

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2012

Public Authority: The Chief Constable
Address: Gloucestershire Constabulary
County Police Headquarters
No 1 Waterwells
Waterwells Drive
Quedgeley
GL2 2AN

Decision (including any steps ordered)

1. The complainant requested information relating to a 'café diary'.
2. Gloucestershire Constabulary confirmed it holds information within the scope of the request but refused to provide it citing the investigations and proceedings, health and safety and personal information exemptions of FOIA (sections 30, 38 and 40(2) respectively). During the course of the Commissioner's investigation, Gloucestershire Constabulary disclosed some of the withheld information. The Commissioner's decision is that Gloucestershire Constabulary has correctly applied section 40(2) to the remaining withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant initially requested information about a café diary in relation to a missing person investigation. In response, Gloucestershire Constabulary told her that the café diary was disposed of in accordance with Force policies at the time.
5. Following that, on 3 March 2012, the complainant made a further request for information in relation to the diary. She wrote to Gloucestershire Constabulary:

"Then I have further questions for you:

On what date was the item disposed of and who made that decision and for what reason? After all the [name redacted] investigation is not yet closed, she is still a missing person.

What exactly was the item logged into evidence as? I would like to see the records detailing the description of this item. I assume that log will also contain a record of how the item became known to the enquiry – I therefore wish to know who reported finding it and where it was found, on what date it was found and in exactly what part of the location as in what floor, what part of the building and in what physical condition, this book was found. I would like to see the statement made by the person who reported the item to the police and the statement and description of it written by the receiving police officer, and any subsequent statement, record or file note made by any officer handling this item.

I think it safe to assume in a digital age that your records hold either scans or a photographic record of this item; how else would [name redacted] know to describe the item as a 'cafe diary'? I would like to see copies of such images, documents or photos; in other words, I wish to see the entire audit trail of your records regarding this item".

6. Gloucestershire Constabulary responded on 2 April 2012. It confirmed that it holds some relevant information but refused to provide that information citing the section 30 exemption – investigations and proceedings.
7. Following an internal review Gloucestershire Constabulary wrote to the complainant on 8 May 2012. It upheld its citing of section 30 and additionally cited sections 38 and 40 (the health and safety and personal information exemptions respectively).

Scope of the case

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled.
9. During the course of the Commissioner's investigation, Gloucestershire Constabulary disclosed some of the information within the scope of the request. It confirmed that it was continuing to rely on section 40(2) to withhold the remainder of the requested information. The complainant confirmed to the Commissioner that the disclosure did not satisfy her request and that she wished to pursue her complaint.

10. The Commissioner considers the scope of his investigation to be Gloucestershire Constabulary's citing of section 40(2).

Reasons for decision

11. Gloucestershire Constabulary cited section 40(2), which provides an exemption for information which is the personal data of any individual, aside from the requester, and where the disclosure of that personal data would be in breach of any of the data protection principles.
12. In order to reach a view on Gloucestershire Constabulary's arguments in relation to the exemption in section 40(2), the Commissioner has first considered whether the withheld information is the personal data of one or more third parties.

Is the information personal data?

13. Personal data is defined in section 1(1) of the Data Protection Act (DPA) 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."

14. 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, has them as its main focus or impacts on them in any way.
15. Having viewed the withheld information, the Commissioner is satisfied that the requested information constitutes third party personal data on the basis that it constitutes the personal data of individuals other than the requester.

Would it be fair to disclose the requested information?

16. Turning to whether disclosure of this personal data would be in breach of any of the data protection principles, the Commissioner has focussed initially on the first principle of the DPA which states that personal data shall be processed fairly and lawfully.
17. In the Commissioner's view, the application of the first data protection principle in respect of fairness involves striking a balance between competing interests, the arguments around which are now well rehearsed. In summary, the Commissioner will be guided by the following factors when weighing up these competing interests:
 - (i) a data subject's reasonable expectations of what would happen to their personal data;*
 - (ii) the consequences of disclosure; and*
 - (iii) the balance between the rights and freedoms of the data subject and the legitimate interests of the public.*
18. In determining whether a disclosure is fair for the purposes of section 40 of the FOIA the Commissioner considers it appropriate to balance the consequences of any disclosure and the reasonable expectations of the data subject with general principles of accountability and transparency.
19. When considering the consequences of disclosure on the third parties involved, the Commissioner has taken into account the nature of the withheld information. He has also considered the fact that disclosure under freedom of information legislation is disclosure to the public at large and not just to the complainant.
20. Gloucestershire Constabulary argued that:

"The third party personal data that forms part of the information being requested was collected for the purpose of an investigation. All living individuals who provided their details for this purpose will have a reasonable expectation that Gloucestershire Constabulary will only process their personal data for this purpose".
21. The Commissioner gives weight to the argument that the reasonable expectation of those data subjects whose data was collected for the purpose of an investigation is that such information would not be disclosed and that the consequences of any disclosure could be damaging or distressing to them.

22. With respect to the withheld information in general, Gloucestershire Constabulary argued that it will not disclose information if it is likely to identify an individual.
23. Having viewed the withheld information, the Commissioner is satisfied that one likely consequence of disclosure of information within the scope of the request is that the third parties could be identified.

Conclusion

24. The Commissioner understands that, in the context of this case, the withheld information relates to an open missing person inquiry, an investigation that has attracted media attention and the interest of the public.
25. However, the fact that, at the time of the request, the information at issue has not been disclosed is, in the Commissioner's view, likely to contribute to the data subjects' expectations that, having not been made public at that time, the information would not be made public in the future.
26. Having considered all the circumstances of the case, the Commissioner has concluded that it would be unfair to the individuals concerned to disclose the withheld information to the world at large and to do so would contravene the first principle of the DPA. As disclosure of that information would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether one of the Schedule 2 or Schedule 3 DPA conditions is met. However, his initial view is that no such condition would be met.

Right of appeal

27. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

28. 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.
29. 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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