

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 December 2020

Public Authority: South Yorkshire Police
Address: South Yorkshire Police Head Quarters
Carbrook House
Carbrook Hall Road
Sheffield
South Yorkshire
S9 2EH

Decision (including any steps ordered)

1. The complainant has requested from South Yorkshire Police ("the Police"), information regarding a named police officer, including complaints made about them, their disciplinary record and reports relating to misconduct.
2. The Commissioner's decision is that the Police are entitled to rely on section 38(2) to refuse to confirm or deny whether it holds any information falling within the scope of the request.
3. The Commissioner does not require the Police to take any steps.

Request and response

4. On 19 July 2020, the complainant wrote to the Polce and requested information in the following terms:

"...According to the BBC 'At the time of his death, [Named person] was under investigation for his alleged role in the Rotherham abuse scandal.'

REQUEST.

Disclose:

- 1. The police disciplinary record of [Named person]. This includes but is not limited to punishments or censure.*
- 2. All complaints made against [Named person]. This includes but is not limited to child abuse and sexual matters.*
- 3. All IPCC/IOPC and police reports relating to misconduct, wrongdoing, etc. by [Named person].*

I am of course happy for you to redact personal information of complainants."

5. The Police responded on 7 August 2020. It stated that it refused to either confirm nor deny that the information is held, relying on section 38(2) of the FOIA – Health and Safety.
6. Following an internal review the Police wrote to the complainant on 18 August 2020. It stated that it was upholding its original position.

Scope of the case

7. The complainant contacted the Commissioner on 18 August 2020 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of the case is to determine if the Police are entitled to rely on section 38(2) to neither confirm nor deny that the requested information is held.

Reasons for decision

Section 38 – health and safety

9. Section 38(1)(b) of FOIA states that:

'Information is exempt information if its disclosure under this Act would, or would be likely to—

 - a) endanger the physical or mental health of any individual, or*
 - b) endanger the safety of any individual.'*
10. Section 38(2) removes the duty to confirm or deny:

'if, or to the extent that, compliance with section 1(1)(a) would, or

would be likely to, prejudice any of the matters mentioned in subsection (1)'.

11. In section 38 the word 'endanger' is used rather than the word 'prejudice' which is the term used in other similar exemptions in FOIA. However, in the Commissioner's view the term endanger equates to prejudice.
12. The Police have explained that confirming or denying that information in relation to the request exists, would be unfair to place into the public domain.
13. It has further explained that the information, which is likely to cause an individual, such as the relatives and/or close family or even colleagues of the deceased, distress as disclosure could cause unwanted contact from those interested in the case. The Police added that these individuals would be seeking to progress their lives without further, unwanted attention.
14. The Commissioner has considered the circumstances of this request carefully and is persuaded that confirming whether or not the Police holds any information would be likely to cause harm to an individual. In reaching this conclusion, the Commissioner has taken into account the importance of neither confirming nor denying provisions being applied consistently.

Public interest

15. Section 38(2) is also subject to the the public interest test, set out in section 2(2)(b) of FOIA. The Commissioner has therefore considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in disclosure

16. The Police acknowledged that should they confirm or deny holding the information, it would provide openness and transparency, along with enhancing public confidence in the Police.
17. It also acknowledged that should it confirm or deny that the information is held, it potentially would not cause any risk to the physical or mental health of the family/friends/colleagues of the deceased individual.

Public interest in maintaining the exemption

18. The Police went on to consider factors against confirming or denying if the information is held.

19. It argued that the potential mental harm to family/friends/colleagues by confirming or denying the information is held, needs to be fully considered in these circumstances. It also considered that any public/media attention may cause distress to these individuals.
20. The Police also considered that either confirming or denying the information is held, could lead to the loss of public confidence in South Yorkshire Police and their ability to protect the wellbeing of the community and sensitive information.

The balancing test

21. The Police explained that, should information be held in such circumstances, where it is accessible to all, it could be researched at any time by those with an interest in the case and as such, it could cause unnecessary distress to the people involved. As such, it considers that the exemption to neither confirm nor deny outweighs disclosure of any information, should it be held.

The Commissioner's view

22. The Commissioner has considered other cases in the past¹, which are similar to the circumstances in this case. The Commissioner has taken into account these cases in making her decision in this case due to the similarities between them, however, she does note that she takes each case on its own merit
23. The Commissioner agrees that there is a public interest in the Police confirming whether or not it holds information in order to ensure that it is transparent about its processes and procedures. However, in the Commissioner's view there is a very strong public interest in ensuring the safety of individuals. In the circumstances of this case, given the likely interest from individuals, she is firmly of the view that the balance of the public interest favours maintaining the exemption contained at section 38(2).

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2019/2614850/fs50772072.pdf>

<https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617194/fs50867142.pdf>

https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624607/fs_50594137-fs50593779-fs50593783.pdf

Right of appeal

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

25. 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.
26. 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

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