

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 July 2016

Public Authority: Chief Constable of North Yorkshire Police

Address: Police Headquarters

Newby Wiske Hall

Newby Wiske

Northallerton

North Yorkshire

DL17 9HA

Decision (including any steps ordered)

1. The complainant has requested information relating to an incident where it was alleged that Jeremy Clarkson assaulted a man. North Yorkshire Police neither confirmed nor denied holding the requested information by virtue of sections 30(3) (investigations) and 40(5) (personal information) of the FOIA. It also applied section 30(1)(a) (investigations and proceedings) of the FOIA.
2. The Commissioner's decision is that North Yorkshire Police has applied section 40(5) of the FOIA appropriately to the request.
3. The Commissioner does not require North Yorkshire Police to take any steps as a result of this decision.

Request and response

4. On 24 April 2015, the complainant wrote to North Yorkshire Police (NYP) and requested information in the following terms:

"With regard to an incident that took place on or around 5th March 2015 at Simonstone Hall in Hawes, North Yorkshire.

"1. Was the incident investigated as a racial incident?

2. Was the suspect, Jeremy Clarkson, interviewed by North Yorkshire Police regarding his role in the incident?

3. *What date was a crime report created into the alleged racial incident?*
 4. *Was a separate crime report created into the alleged racial incident?*
 5. *How many communications were sent to North Yorkshire Police stating that it was believed that the incident was a "racial incident?"*
 6. *What date was the investigation into the assault completed?*
 7. *What date was the investigation into the racial incident completed?"*
5. NYP responded on 15 May 2015. It disclosed some information and neither confirmed nor denied whether it held anymore by virtue of sections 30(3) (investigations) and 40(5) (personal information).
 6. Following an internal review NYP wrote to the complainant on 18 June 2015. It upheld its original position and also added another exemption – section 30(1)(a) (investigations and proceedings). NYP also explained that it had provided media updates regarding its enquires in relation to the alleged incident.

Scope of the case

7. The complainant contacted the Commissioner on 23 November 2015 to complain about the way his request for information had been handled. He explained that he had concerns about whether the alleged incident had been investigated correctly.
8. The Commissioner will consider whether NYP has applied the sections 30(3), 40(5) 30(1)(a) appropriately and the length of time taken to deal with the request.

Reasons for decision

Section 40 – personal data

9. Section 40(5)(b)(i) FOIA provides that if a public authority receives a request for information which, if held, would be the personal data of a third party, it can rely on section 40(5)(b)(i) to neither confirm or deny whether or not it holds the requested information.
10. Consideration of section 40(5) involves two steps: first, whether providing the confirmation or denial would involve the disclosure of personal data and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

Is the information personal data?

11. The first step for the Commissioner is to determine whether the requested information, if held, constitutes personal data as defined by the Data Protection Act 1998 ("the DPA"). If it is not personal data, then section 40 cannot apply.

12. 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 intention of the data controller or any other person in respect of the individual."

13. 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.

14. The requested information relates to an identifiable individual, namely Jeremy Clarkson. Therefore, the Commissioner considers that the requested information, if held, would be the personal data of Jeremy Clarkson.

Is the requested information sensitive personal data?

15. NYP explained that it considered that if held, the requested information would also be sensitive personal data.

16. Sensitive personal data is personal information which falls into one of the categories set out in section 2 of the DPA. Of relevance in this case is that section 2 relates to personal data consisting of information as to:

"(g) the commission or alleged commission by him of any offence,"

17. The Commissioner is satisfied that if held, the requested information in its entirety would be sensitive personal data. This is because it relates to an alleged offence in relation to Jeremy Clarkson.

18. Having accepted that the request is for sensitive personal data of a living individual, the Commissioner will go on to consider whether disclosure of this personal data would breach one of the data protection principles.

19. The Commissioner considers that the first data protection principle is relevant in the circumstances of this case.

Would confirmation or denial breach the first data protection principle?

20. The first data protection principle states –

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

*(a) at least one of the conditions in Schedule 2 is met, and
(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”*

21. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the disclosure, ie the confirmation or denial in this case, can only be given if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions and, in this case, one of the Schedule 3 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.
22. When considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
- the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned);
 - any legitimate interests in the public having access to the information; and,
 - the balance between these and the rights and freedoms of the individuals who are the data subjects.
23. The Commissioner recognises that people have an expectation that NYP, in its role as a responsible data controller, will not disclose certain information about them and that it will respect their confidentiality.
24. Furthermore, the Commissioner considers that, in most cases, the very nature of sensitive personal data means it is more likely that disclosing it will be unfair. The reasonable expectation of the data subject is that such information would not be disclosed and that the consequences of any disclosure could be damaging or distressing to them.

25. Accordingly, the Commissioner considers that the data subject would not reasonably expect NYP to place details of whether he had been charged with a racially-motivated assault, into the public domain.
26. As to the consequences of disclosure upon a data subject, the question – in respect of fairness - is whether disclosure would be likely to result in unwarranted damage or distress to that individual.
27. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. He will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions.
28. Given the nature of the request and the sensitivity of the subject matter, the Commissioner considers that confirming or denying in this case could lead to an intrusion into the private life of the individual concerned and the consequences of any disclosure could cause him damage and distress.
29. Whilst the complainant has made reference to an alleged racially-motivated assault, the Commissioner can find no evidence that at the time of the request, there was anything in the public domain which states that the individual in question had been charged with such an assault. It is therefore the Commissioner's view that the data subject would have little – if any - expectation that such details would be put into the public domain by way of a request under the FOIA.
30. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose information, or in this case confirm or deny if information is held, if there is a more compelling public interest in doing so. Therefore the Commissioner will carry out a balancing exercise, balancing the rights and freedoms of the data subject against the public interest in confirming or denying if the information is held.
31. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to exemptions listed under section 2(3) of the FOIA. Given the importance of protecting an individual's personal data the Commissioner's 'default position' is in favour of protecting the privacy of the individual. The public interest in confirming whether or not information is held must outweigh the public interest in protecting the rights and freedoms of the data subject if providing confirmation or denial is to be considered fair.

32. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest.
33. The Commissioner understands that the complainant has concerns about the way in which the alleged assault was dealt with. The complainant pointed to the fact that there had been several press releases made by NYP regarding the alleged incident. The Commissioner has considered the articles in question. He notes that although they refer to NYP making enquiries regarding an alleged incident, they do not refer to any alleged assault, whether racially-motivated or not.
34. In light of the nature of the information and the reasonable expectations of the data subject, the Commissioner is satisfied that confirming or denying if the requested information is held would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subject. He considers that these arguments outweigh any legitimate interest in disclosure. He has concluded that confirmation or denial in this case would breach the first data protection principle. He therefore finds the exemption at section 40(5) is engaged and the duty to confirm or deny does not arise.
35. Given that the Commissioner is satisfied that section 40(5) has been applied appropriately to all of the requested information, he did not go on to consider the application of the other cited exemptions.

Other matters

36. The Commissioner notes that the complainant requested an internal review on 20 May 2015 and NYP responded on 18 June 2015.
37. Part VI of the section 45 Code of Practice makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information. He considers that the procedure should encourage a prompt determination of the complaint.
38. As he has made clear in his *'Good Practice Guidance No 5'*, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

39. The Commissioner is concerned that it took over 20 working days for the internal review to be completed.

Right of appeal

40. 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

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

41. 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.
42. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF