

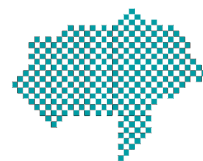
Our Ref: 475.2016-17

Date: 31 January 2017

Neil Wilby  
request-353604-479ad2a5@whatdotheyknow.com



Police and Crime  
Commissioner  
North Yorkshire



Dear Mr Wilby,

**FREEDOM OF INFORMATION REQUEST REFERENCE NO: 475.2016-17**

I write in further to the amendment of your earlier request communicated to North Yorkshire Police by the Information Commissioner. You decided to omit question 4 and have accepted the earlier answers to question 2 and 5, therefore this response is limited to the following;

*Please provide the following information:*

*1 Name(s) of solicitor(s) instructed to act for the chief constable in the matter of the application for a sexual risk order against Mr John O'Neill*

*3. Was Oliver Thorne responsible for drafting the interim order in the matter. If not, who was?*

**Extent and Result of Searches to Locate Information**

To locate the information relevant to your request searches were conducted within North Yorkshire Police.

I can confirm that the information you have requested is held by North Yorkshire Police.

**Decision**

I have today decided that North Yorkshire Police are not obligated to provide the requested information to you;

1) I am exempting the provision of the solicitor(s) name/s who acted for the Chief Constable in the matter of the application for a sexual risk order against Mr O'Neill pursuant to Section 40(2) Personal Information and section 38 – Health and Safety, of the Freedom of Information Act

3) A North Yorkshire Police Lawyer was responsible for drafting the interim order. I am withholding the Lawyer's name pursuant to Section 40(2) Personal Information and Section 38 (1) – Health and Safety, of the Freedom of Information Act.

Section 17 of the Act requires North Yorkshire Police, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states (if that would not otherwise be apparent) why the exemption applies. Please refer to the relevant exemption header for further context.

## **Section 40 – Personal Information**

I am exempting the provision of the name(s) of Solicitors/ Lawyer(s) in relation to questions 1 and 3 pursuant to Section 40(2) Freedom of Information Act (the Act). This is to ensure anonymity for those involved. I have, however, provided other details to assist in your request, whilst maintaining the elimination of any identification.

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.

Section 40(2)(b) 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'.) In the case of section 40 (2) The presumption is favour of disclosure is reserved and a justification is needed for disclosure.

The type of information you have requested is personal information which can only be disclosed to the individual concerned. 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. There is very limited public interest in this information being disclosed. As a legal representative the role of the instructed Solicitor is solely to give advice and provide representation and not to make operational decisions.

In addition, although a Solicitor may draft a Court Order the conditions of a Sexual Risk Order must be approved by the Court. The decision to impose the Court Order and the conditions attached to it is that of the Court.

In all the circumstances of this instance 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 cases, outweighs the public interest in disclosure. There is no justification for the release of the personal data requested.

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.

## **Section 38 – Health and Safety**

I am exempting the provision of the name(s) of Solicitors/ Lawyer(s) in relation to questions 1 and 3 pursuant to Section 38 (1) Freedom of Information Act (the Act).

Section 38 (1) provides that information is exempt information if its disclosure under this Act would, or would be likely to:

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

The Information Commissioner interprets the word "endanger" to mean "prejudice". In this case the disclosure of the name would be likely to prejudice their physical or mental health or safety of the individual. There is a causal link between the release of the information and the prejudice.

Section 38 is a qualified exemption and is subject to a Public Interest Test.

## **Public Interest Test**

### **Factors favouring disclosure**

There is a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes.

### **Factors favouring non-disclosure**

The public interest if any exists is minimal. Sufficient information has been released to allow for accountability within North Yorkshire Police. The disclosure is likely to prejudice the physical or mental health or safety of the individual concerned.

## **Balance Test**

After weighing up the competing interests I have determined that the disclosure of the requested information would not be in the public interest. I consider that the factors favouring disclosure do not outweigh the factors favouring non-disclosure and the prejudice likely to be caused to the individual outweighs any public interest,

Pursuant to Section 17(1) of the Act this letter acts as a refusal notice under the Freedom of Information Act 2000 in relation 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

Ashley Malone  
Police Lawyer (Civil Disclosure)  
Joint Corporate Legal Services  
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## **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 the 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 [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk). Alternatively, phone or write to:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF  
Phone: 01625 545 700