



Our Ref: 681.2017-18

Your Ref:

Date: 26 October 2017

Civil Disclosure
Joint Corporate Legal Services

Neil Wilby
request-343129-1de14d2f@whatdotheyknow.com

Dear Neil,

FREEDOM OF INFORMATION REQUEST REFERENCE NO: 681.2017-18

I write in connection with your request for information which was originally received by the Office of the Police and Crime Commissioner as part of an internal review request on 2 August 2016. Please accept our apologies for the delay in responding to this request. I note you seek access to the following information:

1. It is claimed, in open letter to me, by solicitors acting for the North Yorkshire Police and Crime Commissioner that my six previous FOIA requests to her office have all been 'vexatious'. Please provide ALL the documentary evidence that supports these assertions. Emails, meeting notes, briefing notes, logs, pocket books and the like.

For the avoidance of doubt the question of ANY of my requests being 'vexatious', let alone all, has never once been raised with me by the North Yorkshire Police and Crime Commissioner either in meetings with her, or by any of her staff with whom I correspond frequently.

2. It is further claimed by the same solicitors (Weightmans) that in each and every case - not limited to my own FOIA requests - all information requests finalised on behalf of North Yorkshire Police and Crime Commissioner have been, and are, compliant with FOIA. Please provide ALL documentary evidence that supports that assertion. Date request received, URN, date finalised, date review requested (if any), date review finalised.

3. The two claims made by Weightmans have been embellished by another solicitor, seemingly acting for the North Yorkshire Police and Crime Commissioner, although he actually works for Cleveland Police. Mr Stephen Hodgson also claims that the North Yorkshire Police and Crime Commissioner is FOIA (and DPA) compliant in every respect, although he has not burdened me with any evidence to support those claims, despite an invitation to do so. Please disclose all ecommunications, meeting notes, briefing notes involving Mr Hodgson and any member of NYOPCC staff, or the Commissioner, on the subject of FOIA/DPA compliance.

Extent and Result of Searches to Locate Information

To locate the information relevant to your request searches were conducted within the Office of the Police and Crime Commissioner. I can confirm that the information you have requested is held, in part, by the Office of the Police and Crime Commissioner.

Jane Wintermeyer BSc (Hons) Force Solicitor & Head of Legal Services
Police Headquarters | Alverton Court | Crosby Road | Northallerton | North Yorkshire | DL6 1BF
DX No 68810 NORTHALLERTON 2 | Telephone 01609 643542 | Fax 01609 789987

Non-emergency
Number



Decision

1. I have decided not to disclose any information in relation to this part of your request, pursuant to Section 40 of the Freedom of Information Act 2000 (the Act) – Personal Information. I will explain the reason for this later in the response.

2. FOI compliance figures are recorded daily and submitted to the NPCC on a regular basis. It is not correct to say that all information requests finalised on behalf of the Office of the Police and Crime Commissioner (OPCC) have been, and are, compliant with the Act, therefore there is no information held to support this assertion.

3. Again, it is not accurate to say that the OPCC is compliant in every respect of the FOI Act and the Data Protection Act. I have decided not to disclose any communications between Stephen Hodgson and any member of the OPCC staff, again pursuant to Section 40 of the Act (Personal Information) and Section 42 – Legal Professional Privilege. Please see below explanation.

Explanation of Exemptions

I am required by law to identify the relevant parts (the exemptions) of the Freedom of Information Act 2000 (the Act) that I have considered when reaching this decision, and I must also explain why these exemptions apply.

Section 40(1)(2)(a)(b) – Personal Information

Section 40 is an absolute class based exemption, which does not require a public interest test, but requires the balancing of the legitimate interests of the public against the interests of the individual under the first Data Protection Principle (that of ‘fairness’.)

Section 42(1) – Legal Professional Privilege

Section 42 is a qualified, class based exemption, which requires a public interest test, but there is no obligation to evidence harm.

Section 40 – Personal Information

The specific information you have requested is exempt by virtue of Section 40(1) and 40(2) of the Freedom of Information Act 2000 (the Act) because I consider it to be personal information to the people concerned. Information disclosed under the Act is considered released to the world and responses are published on our website.

Where an individual can be identified by such data, releasing it would clearly breach the first data protection principle of being ‘fair’ to the data subject. This exemption applies because the right given under the Act to request official information held by public authorities does not apply to the personal data of third parties where disclosure of that information would not be fair to the individual, and where there is no legitimate public interest in disclosure.

In all the circumstances of the case it has been determined that the duty to the individual under the Data Protection Act 1998, and the public interest in maintaining the exemption from disclosure of personal information held by the force in such instances, outweighs the public interest in disclosure. In this instance, personal information can only be disclosed to the individual concerned.

Releasing personal details to a person other than the data subject would not only breach the data subject’s Data Protection rights it may also breach the obligations placed on an authority under the European Convention on Human Rights.

Any information held by an authority which is personal to you is exempt under Section 40(1) of the Act and may be requested through Subject Access under the Data Protection Act 1998.

Further information on this process can be found on the North Yorkshire Police website at the following link: <https://northyorkshire.police.uk/access-to-information/data-protection-request/>

Please note that the process to provide information can take up to 40 days and through such a request you are only entitled to receive only information that identifies you and/or has been supplied by you.

Section 42 - Legal Professional Privilege

Public Interest Test

Reasons for Disclosure

There is a public interest in the transparency and accountability of decisions made by public authorities; the process that is followed in making them; and the assurance that decisions are based on sound legal guidance. Openness of communications increases the public's trust in public authorities.

Reasons against Disclosure

It is a principle of law that communications between a lawyer and a client are confidential. In cases where there are sufficient grounds to expect that litigation claims will be brought, the confidential nature of such communications must be respected. In addition, publishing and held advice offered by a lawyer may initially undermine the relationship between legal adviser and client, and could furthermore compromise the quality of future decision-making.

Balancing Test

The OPCC, as a publically funded authority, must follow a rigid and accountable process in any decision making activities. The public must have trust in the decisions that are made – this includes considerations taken within a legal capacity.

The confidential nature, however, of a relationship between client and adviser is a fundamental point of law. If this confidentiality is breached, any ongoing and future communications and decisions between the parties are undermined. The importance of this confidence is furthered in cases of litigation between the public authority and a third party.

Therefore, after considering the reasons for and against disclosure, it is my opinion that the reasons for non-disclosure outweigh the reasons for disclosure.

Pursuant to Section 17(1) of the Act this letter acts as a Refusal Notice in response to your request.

Please note that systems used for recording information are not generic, nor are the procedures used locally in capturing the data. It should be noted therefore that this force's response to your questions should not be used for comparison purposes with any other responses you may receive.

Complaint Rights

Your attention is drawn to the attached sheet which details your right of complaint.

If you have any queries concerning this request, please contact me quoting the reference number above.

Yours sincerely

Liz Fryar
Legal Officer (Civil Disclosure)
Joint Corporate Legal Services

COMPLAINT RIGHTS

Are you unhappy with how your request has been handled or do you think the decision is incorrect?

You have the right to require the North Yorkshire Police to review their decision.

Prior to lodging a formal complaint you are welcome and encouraged to discuss the decision with the case officer that dealt with your request.

Ask to have the decision looked at again –

The quickest and easiest way to have the decision looked at again is to telephone the case officer that is nominated at the end of your decision letter.

That person will be able to discuss the decision, explain any issues and assist with any problems.

Complaint

If you are dissatisfied with the handling procedures or the decision of the North Yorkshire Police made under the Freedom of Information Act 2000 (the Act) regarding access to information you can lodge a complaint with the North Yorkshire Police to have the decision reviewed. North Yorkshire Police must be notified of your intention to complain within 2 months of the date of its response to your Freedom of Information request. Complaints should be made in writing and addressed to:

Force Solicitor and Head of Legal Services
North Yorkshire Police
Newby Wiske Hall
Northallerton
North Yorkshire
DL7 9HA

In all possible circumstances the North Yorkshire Police will aim to respond to your complaint as soon as practicable but within 20 working days.

The Information Commissioner

After lodging a complaint with North Yorkshire Police if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at <https://ico.org.uk> Alternatively, phone: 0303 123 1113 or write to:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF