

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 July 2018

**Public Authority:** Chief Constable of South Yorkshire Police  
**Address:** South Yorkshire Police  
Carbrook Force HQ  
Carbrook House  
5 Carbrook Hall Road  
Sheffield  
S9 2EH

#### Decision (including any steps ordered)

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1. The complainant requested details of compensation and legal costs associated with the child grooming scandal in Rotherham. South Yorkshire Police ('SYP') provided some of the requested information but ultimately refused to provide the remainder citing sections 38(1), health and safety, 40(2), personal information, and 43(2), commercial interests.
2. The Commissioner's decision is that SYP is entitled to rely on section 38(1) in relation to both the overall total compensation paid and the individual compensation payments, for the reasons set out in this notice. As she finds section 38(1) to be engaged, she has not considered SYP's reliance on the other exemptions.
3. In relying on sections 38(1) and 43(2) after completing its internal review, SYP has breached section 17(1) of FOIA.

#### Request and response

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4. On 2 October 2017 the complainant wrote to SYP and requested information in the following terms:

*"I would be grateful if you would provide the following:*

- 1) The number of claims for compensation received from victims of the child grooming scandal in Rotherham. 2) The number of*

*claims so far settled and the payments made for each. 3) The legal costs - that is the amount of payment made to claimants' lawyers if separate from the individual compensation claim and the amount paid by the police to any outside law firms and counsel employed or instructed in relation to the claims.*

*My focus is on victims in Rotherham but if there are, separately, any claims relating to victims in Sheffield, who may have been in contact with Sheffield Council services rather than Rotherham, I would be grateful if the same information is provided in relation to those.*

*Please let me know if you need to clarify any of the above."*

5. SYP responded on 22 November 2017. For parts 1 and 2 of the request, it refused to provide the requested information, citing section 40(2), personal information of FOIA. For part 3 it informed the complainant of the legal fees total spend to date.
6. The complainant requested an internal review on 22 November 2017, in which he suggested that: "*[a]t the very least it was open to SYP to provide a global settlement figure*" noting that this "*has also seemingly not been considered*". SYP provided its internal review on 29 December 2017. It advised that a total of 60 claims had been made, six of which had been settled, but maintained that section 40(2) applies to the amounts of compensation paid. It also provided more detail in relation to its response to part 3.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 29 December 2017 to complain about the way his request for information had been handled by SYP. He highlighted that his request did not seek any information leading to identify anyone and that the victims run into many hundreds over a near 20-year period, as recorded in formal reporting on the issue.
8. He said he had asked for individual payments on the basis that it would be impossible to identify who, out of at least 1400 acknowledged victims since the 1990s, had received compensation.
9. He also pointed out that it was open to SYP to provide a global (ie total) compensation sum. Although he does not accept that identification is possible through disclosure of individual payments, he said it would certainly not be feasible with disclosure of a global sum.

10. He contended:

*"... it is submitted that a global sum further distances any individuals from identification. Given that group is already publicly acknowledged to be in excess of 1400 spread over nearly 20 years (when there would have been many tens of thousands of individuals within the broad age range during that time) it is submitted it would not be feasible to identify individuals.*

*It is submitted that there has to be a reasonable application of what constitutes identification of an individual and that if no identifying information is provided at all it is not reasonable to withhold information on payments. That argument is further enhanced in terms of a global sum where it is submitted it would not be feasible for anyone to identify an individual's individual payment.*

*Not only would the individual not in any way be identified, their individual payment would not be identified. In those circumstances it is very difficult to see how Section 40 could be held to apply."*

11. The complainant's complaint centres on SYP's handling of part of question 2 of his request. To clarify, SYP has confirmed the number of claims settled in scope of the request which the complainant requested under part 2. This leaves only the six individual amounts of compensation paid, or the overall total expenditure, all of which have been withheld by SYP, and it is these aspects which the complainant wishes to have investigated.
12. During the Commissioner's investigation, SYP said that it no longer wished to rely on section 40(2) in relation to the overall total compensation figure and advised it would now disclose this figure to the complainant. However, in addition to section 40(2), it now cited section 38, health and safety, in relation to the individual compensation amounts paid.
13. The Commissioner asked SYP to write to the complainant to advise him accordingly and to provide both parties with its section 38 arguments.
14. SYP subsequently revised this position and confirmed that it would not release either the total or individual compensation payments, citing sections 38(1), 40(2), and 43(2), the exemption for commercial interests.
15. In this case, the Commissioner has therefore considered whether SYP was entitled to rely on sections 38(1), 40(2) and 43(2) of FOIA to withhold some of the information requested at part 2 of the request, specifically the overall and / or individual compensation payments.

## Reasons for decision

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### Section 38 – health and safety

16. SYP has confirmed reliance on section 38(1)(a) of FOIA in relation to both the overall and individual compensation payments. This states that information is exempt information if its disclosure would, or would be likely to, endanger the physical or mental health of any individual.
17. The Commissioner considers an individual's mental wellbeing to fall within the scope of section 38. In this she includes emotional and psychological wellbeing, including the likelihood of causing significant upset or distress. The arguments provided by SYP relate to this limb of section 38(1)(a).
18. SYP also confirmed that:

*"...the arguments for section 38 apply to both the whole figure and the individual figures.*

*For clarity, the arguments for each of the exemptions apply to both the overall figure and the individual sums."*
19. For the exemption to be engaged it must be at least likely that the endangerment identified would occur. Even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
20. The Commissioner considers that the term 'endanger' in section 38(1) should be interpreted in the same way as the term 'prejudice' in other FOIA exemptions. In order to accept that the exemption is engaged, the Commissioner must be persuaded that the nature of the endangerment, and the likelihood of it occurring as a result of disclosure of the information in question, is "*real, actual and of substance*", rather than trivial or insignificant. As part of this she must be satisfied that some causal relationship exists between the potential disclosure and the stated endangerment.
21. This means that three conditions must be satisfied for the exemption to be engaged. First, the harm that is envisaged would, or would be likely to, occur relates to the applicable interests described in the exemption. Secondly, there is a causal relationship between the potential disclosure of the withheld information and the prejudice that the exemption is designed to protect against. Third, there is a real risk of the prejudice, or more precisely the endangerment, arising through disclosure. In this regard, a public authority is required to demonstrate that either disclosure "*would be likely*" to result in endangerment or disclosure

"would" result in endangerment; "would" imposing a stronger evidential burden than the lower threshold of "would be likely".

22. SYP told both the complainant and the Commissioner that:

*"It has been highly publicised that the survivors of CSE [child sexual exploitation] in Rotherham were severely let down by a number of authorities, including South Yorkshire Police. This resulted in a number of cases of abuse going unchallenged for a significant period of time.*

*It is also well documented that the survivors of CSE can suffer from long-term effects on their general emotional wellbeing, mental health and can lead to a number of long-term concerns. These psychological impacts can have significant detrimental impact on a survivor's quality of life including fear, anger, guilt, self-blame and confusion.*

*For the survivors of this abuse, the settlement of a compensation claim should be a position in time when they can start to have some closure and begin to rebuild their lives. The Data Controller [ie SYP] is of the opinion that, by breaking down the compensation payments into individual payments will further endanger their emotional wellbeing.*

*The risk of such endangerment is more than remote or hypothetical when the circumstances of these cases are taken into consideration and disclosure, if individual figures were released, would potentially increase the existing psychological impacts that survivors are known to suffer from."*

23. In this case SYP has relied on the first limb of the exemption: that mental endangerment "would" occur. Specifically, SYP advised the Commissioner that:

*"For section 38 it is the view of the Data controller that the risk of endangerment would occur. This is based on the well-publicised position that SYP have already caused serious harm to the physical and mental wellbeing of the survivors."*

24. During the course of the Commissioner's investigation, SYP has advised the following:

*"Each of the claims for compensation are reviewed on an individual basis, there is no banding approach to identify possible levels of compensation against a pre-set criteria.*

*Disclosure of the full amount of compensation paid would allow any individual to identify an average payment to each of the six survivors who have settled their claims.*

*The damages paid all relate to Article 3 claims and are directly linked to the individual medical conditions of some very damaged and vulnerable individuals. The settlement figures are based upon medical prognosis following examination of each of their medical records and their life histories."*

25. The Commissioner accepts that, as SYP has already confirmed that there were six concluded payments at the time the request was made, knowing the overall amount would enable average payment calculations to be made; for example, were the total amount paid to be £60k then it could be assumed that each victim was paid £10k (this is a purely hypothetical amount). However, this is not the case. Payments are not made within 'bands' and not calculated according to any pre-designated criteria. Each payment has been made on an individual assessment. In a scenario such as this, were the total amount paid to be £60k and one of the victims were aware that she received £5k herself, then this could lead to her feeling her own particular case was in some way undervalued as she would be able to calculate that the remaining five cases would have received an average of £11k, more than double what she had been awarded. This would of course be fully evident were individual payments to be disclosed.
26. The arguments provided by SYP relate to the mental health of the six individuals concerned. Having considered the arguments put forward by SYP, the Commissioner is satisfied that SYP has demonstrated that there is a causal link between disclosure of the figures requested and endangerment to the mental health of the individuals concerned. She accepts that coming to terms with abuse would be of significant distress and that the insensitive handling of this matter has the potential to endanger the mental wellbeing of those parties concerned.
27. In relation to disclosure of both the overall and individual compensation payments, the Commissioner is therefore satisfied that section 38(1)(a) is engaged on the basis that the risk of endangerment is substantially more than remote and that it is real, actual and of substance.
28. As section 38 is a qualified exemption, consideration must next be given to the balance of the public interest in disclosure in relation to the payments.

*Public interest in favour of disclosure*

29. The complainant's view is that the information should be disclosed because:

*"South Yorkshire Police (through the offices of the PCC [Police and Crime Commissioner]) are budgeting for these payments, publicly, and refer, publicly, to their existence as to why more money is needed to manage the operation of the force. It cannot be reasonable for a police force budget to openly refer to a budgetary pressure and then decline to say how much money it has actually paid in line with that budgetary pressure. It would be akin to going to a bank to say I must have this much money to pay for this liability but then declining to tell the bank manager how much you've actually had to pay. In this case the bank is the public who are ultimately paying the bills."*

30. He also submitted the following arguments:

*"I don't think anyone would doubt CSE is harmful but no evidence is presented as to how a figure of compensation to completely anonymous individuals, who cannot be identified under any circumstances, would be likely to endanger physical and/mental health.*

*In essence, the argument advanced focuses on the impact of CSE itself rather than the impact of anonymised amounts of compensation which ultimately represent recognition of failings by the police and say nothing remotely detrimental about victims. It is confirmation they were wronged and deserve compensation for being let down.*

*I know the arguments around this issue are well rehearsed but it is worth bearing in mind that the total number of victims is more than 1,500 over a near 20-year period. The individuals are and will remain unidentified.*

*Recognition of culpability (aside from the actual perpetrators) in the case of the police (and the council) is a very important feature of ensuring public accountability and disclosing compensation payments is a vital part of that.*

*In terms of the public interest, criminal court cases deliver accountability for the perpetrators, while disclosure of compensation delivers accountability for the public bodies at fault.*

*We wouldn't think the first should not be publicly recorded and criminal cases are also often cited as providing 'closure' for victims.*

*And I keep returning to the fact that no-one is being identified nor can be reasonably said to be identified from such a large pool of people affected over such a large period of time."*

31. SYP acknowledge that disclosure would ensure that:

*"It is accepted that there is a public interest in articulating how public finances are spent by the Authority and disclosure of the information would promote accountability and transparency in the spending of public money, especially in terms of such a high profile case and it is important that the public are aware of the existence of such payments."*

*Public interest in favour of maintaining the exemption*

32. SYP explained to the complainant that:

*"Disclosure of the information to individual amounts would, in the view of the Data Controller, endanger the wellbeing and mental health of the survivors."*

33. It advised that the main reason favouring non-disclosure is the significant distress to the survivors which it believes would occur were it to release the individual payments directly into the public domain.

*Balance of the public interest test*

34. The Commissioner will invariably place significant weight on protecting individuals from risk to their mental well-being. The natural consequence of this is that disclosure will only be justified where a compelling reason can be provided to support the decision.

35. The Commissioner initially notes that SYP has disclosed its legal costs, which she considers goes some way to satisfying the public interest in disclosure of the requested information.

36. The Commissioner recognises the complainant's view that disclosure of the individual compensatory amounts is in the public interest and that he does not seek to identify any of the individuals concerned. However, the arguments considered under this exemption do not need to take into account the potential for identification of any of the parties, rather they take into consideration the effect that disclosure would have on those individuals. On this basis, the Commissioner does not consider that an unfettered disclosure to the world at large via FOIA would be an appropriate action to take.

37. There is also the matter that the compensation payments process is ongoing and that many individuals are either awaiting decisions on their cases, or have yet to start the process.

38. Further, the Commissioner is satisfied that there are no established 'bandings' for determining the level of compensation which is payable in each individual case and therefore no expectations of the likely settlement. Disclosure of the individual amounts of the previously settled claims could cause unwarranted distress to those who have received compensation, as well as to those whose cases are being determined or have yet to be considered. Similarly, disclosure of the overall compensation paid would enable identification of the average sums paid through dividing the total by the number of settled claims and has the potential to raise expectations regarding future payments that may be expected by other individuals.
39. It is not the identification of the survivors themselves which is the issue here, but rather the identification of the average amounts of compensation paid through disclosure of the total.
40. With respect to both the total and the individual compensation amounts, on this occasion the Commissioner considers that the strength of the arguments for disclosure is clearly outweighed by the public interest in maintaining the exemption in order to safeguard the mental health of the survivors of child sexual exploitation. Therefore, in all the circumstances, the Commissioner has decided that the balance of the public interest favours maintaining the exemption at section 38(1)(a).
41. As she has found that section 38(1)(a) applies to both the total and individual payments, it has not been necessary for the Commissioner to consider the other exemptions cited.

**Breach of section 17 for late reliance on sections 38(1)(a) and 43(2)**

42. Section 1(1) of FOIA states:

*"(1) Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

43. Section 17(1) of FOIA states:

*"(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, **within the***

***time for complying with section 1(1), give the applicant a notice which –***

*(a) states that fact,*

*(b) specifies the exemption in question, and*

*(c) states (if that would not otherwise be apparent) why the exemption applies.”*

44. Breaches of section 17 will also be found if the public authority seeks to rely on another exemption during the investigation which it had not mentioned at or before internal review.
45. In this case, SYP relied on sections 38(1)(a) and 43(2) during the course of the Commissioner’s investigation thereby breaching section 17(1).

## **Other matters**

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46. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As she has made clear in her '*Good Practice Guidance No 5*', the Commissioner considers that these internal reviews should be completed as promptly as possible.
47. While no explicit timescale is laid down by 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. The Commissioner is concerned that in this case, it took over 25 working days for an internal review to be completed, despite the publication of her guidance on the matter.

## Right of appeal

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48. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.

50. 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 .....**

**Carolyn Howes  
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