The College notes that the requester does not seek full access to the register, however, the requester does seek a further breakdown of the figures previously released by the College in terms of 'per force' statistics".

20. It told the complainant:

"It is our assessment that the release of the requested information will, in fact, be a disclosure of personal and sensitive personal data. This is especially so when considering the low numbers in question".

21. In support of its application of section 40, the College told the complainant:

"The information already published via the College provides year, rank, categories of misconduct, outcomes, and whether the investigation originated internally or externally. It is the College's view that providing a further breakdown of this information will result in the data becoming identifiable and would, therefore, be personal and sensitive personal data".

22. It also told him:

"we must always have the 'determined individual' in mind whenever we make a decision regarding the disclosure of statistics based on the information contained within the Disapproved Register".

23. In its submission to the Commissioner in support of its application of section 40, the College said:

"As the numbers of individuals on the register in each force is relatively low at present, I consider that it [sic] highly likely that in disclosing details of the numbers of officers on the register at a 'force level' may allow individuals to be identified (by the data controller or others), albeit this may only be indirectly".

24. During the course of his investigation, the College told the Commissioner that disclosure of the requested information:

"would potentially lead to individuals, and therefore their personal data, becoming identifiable".

25. To justify why the withheld information constitutes personal data it provided an example of how this might occur, explaining that if the information was published:

"there was a reasonable risk that people within the organisation and elsewhere would be able to work out [that a particular person had been dismissed]".

The Commissioner's view

26. A test used by both the Commissioner and the First-tier tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of re-identification of an individual from information which, on the face of it, appears truly anonymised.

27. The ICO's Code of Practice on Anonymisation³ notes that:

"The High Court in [R (on the application of the Department of Health) v Information Commissioner [201] EWHC 1430 (Admin)]

³ <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

stated that the risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA”.

28. In summary, the motivated intruder test is that if the risk of identification is *reasonably likely* the information should be regarded as personal data.
29. The requested information in this case relates to misconduct figures, broken down by police force – not individual names, rank or the reason for the officer’s inclusion on the register.
30. The Commissioner is mindful of the timeframe of request and the relative newness of the misconduct report. Having had the opportunity to review the withheld numbers, he accepts that some of the numbers within the scope of the request are low.
31. However, even where the number may be low, the Commissioner does not consider that this in itself means that the information is personal data. In that respect, he recognises that police force numbers vary due to staff turnover. He also recognises that while staff turnover may be as a result of matters of misconduct, it is more likely to be for other reasons including, for example voluntary retirement, resignation and inter-force transfers.
32. The Commissioner notes that in the 12 months to 31 March 2015, 6,988 police officers left the 43 police forces of England and Wales and the British Transport Police.⁴
33. In light of the above, and having considered the withheld information, the Commissioner could not easily establish how an individual who had left for reasons of misconduct – as opposed to one who had left the force for other reasons - could be identified from the withheld information.
34. Consequently, he has decided that the withheld information does not constitute personal data and that the exemption in section 40(2) is not applicable.

⁴ <https://www.gov.uk/government/publications/police-workforce-england-and-wales-31-march-2015/police-workforce-england-and-wales-31-march-2015>

Right of appeal

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Jon Manners
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