

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 September 2022

Public Authority: Chief Constable of South Yorkshire Police
Address: Police Headquarters
Carbrook House
Carbrook Hall Road
Sheffield
South Yorkshire
S9 2EH

Decision (including any steps ordered)

1. The complainant requested, from South Yorkshire Police (SYP), information about an alleged crime by a named party. SYP would neither confirm nor deny (NCND) holding any information, citing section 40(5) (Personal information) of FOIA. The Commissioner's decision is that it was correct to do so. No steps are required.

Request and response

2. On 28 October 2021, the complainant wrote to SYP and requested information in the following terms:

"I write regarding investigations into a complaint made in respect of a [name redacted] of [address redacted].

This person was interviewed in relation to the complaint made. I seek from SYP a copy of any and all data collated as a consequence of the interview made. This would include any evidence collated from lines of investigation suggested by the interview with [name redacted] and raised in his defence.

I seek also a copy of the interview transcript with [name redacted] and notification of the date and location of the interview.

The matter has been marked as NFA [no further action] and therefore production of this data will not prejudice any ongoing investigation or the prevention of detection of any crime”.

3. On 16 November 2021, SYP responded. It would NCND holding the requested information citing section 40(5) (Personal information) of FOIA.
4. The complainant requested an internal review on 18 November 2021.
5. SYP provided an internal review on 29 December 2021, in which it maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 29 December 2021, to complain about the way his request for information had been handled. He asked the Commissioner to consider the application of section 40(5) to the request.
7. The Commissioner has reached a decision on the basis of the documents provided.

Reasons for decision

Section 40 - Personal information

8. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation (UK GDPR) to provide that confirmation or denial.
9. Therefore, for SYP to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request the following two criteria must be met:
 - Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - Providing this confirmation or denial would contravene one of the data protection principles.

Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?

10. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:-

“any information relating to an identified or identifiable living individual”.

11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

12. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

13. The complainant has argued:

“It is my belief that the data in question could be provided with minor adjustments to remove personal data of third parties. However SYP do not wish to release the data as it will show that no proper investigations into the various lines of enquiry put to them were undertaken”.

14. In the Commissioner's view, it is clear that the complainant has specified a named party and their address in his information request. Therefore, the information requested is necessarily about that named party. Whilst the complainant has commented that the name could be redacted from any disclosure, the Commissioner does not accept that this is a viable solution as the complainant already knows who that party is; whilst members of the public may not be able to identify the third party were his details redacted, obviously the complainant himself would still know who that party was. Therefore, confirming or denying whether or not any information is held about the named third party would result in a disclosure of information about that party.

15. For the reasons set out above the Commissioner is satisfied that, if SYP confirmed whether or not it held the requested information, this would result in the disclosure of a third party's personal data. The first criterion set out above is therefore met.

16. The Commissioner also considers it appropriate to consider whether confirming or denying whether it holds the requested information would result in SYP's disclosure of information relating to the criminal convictions and offences of a third party.

17. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and

offences. Under section 11(2) of the DPA 2018 personal data relating to criminal convictions and offences includes personal data relating to-:

- (a) The alleged commission of offences by the data subject; or
- (b) Proceedings for an offence committed or alleged to have been committed by the data subject of the disposal of such proceedings including sentencing.

18. In his grounds of complaint to the Commissioner the complainant has stated that the complaint to the SYP about the named party:

"... involved wholesale breach of copyrighted materials, such constituting a criminal offence. The complaint was made in October 2020 and SYP informed around a year later that they would not be laying charges in respect of this matter despite ample evidence existing online against [name redacted]. It is my belief that none of the lines of investigation put to the police in statements etc. were properly followed and that police simply did not wish to collate the data required to establish a prosecution.

The basis of the data access request of 28.10.21 was to establish if indeed these proper lines of investigation had been followed. [Name removed] continues to breach copyright invested in materials published by other organisations by reproducing these verbatim on his own website".

- 19. The request clearly relates to a criminal allegation about the named party. Confirming or denying whether the requested information is held would therefore result in the disclosure of information relating to an alleged criminal offence by that named party.
- 20. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held in response to a FOI request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.
- 21. The Commissioner has considered each of these conditions and whether any of them could be relied on by SYP to confirm or deny whether it held criminal offence data falling within the scope of this request. The Commissioner has considered these on his own merit and finds that, having regard for the restrictive nature of the Schedule 1, Parts 1 to 3 conditions, none of the conditions can be met.
- 22. As none of the conditions required for processing criminal offence data are satisfied there can be no legal basis for confirming whether or not the requested information is held; providing such a confirmation or denial would breach data principle (a) and therefore the second criterion

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of the test set out above is met. It follows that SYP is entitled to refuse to confirm or deny whether it holds the requested information on the basis of section 40(5)(B) of FOIA.

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

24. 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.
25. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF