

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2014

Public Authority: Staffordshire Police
Address: PO Box 3167
Stafford
ST16 9JZ

Decision (including any steps ordered)

1. The complainant requested the number of police callouts relating to a named children's home and the number of police cautions/ prosecutions relating to that children's home both over the last 24 months. Staffordshire Police (the police) relied on sections 30(3) (criminal investigations and proceedings) and section 40(5) (personal information) to neither confirm nor deny holding the information requested. During the Commissioner's investigation the police provided callout information.
2. The Commissioner's decision is that the police acted correctly in relying on section 40(5) to neither confirm nor deny holding information about cautions or prosecutions.
3. The Commissioner does not require the police to take any steps.

Request and response

4. On 9 June 2013, the complainant wrote to Staffordshire Police and requested information in the following terms relating to a named children's care home (the home):

"the number of [police] callouts relating to the children's home over the last 24 months

the number of [police] cautions/ prosecutions relating to the children's home over the last 24 months".

5. The home is run by a private company and accommodates up to three vulnerable young people at a time. The home is located in a residential area and there have been reports that the behaviour of some of the young people living there has sometimes concerned local councillors and nearby residents. The reports have been refuted by the home's owners.
6. The police responded to the information request on 8 July 2013. They said they could neither confirm nor deny holding the information requested. In saying this the police relied on section 30(3) and section 40(5) of the FOIA.
7. When asking the police to review the decision on 29 August 2013, the complainant emphasised to them that he was not seeking personal information, simply the factual evidence that would provide reassurance that incidents relating to the home were being reported and logged correctly. He said that the questions needed to be asked so that in the future the children and also local residents did not have to endure what he said were ongoing failures at the home.
8. Following an internal review the police wrote to the complainant on 3 October 2013. The police maintained the exemptions relied upon in their refusal notice and added section 31(3) (law enforcement) exemption.

Scope of the case

9. On 9 October 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He said that he wanted his questions answered in the light of recent and ongoing events at the home; he wanted to make sure that the relevant public authorities were transparent about what they were doing on behalf of the public. He said it was paramount that the police did their part to exercise their duty and responsibility both towards the children and the general public. He was concerned for local residents who, he said, were experiencing personal abuse and trespass to property. He added that he was concerned for the welfare and physical safety of the children and young people at the home.
10. During the Commissioner's investigation, the police confirmed that information about the number of police callouts was held and disclosed to the complainant the total for the two year period from January 2012 to January 2014. The complainant indicated that he wanted the information for the period June 2011 to June 2013. The police told the Commissioner that they would provide this information and he did not consider that part of the information request further.

11. The police continued to neither confirm nor deny holding information about numbers of cautions and prosecutions for the relevant period relying on the section 40(5) FOIA exemption. The Commissioner considered this refusal.

Reasons for decision

12. Section 40(5) FOIA sets out the conditions under which a public authority can give a "neither confirm nor deny" response where the information requested, if held, would be personal data. It includes provisions relating to both the personal data of the requester and of third parties.

13. Section 40(5) says:

"(5) The duty to confirm or deny—

(a) 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), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (the data subject's right to be informed whether personal data being processed)".

14. Generally, the provisions in section 40 subsections 1 to 4 FOIA exempt *personal data* from disclosure. In relation to a request which constitutes the personal data of individual(s) other than the applicant (i.e. the person making the request), section 40(5)(b)(i) further excludes a public authority from complying with the duty imposed by section 1(1)(a) FOIA if compliance would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA) or would do so if the exemptions in section 33A(1) of the DPA were disregarded.
15. Section 1(1)(a) FOIA imposes a duty on a public authority to either confirm or deny if it holds information specified in a request. Therefore, the first element that needs to be met before relying on section 40(5)(b)(i) is that

the information requested should, if held, constitute the *personal data* of a third party (i.e. someone other than the person making the request).

16. Personal data is defined in section 1 DPA as follows:

"... data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or 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 ..."

17. The police said that, should the information requested be held, then disclosing any details about cautions or prosecutions could lead to the data subjects being identified from that information. For the time period covered by the request, only eight young people had been in residence at the home, and no more than three of those at any one time, a number of them still being there at the time of the request. Disclosure under FOIA is made 'to the world' so that anyone, including any person in possession of other information about the young people resident at the home, or other residents and staff themselves, must be able to ask for and be given any information held.

18. Although the complainant may not agree with the view that the numbers requested are personal data, as the numbers are so low the Commissioner agrees that it would make the individuals more readily identifiable to anyone with any connections to the home, for example, the other residents or staff, or indeed other members of the local community. In view of the small number of individuals involved, the Commissioner accepts that confirmation or denial that the information requested was held, would constitute the personal data of the vulnerable young people within the meaning in section 1 DPA.

19. The next step is to address whether disclosure of that personal data would be in breach of any of the data protection principles. The police considered the first data protection principle which states:

"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 ..."

20. In forming a view on whether disclosure would be fair the Commissioner has taken into account the reasonable expectations of the data subjects, the consequences of disclosure upon the data subjects and whether there is legitimate public interest in the disclosure of this confirmation or denial.

21. Section 2 of the DPA lists what is to be considered sensitive personal data for the purposes of that Act. Included in this list is information concerning the commission or the alleged commission of an offence by the data subject.
22. Any relevant information that the police does hold would concern alleged commission of criminal offences by the young persons referred to in the request. This information would therefore be the sensitive personal data of the data subjects, as defined in section 2 of the DPA.
23. The police said, and the Commissioner accepts, that the children and young people residing at the home are in care and therefore likely to be vulnerable, and that disclosure of information about any cautions or prosecutions they may have received could undermine the work being done by other public authorities and other agencies to resolve issues. Such work could enable the residents to have a better future and lead to their being better able to contribute to society. Moreover, the police said, the children and young people could become targets for individuals who wished to cause them harm due to their vulnerability. Disclosure could also reduce their opportunities for rehabilitation in the future and that, in turn, could increase the risk posed to the wider community.
24. The Commissioner acknowledges the public interest in local residents understanding how the police respond to issues relating to the children and young people at the home. However he also acknowledges that the safety of the vulnerable young people and their safeguarding is of paramount importance.
25. Sensitive personal data is, by its very nature, information that individuals regard as the most private information about themselves. As disclosure of this type of information is likely to have a detrimental or distressing effect on the data subjects, the Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose the confirmation or denial in this case.
26. The Commissioner therefore finds that the public authority was entitled to rely on the provision in section 40(5) to neither confirm nor deny holding the information requested.

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: GRC@hmcts.gsi.gov.uk

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

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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