

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

### **Decision notice**

**Date:** 4 October 2022

**Public Authority:** Chief Constable of Surrey Police  
**Address:** Police Headquarters  
Mount Browne  
Sandy Lane  
Guildford  
GU3 1HG

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

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1. The complainant has requested information about the handling of a complaint he made. The above public authority ("the public authority") relied on section 40 of FOIA (personal data) to neither confirm nor deny that it held any information.
2. The Commissioner's decision is that the public authority was entitled to rely on section 40(5A) of FOIA to refuse to confirm or deny that it held any relevant information.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 28 February 2022, the complainant contacted the public authority. He stated that he had previously raised a complaint with the public authority and sought various items of information which would show how his complaint had been handled.

5. The public authority responded on 1 March 2022. It stated that it was relying on "section 40(5)"<sup>1</sup> of FOIA to neither confirm nor deny holding any information as to do so would contravene one of the data protection principles. It did not indicate whose personal data it considered would be revealed by issuing a confirmation or a denial that information was held.
6. The complainant sought an internal review on the same day. The public authority had yet to complete an internal review at the date of this notice – despite an intervention from the Commissioner.

### **Reasons for decision**

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7. The following analysis explains why the Commissioner is satisfied that the public authority was entitled to neither confirm nor deny holding the information that had been requested.
8. Section 40(5A) allows a public authority to refuse to confirm or deny if it holds particular information if that information would (if it existed) be the personal data of the person making the request.
9. The full text of the request explains that the complainant had made a complaint, along with details of the timings of that complaint and its nature. Any information that the public authority held must, by definition relate to the very specific grounds of complaint that the complainant originally submitted and which are summarised in the request. This information would therefore be his personal data.
10. Furthermore, in merely confirming that it held any information within the scope of the request, the public authority would also, by definition, be confirming, to the world at large (which is what FOIA requires) that the complainant had made a complaint – along with the specific nature of his complaint. This too would be his own personal data.
11. Whether the complainant is or is not happy for his personal data to be released in this fashion is irrelevant.
12. The Commissioner is therefore satisfied that the request seeks information of which the complainant is the data subject. It is not clear

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<sup>1</sup> The Data Protection Act 2018 amended section 40 of FOIA, which no longer has a sub-section 5. Instead it has a subsection 5A – which covers the situation where relates to the personal data of the requestor – and subsection 5B – which covers the personal data of third parties.

whether the public authority was relying on this provision to refuse to confirm or deny, but to the extent that it was, the Commissioner is satisfied the exemption was cited correctly. To the extent the public authority did not intend to rely on this provision, the Commissioner applies it himself, proactively, to prevent the inadvertent disclosure of personal data.

## **Other matters**

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13. The Code of Practice, issued under section 45 of FOIA, states that internal reviews should be completed within 40 working days.
14. The Commissioner notes that, despite his intervention, the public authority had failed to complete its internal review at the date of this notice – some seven months after it was sought. He considers this extremely poor practice.
15. It is not clear whether the public authority has or has not already dealt with this matter as a subject access request (SAR). The Commissioner cannot require the public authority, in a FOIA decision notice, to deal with the request as a SAR, but he would strongly recommend that it does so.

## Right of appeal

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16. 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)

17. 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.
18. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**