

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 July 2017

**Public Authority:** Chief Constable of West Yorkshire Police  
**Address:** West Yorkshire Police  
PO Box 9  
Laburnum Road  
Wakefield  
WF1 3QP

### Decision (including any steps ordered)

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1. The complainant has requested information relating to a complaint he had submitted to West Yorkshire Police ("WYP"). WYP would neither confirm nor deny holding the information, citing section 40(5)(a) (personal information) of the FOIA. The Commissioner's decision is that WYP was entitled to rely on section 40(5)(a) of the FOIA to refuse to confirm or deny whether it held the requested information. No steps are required.

### Request and response

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2. On 9 December 2016, the complainant wrote to WYP and requested information in the following terms:

*"Under the Freedom of Information legislation I would like you to tell me the name(s) of the now deceased person(s) who, through Operation [name redacted], were linked to my complaint. I understand that the Data Protection Act does not apply to deceased persons."*

3. WYP responded on 11 January 2017. It refused to confirm or deny ("NCND") whether it held the information, citing the NCND exemptions at sections 30(3), 31(3) and 40(5) of the FOIA.

4. Following an internal review, WYP maintained its position.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 21 February 2017 to complain about the way his request for information had been handled.
6. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. The FOIA is concerned with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
7. The Commissioner firstly considered WYP's application of section 40(5)(a) to the request.

### **Reasons for decision**

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#### **Section 40 – personal information**

8. WYP confirmed to the Commissioner that, if held, the requested information would relate to the complainant, in that it would be held by virtue of the complaint that the complainant had made to it. It therefore could not comply with the request without disclosing into the public domain information about the existence or otherwise of a complaint from the complainant. The Commissioner has therefore considered the application of 40(5)(a).
9. Section 40(5)(a) of the FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA (confirming whether or not the requested information is held) in relation to information which, if held by the public authority, would be exempt information by virtue of section 40(1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
10. Section 40(1) of FOIA states:

*“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject”.*

11. Section 1(1) of the Data Protection Act 1998 ("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 intentions of the data controller or any other person in respect of the individual."*

12. 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.
13. Having considered the particular wording of the request in this case, the Commissioner is satisfied that the complainant is, or would be, the subject of the requested information. This is because the information he has requested is about or connected to him and a complaint he has allegedly made to the police. It is an approach for information which can be linked to a named, living individual - the complainant himself. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
14. In relation to such information, the provisions of section 40(5) mean that the public authority is not required to comply with the duty to confirm or deny whether it holds the information, as the duty to confirm or deny does not arise in relation to information which is (or, if it were held by the public authority, would be) exempt information by virtue of subsection (1).
15. For WYP to provide a response to section 1(1)(a) by confirming or denying that the requested information is held, would put into the public domain information about the existence or otherwise of a complaint linked to the complainant; this would constitute a disclosure of personal data that would relate to the complainant.
16. The Commissioner is satisfied that confirming or denying whether it holds the requested information under the terms of the FOIA would mean that WYP would be confirming, to the world at large, whether or not it holds details of a complaint involving the complainant. She

therefore considers that the section 40(5)(a) exemption was correctly relied upon by WYP in this case.

17. As she finds that 40(5)(a) is properly cited in respect of the request in its entirety the Commissioner has not considered any of the other exemptions cited by WYP.

## Right of appeal

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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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](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** .....

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**