

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2023

Public Authority: Metropolitan Police Service
Address: New Scotland Yard
Victoria Embankment
London
SW1A 2JL

Decision (including any steps ordered)

1. The complainant has requested transcripts of a specific police misconduct hearing. The Chief Constable for the Metropolitan Police Service (the Police) relied on sections 32(1)(c) and 40(2) of the FOIA to withhold the information.
2. The Commissioner's decision is that the Police have correctly relied on section 32(1) of the FOIA to withhold the information. As the Commissioner considers this to be the case, he has not gone on to consider the application of section 40(2) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 6 June 2023, the complainant wrote to the Police and requested information in the following terms:

"Please can you provide me with an electronic copy of the transcript of the misconduct hearing into [redacted] (the outcome of which was given on 28 May 2023). If there is no transcript, please provide the audio recording instead."

5. The Police responded on 9 June 2023 and refused the request under section 40(2) of the FOIA.
6. Following an internal review, the Police wrote to the complainant on 17 July 2023. It stated that it did not hold a transcript of the hearing, and that the information requested was held by an external company. It could be transcribed only when necessary and in accordance with the Police Conduct Regulations, at a cost of £99 per hour of audio.
7. Upon investigation by the Commissioner, the Police confirmed they did hold a copy of the audio recording. The Police advised it considered this exempt under sections 32(1)(c) and 40(2) of the FOIA.

Reasons for decision

8. Section 32(1) of FOIA states that information if it's held only by virtue of being contained in:
 - “(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
 - (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
 - (c) any document created by
 - (i) a court, or
 - (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter”.
9. Section 32(1) is a class based exemption. This means that any information falling within the category described is exempt from disclosure, regardless of whether or not disclosure would, or would be likely to, cause any prejudice or harm. It's also an absolute exemption. This means there is no requirement to conduct the public interest test.
10. The Police have confirmed the requested information is exempt under section 32(1)(c)(i).
11. There is a two part test that will determine whether information falls within this exemption:
 - Is the requested information contained within a relevant document created by a court, and

- Is this information held by the Police only by virtue of being held in such a document?
12. The Commissioner has considered the definition of 'court' in relation to section 32(1)(c). Section 32(4) specifically explains that "court" includes any tribunal or body exercising the judicial power of the State.'
 13. The Police have stated:

"A police misconduct panel is, in our submission, a tribunal, or alternatively a body exercising the judicial power of the State. The power exerted by a police misconduct panel to receive evidence, make findings and impose disciplinary action in determining whether or not a police officer, who holds the office of constable under the Crown, should have a disciplinary sanction imposed on them, is a statutory power set out by the Police (Conduct) Regulations 2020. Misconduct hearings (i.e. tribunals) are a separate entity from the Chief Constable of a police force, a position which reflects Parliament's intention that disciplinary proceedings should be independent and transparent."
 14. The Police have also cited a number of court decisions that have found misconduct hearings to be tribunals.
 15. The Commissioner is satisfied that the Police, in its capacity carrying out misconduct hearings, is exercising the judicial power of the State, as outlined in Police (Conduct) Regulations 2020. The requested information, the audio recording of the hearing, was therefore created by a court. The first criteria at paragraph 15 is engaged.
 16. Furthermore, the information requested was created as police forces are required to record misconduct hearings under regulation 44(1) of the Police (Conduct) Regulations 2020. Therefore, it only exists for the purposes of court proceedings.
 17. The Commissioner is satisfied that the requested information has been created by a court and is held only by virtue of the Fitness to Practice hearing. The Commissioner is satisfied that the requested information is exempt under section 32(1)(c)(i). Since the information engages the exemption, it is exempt under FOIA.
 18. The Commissioner has therefore decided that the Police were not obliged to disclose the requested information.
 19. As all the information is exempt under section 32 it is not necessary to consider the application of section 40(2) of FOIA.

Right of appeal

20. 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

21. 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.
22. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF