

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 May 2023

**Public Authority:** Chief Constable of Lancashire Constabulary  
**Address:** Police Headquarters  
Saunders Lane  
Hutton  
Lancashire  
PR4 5SB

#### **Decision (including any steps ordered)**

---

1. The complainant has requested information about an incident he reported, from Lancashire Constabulary. Lancashire Constabulary would neither confirm nor deny ("NCND") holding the requested information, citing section 40(5) (Personal information) of FOIA.
2. The Commissioner's decision is that Lancashire Constabulary was entitled to rely on section 40(5) of FOIA. No steps are required.

#### **Background**

---

3. The request refers to an initiative that is known as Operation SNAP<sup>1</sup>.
  4. According to its website:
- 

<sup>1</sup> <https://unitedkingdom1cpp-portal.digital-policing.co.uk/lancashire/appeal/public-dashcam-submission>

"This is Lancashire Constabulary's response to the increasing submission of digital evidence relating to moving traffic offences witnessed by members of the public.

If you have witnessed an incident that is not a collision and wish to submit footage that you believe can be used to evidence a moving traffic offence, please fill out the form below...

...Following submission, you will receive a unique reference number on the final page; please make a note of this URN. You will then be contacted by a member of the OpSnap Lancs team to advise that the footage has been successfully uploaded within a day or so. We will then advise you within 14 days of our decision on whether to take further action or not".

## Request and response

---

5. On 20 January 2023, the complainant wrote to Lancashire Constabulary and requested the following information (his email was accompanied by images):

"[Form reference redacted] was submitted at around 17:55 on 21.2.22, and referred to the offence shown below: a terrifying close-pass of a cyclist, me, by the Public Service Vehicle/School Bus driver of a Traveller's Choice Plaxton Panther coach based on a Volvo B12M chassis which was then registered as [Vehicle Registration Mark ("VRM") redacted]. The offence occurred at 08:55 on 21.2.22 on Park Hill Road, Garstang.

[Images of bus redacted]

[VRM redacted] is now not allocated to any vehicle

This is *could be* the same bus operated by Travellers Choice as [VRM redacted] at some time before the offence in question, in a different paint scheme.

[Image of bus redacted]

This is the same bus as was involved with the offence in question, about 3 weeks after the offence

[Image of bus redacted]

OpSnap Lancs replied to me at around 16:35 on 22.2.22 with the standard 'action letter'. This FoI request is for the information held about the action actually taken over this offence against the driver of what was then registered as [VRM redacted], using the information above to identify the offence".

6. On 9 February 2023, Lancashire Constabulary responded. It would neither confirm nor deny holding any information, citing section 40(5) of FOIA.
7. The complainant requested an internal review on 27 February 2023; he gave no grounds.
8. Lancashire Constabulary provided an internal review on 20 March 2023 in which it maintained its original position.

### **Scope of the case**

---

9. The complainant contacted the Commissioner on 4 April 2023 to complain about the way his request for information had been handled. He said that Lancashire Constabulary's response: "as usual, is based upon misuse of GDPR [General Data Protection Regulation] and is gibberish".
10. The Commissioner will consider the application of section 40(5) of FOIA below.

### **Reasons for decision**

---

#### **Section 40 - personal information**

11. 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 GDPR to provide that confirmation or denial.
12. Therefore, for Lancashire Constabulary 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 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 confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?**

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

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

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

15. 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.

16. Although the request does not identify any party by name, clearly the VRM of the bus, coupled with the dates and times would allow for the bus company, and other members of the public familiar with bus drivers' patterns of work such as friends and family, to identify the driver in question. Therefore, the request relates to a living person who will be identifiable to some people. The information is therefore the driver's personal data.

17. The Commissioner is satisfied that, if Lancashire Constabulary 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.

**If held, would the information be criminal offence data?**

18. Although not argued by Lancashire Constabulary, as the regulator for data protection legislation the Commissioner has also considered if, by confirming or denying whether it holds the requested information, this would result in the disclosure of information relating to the criminal convictions or offences of a third party.

19. 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.

20. Clearly, the wording of the request contains an allegation of a criminal offence committed by the bus driver<sup>2</sup>. For Lancashire Constabulary to confirm publicly whether or not it holds any information would therefore result in the disclosure of information relating to allegations of a criminal offence committed by the bus driver. The Commissioner is satisfied that this is criminal offence data.
21. 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 an FOIA request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.
22. The Commissioner has considered Lancashire Constabulary's position and the conditions attached to Schedule 1, Parts 1 to 3. Having regard to the restrictive nature of the conditions, he has concluded that none can be met.
23. 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 of the test set out above is met. It follows that Lancashire Constabulary is entitled to refuse to confirm or deny whether it holds the requested information on the basis of section 40(5B)(a)(i) of FOIA.

---

<sup>2</sup> <https://www.police.uk/advice/advice-and-information/rs/road-safety/driving-offences/>

## Right of appeal

---

24. 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](mailto:grc@justice.gov.uk)

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

25. 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.
26. 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**