

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2021

Public Authority: Commissioner of the Metropolitan Police
Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested names and other details of persons charged with murder via postal charge requisitions from the Metropolitan Police Service (the "MPS"). The MPS refused to provide the information, citing the exemptions at sections 30(1) (Criminal investigations, 38(1) (Health and safety) and 40(2) (Personal information) of the FOIA.
2. The Commissioner's decision is that section 40 of the FOIA is properly engaged so the other exemptions cited have not been considered. No steps are required.

Background

3. The MPS has explained to the Commissioner:

"A postal charge or postal requisition [PCR] is the name for a magistrates court summons. It informs an individual that they need to attend court for a criminal case and what offences they have been accused of (essentially a charge by post)".

4. The requester is a reporter. Regarding enquiries made by the media on the subject matter, the MPS advised:

"MPS Press lines logged regarding PCR's

Crown Prosecution Service (CPS) authority must be sought if a postal charge requisition (PCR) is used for an indictable offence, such as murder. In many cases, PCRs will be sent to suspects who are already in prison for other offences, and therefore of no risk to the public.

Each case is subject to rigorous risk assessment, taking into account the risk to the public, the risk of absconding and the risk to the suspect themselves".

5. It added:

"DMC [Directorate of Media and Communications] will place information on the MPS news website and via social media in a careful and managed way. The news website is updated regularly whereby we will proactively release information for either the public's assistance with various appeals for information or matters that may be of public interest relating for example to arrest/charge's and convictions. The news on this website is a snapshot of the position as it was at the time and therefore does not necessarily represent the full or final picture. The individuals linked are likely to be in different circumstances, especially given the passage of time and would therefore have no expectations of their data disclosed via FOIA in this manner".

6. Any published information on the news section of the MPS website¹ will automatically be deleted after three months.

Request and response

7. On 29 April 2020, following an earlier request, the complainant wrote to the MPS and requested information in the following terms:

"1. In 2019, 12 individuals were issued with postal charge requisitions for murder. Please state the name of each individual, the details of the charge and the date upon which they were charged.

¹ <https://news.met.police.uk/>

2. In 2018, 5 individuals were issued with postal charge requisitions for murder. Please state the name of each individual, the details of the charge and the date upon which they were charged.

3. In 2017, 2 individuals were issued with postal charge requisitions for murder. Please state the name of each individual, the details of the charge and the date upon which they were charged”.

8. On 13 May 2020, the MPS responded. It refused to provide the requested information citing the following sections of the FOIA: 40(2) (Personal information) and 38(1)(Health and safety).
9. The complainant requested an internal review on 14 May 2020.
10. The MPS provided an internal review on 10 June 2020 in which it revised its position, adding reliance on section 30(1) (Investigations and proceedings) of the FOIA.

Scope of the case

11. The complainant contacted the Commissioner on 10 June 2020 to complain about the way her request for information had been handled. Her grounds of complaint were as follows:

“I am a reporter ... who has obtained through Freedom of Information that 19 individuals have been charged with murder by post by the Metropolitan Police in the last three years. When I asked the press office for details of the charges: names of individuals, specific details of the charge, and the date upon which they were charged, I was told to submit an FOI. I did so, but the request was refused (grounds detailed in attachments). The grounds upon which it was refused were that to disclose the names of individuals charged with murder would be a breach of GDPR. I submitted an internal review request, which has been returned, again with a refusal. I consider their reasoning to be incorrect, as the criminal charging process is a matter of public record. It is the case that when an individual is charged, details - notwithstanding legal restrictions such as naming children - are read out in open court. Likewise, when the police charge individuals, they not only release details but will state them when asked. In this case, I am simply asking for what is regularly put into the public domain in circumstances where individuals have been charged by post. I do not consider how the manner in which an individual is charged - whether in person at a police station or by post - displaces the principle of open justice which requires this information to be released. I wish to seek adjudication from the ICO”.

12. The Commissioner will consider the application of the exemptions cited to the request.

Reasons for decision

Section 40 – personal information

13. Section 40(2) of the 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.
14. In this case the relevant condition is contained in section 40(3A)(a)². 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 General Data Protection Regulation ('GDPR').
15. 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 the FOIA cannot apply.
16. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

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

18. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
19. 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.

² As amended by Schedule 19 Paragraph 58(3) DPA.

20. 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.
21. Clearly the request being considered here specifically requires the names of those who have been charged with the criminal offence of murder. Therefore, the information would be their personal data.
22. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the individuals whose names have been requested. She is satisfied that this information both relates to and identifies those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
23. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
24. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

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

26. In the case of an 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.
27. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
28. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the GDPR.

Is the information criminal offence data?

29. Information relating to criminal convictions and offences is given special status in the GDPR.
30. Article 10 of the GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA 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 or the disposal of such proceedings including sentencing.*
31. Having considered the wording of the request, and viewed the withheld information, the Commissioner finds that the requested information does include criminal offence data. She has reached this conclusion on the basis that the requested information relates to the alleged commission of murder by named parties.
 32. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.
 33. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under the FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject) or Part 3 paragraph 32 (data made manifestly public by the data subject).
 34. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
 35. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data in order to disclose it under the FOIA would therefore breach principle (a) and so this information is exempt under section 40(2) of the FOIA.
 36. As she has concluded that section 40 is properly engaged, the Commissioner has not found it necessary to consider the other exemptions cited.

Right of appeal

37. 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@justice.gov.uk

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

38. 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.

39. 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
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Wycliffe House
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