

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 June 2015

Public Authority: Chief Constable of Cheshire Constabulary
Address: Cheshire Constabulary HQ
Oakmere Road
Winsford
CW7 2UA

Decision (including any steps ordered)

1. The complainant has requested information in connection with a Fixed Penalty Notice (FPN). Cheshire Constabulary disclosed some information and withheld the remainder, citing the non-disclosure exemption at 40(2) (personal data). The Commissioner's decision is that section 40(2) is properly engaged. He does not require any steps.

Request and response

2. On 15 July 2014 the complainant wrote to Cheshire Constabulary about the FPN and made the following request for information:

"I would be grateful if you could provide details of the device used to record my speed, Officer [redacted]'s certificate of competency to use the said equipment and the calibration record for same at your earliest convenience".
3. Cheshire Constabulary responded on 15 August 2014. It stated that it had disclosed the device details and calibration certificate separately. It refused to disclose the Officer's certificate of competence, stating that the information was exempt from disclosure under section 40(2) of the FOIA.
4. Following an internal review Cheshire Constabulary wrote to the complainant on 8 September 2014. It maintained its position.

Scope of the case

5. The complainant's husband, who is acting for his wife in this matter, corresponded with Cheshire Constabulary, Cheshire Police and Crime Commissioner, the IPCC and his local MP about the response to the request. Unable to resolve the matter to his satisfaction, he contacted the Commissioner on the complainant's behalf on 26 February 2015 to complain about Cheshire Constabulary's decision.
6. Cheshire Constabulary said that it had disclosed the device details and calibration certificate to the complainant. The Commissioner asked the complainant to let him know if this was not the case and the complainant has not done so. The Commissioner therefore considers the scope of the investigation to be Cheshire Constabulary's application of section 40(2) to withhold the Officer's certificate of competence.

Reasons for decision

Section 40(2) – personal information

7. Section 40(2) of the FOIA provides an exemption from disclosure of information which is the personal data of a third party and where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ("the DPA") or in section 10 of that Act.
8. In order to rely on section 40(2) the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as:

" ...data which relate to a living individual who can be identified

a) From these data, or

b) From those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

Is the information personal data?

9. The first question for the Commissioner to consider is whether the requested information is personal data as defined in section 1 of the DPA.
10. The request asks for a copy of a certificate of competence of a named individual. The Commissioner has seen the certificate and notes that it contains the name of the Officer, the type of device he received training in and the date of the training. He is therefore satisfied that it contains *"data which relate to a living individual who can be identified...from these data"* and thus that it constitutes that individual's personal data.

Would disclosure breach any of the data protection principles?

11. The first data protection principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met".
12. In the case of an FOIA request, personal data is processed when it is disclosed in response to the request. This means that the information may only be disclosed if to do so would be fair, lawful and meet one of the conditions in Schedule 2 of the DPA. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

13. When considering the fairness element of the first data protection principle, the Commissioner takes into account a number of factors depending on the circumstances of each case. In this case, he considered:
 - the reasonable expectations of the data subject and the nature of the information;
 - the consequences of disclosure; and
 - any legitimate interests in the public having access to the information.

Reasonable expectations of the data subjects

14. The Commissioner acknowledges that there will be circumstances where, for example, due to the nature of the information and/or the

consequences of it being disclosed, an individual will have an expectation that the information will not be disclosed.

15. In this case, Cheshire Constabulary explained to the Commissioner that the data subject would not expect that a copy of a certificate he was awarded for successfully completing a training course would be released into the public domain.
16. The Commissioner considers that where there is some dispute about the validity of a FPN it may be reasonable for the recipient to seek assurances about the Officer's experience and ability to operate the equipment. However, Cheshire Constabulary has addressed this by confirming to the complainant that the data subject has received the relevant training and accreditation to operate the speed detection device in question. In light of this, the Commissioner considers that the data subject would have a reasonable expectation that a copy of the certificate itself would not need to be disclosed.
17. Furthermore, the Commissioner understands that having been notified of the request, the data subject has declined to give consent to the disclosure.

Consequence of disclosure

18. When considering the consequences of disclosure in this case, the Commissioner has taken into account the data subject's views on the proposed disclosure and the fact that disclosure under the FOIA is to the world at large and not just to the complainant.
19. The data subject has commented that he feels uncomfortable at the prospect of his personal data being placed in the public domain in response to the request and he does not agree that it should be made publically available. He has stated that its disclosure may affect his private and family life, although he has not elaborated as to why. Nevertheless, the Commissioner accepts that the data subject would be likely to view the disclosure of the certificate against his wishes as unnecessarily intrusive and that it would be likely to cause him some degree of concern.

Any legitimate interests in the public having access to the information

20. The Commissioner considers that disclosure of information can help promote transparency and accountability. In this case, it could help show that a particular police officer is fit to carry out speed detection tests. However, it has already been confirmed by Cheshire Constabulary that the data subject is trained and therefore suitably qualified to operate the speed camera. In light of this, the Commissioner can see no legitimate interest in the complainant seeing a copy of the certificate

itself, which confirms nothing more than what the complainant has been told.

Balancing the rights and freedoms of the data subject with legitimate interests

21. Assessing fairness also involves balancing the individual's rights and freedoms against the legitimate interest in disclosure to the public. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
22. The complainant has explained that the request was motivated by concerns that the speeding device might have been operated incorrectly, thus rendering the FPN invalid. The complainant points to an incident in 2000 when a FPN issued against the complainant's husband was rescinded due to concerns about the incorrect operation of the speeding device.
23. Against this, Cheshire Constabulary has said that the complainant had the opportunity to contest the FPN in court, at which point information about the device's operation (including the data subject's certificate of competence) would have been produced as evidence. It noted that she did not opt to do this, which it said indicated her acceptance of the facts.
24. The Commissioner accepts that there is a wider public interest in transparency when it comes to the fitness of a police officer to undertake his duties. However, in this case it has already been confirmed that the data subject has received the necessary training to operate the speed detection device. Disclosing the certificate, which merely confirms this and adds no qualitative data about the data subject's performance, will not assist the public in assessing his fitness to perform this task. In any case, the Commissioner's view is that it is the role of Cheshire Constabulary as his employer to do this (or, in the case of a contested FPN, the Court) rather than the wider public.
25. At the heart of the matter is the complainant's mistrust of the speed detection device which resulted in the FPN. The complainant is seeking to obtain information using the FOIA to demonstrate that the data subject was not competent to use the speed detection device, and that it should be rescinded. As noted above, a clear mechanism for contesting FPNs exists, via the Courts. Furthermore, as noted above, the certificate does not contain any information which would further the complainant's aims.

26. The Commissioner has identified that the data subject would not have expected the disclosure and that it is likely to have some negative consequences for him. Against this the Commissioner can see no weighty legitimate public interest which justifies infringing the privacy rights of the data subject. The Commissioner is therefore satisfied that in the particular circumstances of this case, disclosure would be unfair to the data subject and in breach of the first data protection principle.

Right of appeal

27. 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@hmcts.gsi.gov.uk

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

28. 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.
29. 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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