

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2022

Public Authority: Commissioner of Police of the Metropolis

Address: New Scotland Yard
Broadway
London
SW1 0BG

Decision (including any steps ordered)

1. The complainant requested from the Metropolitan Police Service (the MPS) information relating to police officers and misuse of social media. The MPS disclosed some of the information but refused further information to the request by virtue of section 40(2)(3A)(a) (personal information) and subsequently also relied on section 30(1)(a)(i) (Investigations and proceedings) of FOIA.
2. The Commissioner's decision is that the MPS was entitled to withhold the information requested under section 40(2) of FOIA. Therefore, the Commissioner does not require the MPS to take any steps as a result of this decision.

Request and response

3. On 4 October 2021 the complainant wrote to the MPS and requested information in the following terms:

"For the years 2018, 2019, 2020 and available information for 2021, I would like to be provided with the following information:

- 1) Please indicate the number of police officers that were disciplined for their conduct on WhatsApp and/or other social media sites.

(a) For each disciplined police officer, please describe briefly what happened.

(b) If the police officer was writing offensive messages/posts, please disclose copies of these messages/posts.

(c) If the police officer was sharing offensive posts, please disclose copies of these posts.

2) Please indicate the number of police officers that were dismissed for their conduct on WhatsApp and/or other social media sites.

(a) For each dismissed police officer, please describe briefly what happened.

(b) If the police officer was writing offensive messages/posts, please disclose copies of these messages/posts.

(c) If the police officer was sharing offensive posts, please disclose copies of these posts."

4. On 25 October 2021 the MPS responded and provided the complainant with a partial disclosure. It disclosed the number of officers disciplined and sanctions imposed for misuse of social media. The MPS withheld information relating to the details of the specific cases and refused the request by virtue of section 40(2)(3A)(a) (personal information) of FOIA.
5. Following a request for an internal review, on 20 January 2022 the MPS provided its internal review response. It upheld its original decision to refuse to comply with the request under the exemptions cited.
6. During the Commissioner's investigation, the MPS reconsidered its approach made at the initial and internal review stages. It disclosed to the complainant some information (parts of report relating to police officers disciplined for misusing social media from 2018, and parts of the allegation summary) which it considered within scope of the request.
7. The MPS, however, maintained its position to rely on section 40(2) to the withheld information, and it also decided to rely on section 30(1)(a)(i) (Investigations and proceedings) of FOIA.

Reasons for decision

8. The following analysis focuses on whether the MPS was entitled to refuse the withheld information under sections 40(2) and 30 of FOIA.

Section 40(2) – personal information

9. Section 40(2) of FOIA says that information is exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
10. The MPS confirmed that the withheld information in this instance, is the personal data of police officers that have been disciplined.
11. The complainant argued that “it is vital to access copies of the officers’ messages” and she believes “it is even more in the public interest to access copies in the light of this report published at the beginning of the month.” The complainant directed the Commissioner to the link to the published report¹.
12. The Commissioner is satisfied that the withheld information is personal data of identifiable individuals.
13. The Commissioner acknowledges the complainant’s legitimate interest in this information that would be met through disclosing the information. He notes the complainant’s view is the public interest favours disclosure, specifically in light of the recently published report.
14. The Commissioner considers that the complainant is pursuing a legitimate interest and disclosure of the requested information is necessary to meet that legitimate interest. However, he is of the view that the individuals have a reasonable expectation that the information requested (matters of discipline) which would identify them, would not be re-released to the world at large by means of a FOI request. The Commissioner recognises that it would be an intrusion of privacy and could potentially cause unnecessary and unjustified distress to the individuals.
15. The MPS recognises that there is a public interest in all matters relating to police officer misconduct. It understands that it may help increase public awareness of the outcome of disciplinary proceedings in relation to individuals that may have been, or currently are serving police officers.

¹ <https://www.justiceinspectorates.gov.uk/hmicfrs/publication-html/an-inspection-of-vetting-misconduct-and-misogyny-in-the-police-service/#summary>

16. The MPS argued that the officers would not reasonably expect the MPS to release information over such a period of time, and when individuals have moved on with their lives (either still within the employment of the MPS or not). The officers still in employment would not expect such information to be disclosed by their employer via FOIA when the information was disclosed at the time of the outcome in a managed way. The MPS further argued that disclosure could be harmful as it may expose individuals to a range of threats to their safety in light of some of the incidents involved.
17. The MPS explained that "the nature of misconduct and disciplinary hearings and investigations is such that they are likely to be stressful for the individuals concerned. In this context it would be unfair to the individuals that have already been the subject of these investigations and misconduct/or disciplinary hearings that concluded over a year ago, to again be subject to public scrutiny." The MPS said the effect of further publicity could potentially amount to further media stories or even 'trial-by-media' and it could be reasonably argued that some of these individuals may have already suffered the adverse consequences of this. The MPS also said that there is a strong expectation to withhold this information which relates to misconduct, as it may enable individuals to be identified and placed at risk.
18. The MPS explained that the information requested includes police officer name, rank, gender and description of events relating to the misconduct matter, and this could facilitate identification. Therefore, the MPS believes it is necessary to consider information that is in the public domain and/or information that may be known to other members of the public/colleagues, when considering whether individuals are identifiable.
19. To support its argument, the MPS referred the Commissioner to a decision notice² which it considered to be pertinent in this instance. The decision notice concerned a request for information concerning police officers and staff from a police force, and it included subject matters relating to the "right to be forgotten". The MPS highlighted within the document, a specific statement by the Commissioner "that even though information about officers may have been in the public domain at some point in the past, this does not mean that it will remain accessible indefinitely." The MPS said that police employees, including police officers have a reasonable expectation of confidentiality in relation to information pertaining to their employment with the MPS.

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259609/fs50733478.pdf>

20. The MPS is of the view that an individual would expect any information held about them by the MPS, would only be used to support a policing purpose and not be unlawfully disclosed to third parties.
21. The MPS considered the wider impact of disclosure which could adversely affect witnesses and victim(s) in some of the cases, and they would know which case relates to them. This, the MPS said, could cause unnecessary stress and anxiety again (even if the information was redacted they would be able to identify the cases that relate to them). Therefore, disclosure of the requested information could cause unexpected and unwarranted distress to the individuals, specifically, as the MPS does not have consent from the named officers.
22. The MPS said that previous disclosure of information to a limited audience does not mean information enters (or remains) in the public domain. It explained that any outcomes which may have also been published on the MPS news section of its website, would have automatically deleted after three months.

The Commissioner's position

23. The Commissioner considers the individuals have a strong expectation of privacy relating to the information requested. He has therefore determined that disclosure of the information, which consists of personal data would be unlawful as it would contravene a data protection principle; that is set out under Article 5(1)(a) of the UK General Data Protection Regulation.
24. The Commissioner concludes that the MPS is entitled to rely on section 40(2) of FOIA to withhold the information requested. As the exemption is engaged, the Commissioner is not required to consider the MPS's reliance on section 30(1)(a) of FOIA.

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@justice.gov.uk.

Website: 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

Phillip Angell
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