

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2022

Public Authority: Chief Constable of Kent Police
Address: Police Headquarters
Sutton Road
Maidstone
ME15 9BZ

Decision (including any steps ordered)

1. The complainant has requested, from Kent Police information about a civilian employee. Kent Police would neither confirm nor deny ('NCND') holding the information citing sections 40(5)(Personal information) and 30(3) (Investigations and proceedings) of FOIA.
2. During the Commissioner's investigation, Kent Police agreed to confirm that the information is held, but refused to provide the employee's name. The Commissioner's decision is that, in reliance on section 40(2), it was entitled to do so. No steps are required.

Request and response

3. On 6 November 2021, the complainant wrote to Kent Police and requested information in the following terms:

"I would like to make a 'Freedom of Information' request for the following information

1) The name of Kent Police civilian worker [number redacted], being a person, if they indeed exist, who inputted information (only once) on Kent Police CAD ('Computer-aided Dispatch') [reference number redacted].

2) I believe the above identified Kent Police civilian worker [number redacted], entered false and fake information on that CAD at 08:31:12 with the intention of 'perverting' the course of justice

which has become a significant part of a serious corruption allegation. Their identity is key in securing evidence and those Kent officers, staff or others complicit in that serious corruption”.

4. On 1 December 2021, Kent Police responded. It would NCND holding the information, citing section 40(5) of FOIA.
5. On 2 March 2022, following an internal review, Kent Police revised its position, adding reliance on section 30(3) of FOIA.

Reasons for decision

6. Part (2) of the request is not a request for recorded information so it has not been further considered.
7. Regarding part (1), the Commissioner contacted Kent Police on 18 October 2022. Following consultation, Kent Police confirmed that the collar number stated was genuine and that the employee no longer worked for the force.

8. It explained:

“... STORM [Kent Police’s incident recording system] automatically records all entries against the collar number that is logged into the system at the time the entry is made. It is not possible to falsify a collar number, or to edit a STORM record. As such, I can confirm that the collar number provided is a real collar number.

Unfortunately the individual no longer works for Kent Police”.

9. It would not disclose the person’s name, still relying on section 40 of FOIA.
10. This revision has not been relayed to the complainant as it was considered more expedient to include it in a decision notice.
11. The Commissioner will therefore consider whether or not Kent Police is entitled to rely on section 40(2) of FOIA to withhold the former employee’s name.

Section 40 – Personal information

12. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

13. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
14. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

16. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
19. 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.
20. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the complainant is asking for a person's name. He is satisfied that this information both relates to and identifies the person concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
21. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

22. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

23. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

24. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

25. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

26. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.

27. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”².

² Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

28. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
29. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

30. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
31. It is understood that the complainant initially believed the collar number to be fictitious and that Kent Police's original NCND position was to try and conceal this. However, Kent Police has now confirmed that it is a genuine collar number, but that the person no longer works for them. This legitimate interest therefore no longer applies.
32. The complainant is also of the view that this employee entered "false and fake" information on to the CAD incident his request refers to. He says that their identity is key in securing evidence of serious corruption within Kent Police. It is presumed that the CAD incident has some direct relevance to the complainant which is why he has an interest in knowing the identity on the inputter.

Is disclosure necessary?

33. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under

FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

34. It is not clear how disclosing the name of a previous employee would assist the complainant in this case. On its own, it would not serve to prove any allegation of the veracity of whatever was input onto the CAD incident. Such verification would require further enquiries directly with the person concerned. The complainant is able to pursue his concerns without knowing the name of the person – the collar number alone would suffice for raising any issues directly with the force, or any other relevant party, as the collar number is a unique identifier and Kent Police has now confirmed its validity. The Commissioner considers that disclosure of the name to the general public, which is what is considered under the remit of FOIA, would be both intrusive and unnecessary.
35. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, he has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).

The Commissioner's view

36. The Commissioner has therefore decided that Kent Police was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).
37. As the Commissioner has determined that section 40(2) of FOIA was properly applied he has not found it necessary to consider section 30(3).

Right of appeal

38. 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

39. 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.

40. 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