

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2014

Public Authority: Chief Constable of Greater Manchester Police
Address: Northampton Road
Manchester
M40 5BP

Decision (including any steps ordered)

1. The complainant requested information about video footage taken by Greater Manchester Police (GMP) of a house search conducted as part of a criminal investigation. The footage was subsequently edited by an officer and uploaded to YouTube for a short period. GMP provided some information but refused to supply a copy of the video itself, citing the exemption at section 40(2) of the FOIA.
2. The Information Commissioner's decision is that GMP was entitled to rely upon section 40(2) to withhold the information. He requires no steps to be taken.

Background

3. The video in question comprised footage of a police search that had been captured on a police officer's body worn camera ("bodycam"). The officer had incorrectly mounted the camera so that it filmed his face, rather than the search scene. The footage was subsequently obtained by a second police officer, edited in a manner which ridiculed the first police officer and uploaded to YouTube. It was later taken down and the police officer who uploaded it was disciplined.
4. The complainant is not an interested party with regard to the incident.

Request and response

5. On 25 November 2013, the complainant wrote to GMP and, referring to the incident described at paragraph 3, requested the following information:

"...I would like to request a detailed description of what happened in this video – including a detailed commentary of what the footage showed originally, exactly how the officer edited it and the exact wording he used which was considered to be offensive. I would also like to request a copy of this edited video as it appeared on YouTube, which I assume investigators got a copy of for the purpose of the investigation."

6. GMP responded on 20 December 2013. It provided the descriptive information, but withheld the edited bodycam footage, which it said was exempt from disclosure under section 40(2) of the FOIA.
7. Following an internal review GMP wrote to the complainant on 17 March 2014, upholding its decision. In addition, it stated that the exemption at section 38 (health and safety) also applied.

Scope of the case

8. The complainant contacted the Information Commissioner on 18 March 2014 to complain about the way his request for information had been handled. He was unhappy at GMP's decision to withhold the edited bodycam footage.
9. The Information Commissioner considers the scope of his investigation to be with respect to the GMP's application of section 40(2) and section 38 to withhold the edited bodycam footage.

Reasons for decision

Section 40 - personal information

10. Section 40(2) of the FOIA provides an exemption in relation to information that constitutes the personal data of any individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process: first, whether the information requested constitutes personal data, and secondly whether disclosure of

that personal data would be in breach of any of the data protection principles.

Is the requested information personal data?

11. Section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as follows:

"personal data' means data which relate to a living individual who can be identified:

a. from those data, or

b. from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller".

12. The request in this case is for the edited bodycam footage of the house search. GMP says that the camera points at the police officer's face for the duration of the video, and that he can clearly be seen. The Information Commissioner's position is that video footage of a living individual's face is information which relates to them, and from which they can be identified¹. This information is, therefore, personal data according to the definition given in section 1(1) of the DPA.

Would disclosure contravene the first data protection principle?

13. The next step is to address whether disclosure of that personal data would be in breach of any of the data protection principles. The Information Commissioner has focussed here on the first principle, which requires that personal data is processed fairly and lawfully, and in particular on whether disclosure would be fair to the data subject featured in the video.
14. In forming a view on whether disclosure would be fair the Information Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of this information.

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http://ico.org.uk/for_organisations/data_protection/topic_guides/~media/documents/library/Data_Protection/Detailed_specialist_guides/ICO_CCTVFINAL_2301.pdf

15. With regard to the data subject's reasonable expectations, the Information Commissioner notes that the footage was shot by the data subject in the line of duty. He considers it reasonable for the data subject to have the expectation that it would not be used or disclosed outside of the criminal investigation in question.
16. The Information Commissioner also notes that disciplinary action was taken as a result of the second officer's actions. He considers that, with the disciplinary action concluded, the data subject would have the reasonable expectation that the video would not continue to be circulated and that he would be left to "get on with" his life and his career. GMP has stated that during the disciplinary procedure the data subject reported feeling extremely humiliated and embarrassed by the editing and sharing of the video. The Information Commissioner considers it reasonable that disclosure of the edited bodycam footage now (some three years after the event) would be likely to cause the data subject further significant distress, and possibly reputational damage.
17. The Information Commissioner has considered whether it would be possible for GMP to disclose a redacted version of the bodycam footage, in which the data subject's face is pixelated out. However, he understands that prior to it being taken down from YouTube the second officer shared a link to the edited footage with a large number of the data subject's colleagues, and that it was they who informed the data subject of the video's existence. The data subject would therefore be capable of being identified by these individuals, even if his face was pixelated. In view of the notoriety the incident had achieved within the local police force, the Information Commissioner considers that pixelation would not render the information truly anonymised.
18. The complainant has argued that the fact the data subject may be identified by colleagues is immaterial, since they already knew about the incident and therefore the disclosure of the actual footage could not be considered a disclosure of new information.
19. The Information Commissioner's response to this is that they only became aware of the incident (either by viewing the edited bodycam footage, or anecdotally) as a result of an unauthorised act by the second police officer. He considers that it would be unfair to consider that the data subject had waived his right to anonymity as the result of an unauthorised act over which he had had no control.
20. The Information Commissioner accepts that the requestor has a legitimate interest in knowing about incidents within GMP which have triggered disciplinary action, but he notes that GMP has admitted that this incident occurred and that it has described what took place. He does not consider the added dimension that viewing the bodycam footage

would bring to public understanding of the incident to be sufficient to justify the negative impact of disclosure on the data subject. The Information Commissioner is satisfied that the release of the edited bodycam footage would not only be an intrusion of privacy but would be likely to cause unnecessary and unjustified distress to the data subject. He considers these arguments outweigh any legitimate interest in disclosure.

21. The Information Commissioner has therefore concluded that it would be unfair to disclose the withheld footage - in other words, that disclosure would breach the first data protection principle. He therefore upholds GMP's application of the exemption at section 40(2).
22. Because he is satisfied that the exemption at section 40(2) is engaged, the Information Commissioner has not gone on to consider GMP's claim that section 38 also applies.

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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.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

Jon Manners
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