

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 April 2017

Public Authority: Chief Constable of Kent Police
Address: Police Headquarters
Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant has requested the service and / or disciplinary history of three named officers from Kent Police. Kent Police refused to provide this citing section 40(2) (personal information) of the FOIA. The Commissioner's decision is that it was correct to do so. No steps are required.

Request and response

2. On 20 August 2016 the complainant wrote to Kent Police and made the following two information requests:

"I am requesting the following under the Freedom of Information Act 2000 (FOIA).

The service records and / or the disciplinary records of Detective Inspector [name removed] formerly of Maidstone CID, Kent Police.

'Service records' of [name removed]

And

'Disciplinary records' of [name removed]".

And:

"I am requesting the following under the Freedom of Information Act 2000 (FOIA).

The service records and / or the disciplinary records of DC [name and collar number removed] formerly of Maidstone CID, Kent Police.

'Service records' of DC [name and collar number removed]

And

'Disciplinary records' of DC [name and collar number removed]".

3. On 21 August 2016 the complainant made a further request:

"I am writing to request the following be disclosed to myself under the Freedom of Information Act (FOIA) 2000.

I am requesting the service records and / or the disciplinary records of PC [name removed] be disclosed.

The 'Service records' of PC [name removed]

The 'Disciplinary records' of PC [name removed]".

4. As they were requests for similar information, Kent Police responded to all three together on 23 August 2016. It refused to confirm or deny that the requested information was held, citing section 40(2) (personal information). It told the complainant that:

"... provision of the names of individual [sic] who worked at Maidstone Police Station would constitute the processing of personal information contrary to the first data protection principle of the Data Protection Act 1998".

5. The complainant requested an internal review on 30 August 2016. His grounds were that he already personally knew the officers, that service records are 'public information' and that Kent Police could redact any exempt information.
6. Kent Police provided an internal review on 23 September 2016 in which it maintained reliance on section 40(2) on the basis that disclosure would be unfair and there was no suitable Schedule 2 condition within the Data Protection Act 1998 (the "DPA") to support disclosure.
7. Kent Police has advised the Commissioner that its original intention was to neither confirm nor deny whether the officers are, or were, its employees. However, it has since confirmed that its internal review meant to revise this position and that it was confirming that it holds the

requested information, but wished to withhold it under section 40(2) of the FOIA.

Scope of the case

8. The complainant wrote to the Commissioner on 1 November 2016 to complain about the way his request for information had been handled. His grounds of complaint were that Kent Police had failed to inform him of all options available in respect of 'redaction' of the information requested, and his belief that there is a right of access to service and / or disciplinary records of former and current officers even if this information needs to be redacted first.
9. The Commissioner will consider the citing of section 40 below.

Reasons for decision

Section 40 – personal information

10. 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.

Is the requested information personal data?

11. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the DPA. If it is not personal data, then section 40 cannot apply. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information. 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, has them as its main focus or impacts on them in any way. The second part of the test is whether the withheld information identifies any individual.
12. The requested information in this case relates to the service / discipline records of three named officers. In the Commissioner's view it is clear that the withheld information 'relates' to living persons, they are the focus of the request and it is therefore their 'personal data'.

13. The Commissioner here notes that the complainant has specified that he is happy for any 'personal data' to be redacted prior to disclosure. However, the Commissioner considers that it is not possible to do so on this occasion. This is because the request clearly stipulates the three named officers so it is not possible to remove their identities by simply redacting their names as these are already known to the requester.
14. Having accepted that the requested information constitutes the personal data of a living individual/s other than the applicant, the Commissioner must go on to consider whether disclosure would breach one of the data protection principles.
15. Kent Police advised that it believes disclosure would breach the first data protection principle.

Would disclosure contravene the first data protection principle?

16. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 is met.
17. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.
18. The Commissioner has first considered whether disclosure would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
 - the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
19. The Commissioner recognises that staff would have an instinctive expectation that Kent Police, in its role as a responsible data controller, will not disclose certain information about them and that it will respect their confidentiality. In that respect, Kent Police advised the Commissioner:

"The withheld data will include 'sensitive' personal data, in that employment histories include reasons for redeployment to different

areas, i.e. Change in relationship status, fitness redeployment, maternity, Police Federation (Trade Union) involvement etc.

Complaint and discipline records will also include 'sensitive' personal data in terms of commission or alleged commission of an offence, and potential proceedings and outcomes for such offences".

20. It also advised:

"Although the data was collected as part of their public life as an employees of Kent Police, the data covers aspects of their personal life. In line with the Data Protection Act 1998, the data subject has a reasonable expectation that consent given to process data for the sole purpose of managing their employment would not extend to processing beyond that remit".

21. The Commissioner considers that, in most cases, the very nature of personnel-related data means it is more likely that disclosing it will be unfair. The reasonable expectation of the data subject is that such information would not be disclosed by their employer and that the consequences of any disclosure could be damaging or distressing to them.
22. In light of the above, the Commissioner considers that the type of information requested in this case will carry a strong general expectation of privacy for those parties concerned.
23. As to the consequences of disclosure upon these data subjects, the question – in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to each of them.
24. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. She will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions.
25. Given the sensitivity of the subject matter, the Commissioner considers that disclosure in this case could lead to an intrusion into the private life of the individuals concerned and the consequences of any disclosure could cause damage and distress to those parties.
26. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.

27. In considering these 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
28. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to the exemptions listed under section 2(3) of the FOIA. Given the importance of protecting an individual's personal data the Commissioner's 'default position' is in favour of protecting the privacy of the individual. The public interest in confirming if information is held must outweigh the public interest in protecting the rights and freedoms of the data subject if providing confirmation or denial is to be considered fair.
29. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.
30. The complainant has not specified why he is requesting the information so his motives are not known to the Commissioner. She is therefore unable to take these into consideration as a potential legitimate interest. She does however generally acknowledge that the integrity of police officers is of genuine public interest. Their actions need to be lawful and their individual conduct is of paramount importance to the maintenance of the public's trust in the police service as a whole. However, were their conduct brought into question then there are official ways for this to be investigated and disclosure of any such information into the world at large by way of a request under the FOIA is very unlikely to be appropriate - she is aware of no such justification in this case.
31. In light of the nature of the information and the reasonable expectations of the individual concerned, the Commissioner is satisfied that confirming or denying if the requested information is held would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subject; she considers these arguments outweigh any legitimate interest in disclosure. She has therefore concluded that disclosure in this case would breach the first data protection principle and therefore finds the exemption at section 40(2) is engaged.
32. As the Commissioner has determined that it would be unfair to disclose the requested information, it has not been necessary to go on to consider whether this is lawful or whether one of the Schedule 2 conditions (and Schedule 3 in the case of any sensitive personal information) is met.

Right of appeal

33. 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

34. 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.
35. 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

Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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