



Police Investigations &  
Review Commissioner

Oysterman

By Email : [request-170078-559f811e@whatdotheyknow.com](mailto:request-170078-559f811e@whatdotheyknow.com)

16 August 2013  
FOI 196

Dear <<name redacted>>

## **FREEDOM OF INFORMATION REQUEST**

I write in respect to your email dated 2 August 2013 in which you request a review of our handling of your request for information as follows:

*"I note in my original FOIS request I asked for all details in regards all complaints to be realised in accordance to HM Freedom of Information Act 2002 and HM Data Protection Act respectively.*

*I do NOT seek a disclosure of all the complaints but only the complaints quoted above. In regards these I would like to see the original complaint letters sent, records of the investigations carried out and the subsequent findings that caused the decision to be 'Not upheld in each case'. I do not ask for any names, address or biographical identifiers that are contrary to the data act either of the complainants or the accused but I would expect the details to be viewable to the public. "*

I note from this request that you do not require the original request to be reviewed, but you consider your original request was not fully addressed. You are requesting further information in addition to the information already provided in our response.

### **1. Original Complaint Letters**

You have requested information about other individuals and we have to consider whether this falls under the definition of personal data of third parties and if so whether the release of the information will breach any of the data protection principles in the Data Protection Act 1998 ('DPA') before deciding if it can be disclosed. The Information Commissioner's Office (ICO) has issued guidance to organisations with regard to [Access to Information Held In Complaint Files](#), which recognises that a complaint file will start off at the more 'personal' end of the spectrum. The information you have requested includes this level of personal information, specifically the initial complaint correspondence submitted.

*Does the requested information constitute personal data?*

Personal data is defined in Section 1(1) of the DPA as data which relate to a living individual who can be identified (a) from those data or (b) from those data and other information which is in the possession of, or likely to come into the possession of, the data controller.

We have concluded that the information requested is personal data, as defined above. We have further concluded that it is exempt under FOISA Section 38(1)(b), read in conjunction with Section 38(2)(a)(i) or (b). Together these sections provide that personal data is exempt information if its disclosure to a member of the public would breach any of the data protection principles set out in Schedule 1 of the DPA. As it is an absolute exemption, there is no requirement to consider the public interest test laid down by Section 2(1)(b) of FOISA.

As we are satisfied that this information constitutes “personal data” as defined in section 1(1) of the DPA, as such we now have to consider whether the release of this information would breach any data protection principles.

*Would disclosure contravene any of the data protection principles of the DPA?*

The first data protection principle states that personal data must be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met, and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met.

Having examined the information requested, we are satisfied that none of the personal data is "sensitive personal data" as defined by Section 2 of the DPA. We are therefore only required to consider whether the release of the information is permitted by a condition contained in Schedule 2 of the DPA.

*Schedule 2 conditions*

Schedule 2 of the DPA lists six conditions relevant for the purposes of the first principle. In this case, we consider that condition 6(1) would appear to be the only one which might permit disclosure in the circumstances of this request.

*Condition 6(1)*

This condition can be broken down into three separate tests, i.e.

1. Does the applicant have legitimate interests in obtaining the personal data?
2. Is release of the information necessary to achieve those legitimate interests?
3. Would disclosure nevertheless cause unwarranted prejudice to the rights and freedoms of the data subject?

*Does the applicant have legitimate interests in obtaining the personal data?*

We accept that you may have legitimate interests in obtaining the complaint letters of those individuals who made a formal complaint to the PCCS or PIRC although you have not explicitly defined these interests.

*Is release of the information necessary to achieve those legitimate interests?*

We consider that release of all correspondence is not necessary to achieve your legitimate interests. Our earlier response to you provided statistical information relating to the number of complaints received by the PCCS and PIRC categorised as specified in your request by protected characteristics, human rights violations and lack of due rigour, etc.

*Would disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subject?*

Even if release of all correspondence is in fact necessary to achieve your legitimate aims, we now have to consider whether disclosure would nevertheless cause unwarranted prejudice to the rights and

freedoms or legitimate interests of the other individuals. This involves a balancing exercise between your legitimate interests and those of the other individuals. Factors to be taken into account include:

- Whether information relates to the individual's public or private life
- The potential harm or distress that may be caused by the disclosure
- Whether the individual has objected to the disclosure
- The reasonable expectations of the individuals as to whether their information would be disclosed

We have concluded that release of complaint correspondence would result in risk of causing harm or distress to the individuals. We have taken into consideration their reasonable expectations. Those making a formal complaint to the PCCS or PIRC, would not normally expect their names to appear in the public domain.

#### *Has the data been processed fairly and lawfully?*

In determining the meaning of 'fair', the UK Information Commissioner, who has overall responsibility for Data Protection issues throughout the UK, has issued guidelines stating that the following matters should be taken into account when deciding whether disclosure would breach the first data protection principle:

- the expectation of the data subject;
- whether damage or distress would be caused to the data subject as a result of the disclosure;
- any express refusal by the data subject; or
- whether the information relates to the data subject's public or private life.

These are similar to the issues considered under condition 6 above and we have concluded therefore that disclosure of the complaint correspondence would be unfair and would result in a breach of the first data protection principle. Therefore, information relating to your request has been withheld.

The complaint correspondence withheld in full provides a description of certain events involving the complainant(s). This information clearly relates to that individual, their activities and concerns, and it would identify them. The content of this communication could not be redacted to allow render it anonymous (and so outside the definition of personal data).

#### **Records Of The Investigations Carried Out**

Under section 17 I can confirm that we do not hold this information. Whilst we do carry out an investigation of each complaint received by PCCS/PIRC, there is no record kept on file of this.

#### **The Subsequent Findings (That Caused The Decision To Be Not Upheld In Each Case)**

Under section 17 I can confirm that we do not hold this information. The findings are incorporated into the final responses made to applicants making a complaint. As with the original letters of complaint, this information is withheld under Section 38(1)(b), personal data.

#### **YOUR RIGHT OF APPEAL**

If you are dissatisfied with the outcome of this review, you have a right under the FOISA to appeal to the Scottish Information Commissioner. If you wish to do so, you must appeal to the Commissioner within six months following the date of receipt of the review notice. The Commissioner's contact details are as follows:

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS  
Email: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)  
Tel: 01334 464610

Yours sincerely

A handwritten signature in black ink, appearing to read 'Barry Mackay', with a stylized flourish at the end.

Barry Mackay  
Director of Corporate Services