

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 July 2015

**Public Authority:** Chief Constable of Hertfordshire Constabulary  
**Address:** Police HQ  
Stanborough Road  
Welwyn Garden City  
Hertfordshire  
AL8 6XF

#### Decision (including any steps ordered)

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1. The complainant has requested an accident investigation report (the 'Report') concerning two vehicles. Hertfordshire Constabulary (the 'Constabulary') confirmed that it held the Report but refused to provide it citing section 40(2) (personal information) of the FOIA. The Commissioner's decision is that it was entitled to do so and he requires no steps.

#### Request and response

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2. Having previously requested an unredacted copy of the Report, on 4 March 2015, the complainant wrote to the Constabulary and requested information in the following terms:

*"Under the FOI Act please release the full accident investigation report into a road crash which happened on [date removed] 2014 at 13:25 BST on [location removed], Hertfordshire, involving an Audi RS6 and a Mitsubishi Colt Coupe Cabriolet. Personal information such as names, addresses, number plates of victims can be redacted as is standard practice with FOI requests."*

3. The Constabulary responded on 1 April 2015. It confirmed holding the requested information but stated that it was exempt from disclosure under section 40(2) of the FOIA. It did confirm that it was taking no further action in respect of the accident.

4. Following an internal review the Constabulary wrote to the complainant on 30 April 2015. It maintained its position.

## **Background**

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5. The Commissioner has had sight of the requested accident report.
6. The Commissioner notes that on searching the parameters included in the request (which have been redacted from this notice for data protection reasons), there are media reports about the accident which allegedly involved a high profile public figure. Their actual involvement has not been formally confirmed or denied.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 22 May 2015 to complain about the way his request for information had been handled. He gave the following grounds for disagreeing with the withholding of the information:
  - *This incident involved a police investigation, paid for by public money, and happened on a public road, which is funded by taxpayers. We are not seeking any personal information that would be exempt under the Data Protection Act; we simply want the outcome of an investigation into a crash that had the potential to be more serious.*
  - *It's in the public interest that information such as this is made available so lessons can be learned to avoid future incidents. In addition, it also important public bodies are held to account and that cannot happen if they refuse to supply information.*
  - *The force declined to reveal the information once more stating the S40(2) exemption still applied. The review also stated I was provided with the outcome of the investigation, but the only line I received from them in the first document stated: "The Constabulary Collisions Unit are taking no further action in respect of the above stated incident." This does not fully explain the outcome of the crash. We can see no reason why this information should be with-held, with no active investigation and no issues around data protection.*
8. The Commissioner will consider the application of section 40(2) below.

## Reasons for decision

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### Section 40 – personal information

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

### Is the requested information personal data?

10. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the Data Protection Act 1998 (DPA). If it is not personal data, then section 40 cannot apply.
11. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
12. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
13. The second part of the test is whether the withheld information identifies any individual.
14. The requested information in this case is a Report into a road traffic accident which the Constabulary has confirmed took place. In the Commissioner's view it is clear that the withheld information 'relates' to those living persons involved in that accident, they are the focus of the request and it is therefore their 'personal data'. Even with their names redacted, the parties concerned would personally be aware that the information was theirs and it would not be possible to prevent this as the request gives a specific date, time, location and vehicle type. The Commissioner does not therefore believe that it is possible to 'anonymise' the Report as the request itself is specific to one particular accident.
15. Having accepted that the requested information constitutes the personal data of living individuals other than the applicant, the Commissioner must go on to consider whether disclosure would breach one of the data protection principles.
16. The Constabulary advised that it believes disclosure would breach the first data protection principle.

**Would disclosure contravene the first data protection principle?**

17. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 is met.
18. In the case of a 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 fair, lawful and meet one of the DPA schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.
19. The Commissioner has first considered whether disclosure would be fair.
20. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
  - the individual's reasonable expectations of what would happen to their information;
  - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
  - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
21. In consideration of these factors, the Constabulary provided the following arguments to the Commissioner:
  - the information in the Report was gained as part of an investigation and the individuals concerned would have the expectation that the details provided would only be used for that investigation and not disclosed to the general public;
  - the Constabulary would usually only release this type of information when there is a policing purpose for doing so, eg public assistance being needed for a hit and run incident.
22. The Constabulary also advised as follows:

*"Consideration also was given as to whether there was a pressing social need to disclose the information. The applicant believed that it is in the public interest to provide the information as the involved a police investigation funded by public money and that such information should be made available so lessons can be learned to avoid future accidents. As the case was not investigated by the Forensic Collision Investigation Unit, there is no full accident investigation as you would expect with a fatal or life changing injury. Therefore a minor report was submitted by the attending officer. The collision report does not contain any information which*

*would lead to lessons being learnt. In this particular incident there was an element of personal injury and statistical data was captured and provided to the local authority, as the Constabulary does with all personal injury collisions. The local authority collates the information and provides data around specific locations and the number and nature of the collision(s). The Constabulary does agree with the applicant that the statistical information is in the public interest but disagree that a single collision can be used for lessons learnt. Although information was provided to the applicant in the initial response in respect of statistical information, during the review the applicant's concerns were acknowledged regarding the public interest in safety on the County roads and the applicant was provided with links to the Hertfordshire County Council road safety internet page and also to the Constabulary's road safety internet pages".*

23. The Commissioner recognises that people have an instinctive expectation that a Constabulary, in its role as a responsible data controller, will not disclose certain information about them and that they will respect their confidentiality. For example, he considers that information relating to accidents and police involvement will carry a strong general expectation of privacy for those parties concerned. Therefore, the reasonable expectation of the related data subject is that such information would not be disclosed and that the consequences of any disclosure could be damaging or distressing to them.
24. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. He will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions. With respect to the consequences of disclosure in this case he notes the alleged involvement of a high profile public figure. In view of this additional sensitivity, and the associated media interest in the subject matter, the Commissioner accepts that any related party who was identified could well be sought out by the media, or that their friends and family could also be approached. As such he accepts that disclosure could cause damage and distress to any party concerned.
25. 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.
26. In considering these 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.

27. The Commissioner acknowledges that the issue under consideration in this case raises concerns in respect of highway safety. He also notes that the complainant mentions that it is important that public bodies are held to account and that this cannot happen if they refuse to supply information. However, he here notes the Constabulary's position in respect of the accident and its confirmation to the complainant that it would not be taking any further action in respect of the collision as it is classed as 'minor' - other than passing on statistical information to the local Council for monitoring purposes.
28. The Commissioner has viewed the Report and he accepts the Constabulary's view that there is little content which would inform public debate by disclosure or lead to improvements in road safety.
29. In the Commissioner's view, the Constabulary has therefore provided sufficient information to meet the legitimate interest of the public without infringing the rights of the parties connected to this matter.
30. In light of the nature of the information and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subjects. He considers these arguments outweigh any legitimate interest in disclosure. He has therefore concluded that it would be unfair to disclose the withheld information - in other words, disclosure would breach the first data protection principle. He therefore upholds the Constabulary's application of the exemption at section 40(2).
31. As disclosure would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether one of the schedule 2 DPA conditions is met. However, his provisional view is that no such condition would be met.

## Right of appeal

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32. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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