



HEDDLU GOGLEDD CYMRU
Gogledd Cymru diogelach

NORTH WALES POLICE
A safer North Wales

Response Date: **30/10/2013**

2013/622 Review – Ched Evans

In response to your recent request for a review;

I am writing to request an internal review of North Wales Police's handling of my FOI request 'Press Department - Ched Evans'.

Your response is both spurious and further more incorrect in law.

Are we to believe that the entire number of emails between North Wales Police & members of the press mentioning the name Ched Evans is around 10?

I wish the internal review to look into this & whether the emails below are in fact genuine. They strike me, as being too well constructed to be informal exchanges.

Your original request asked for 'Copies of all emails between North Wales' Press Department and members of media both local and national.... all emails that make reference to Ched Evans'.

Our Press department originally searched their emails and archives for correspondence between themselves and members of the media relating to Ched Evans. This process has been conducted again as part of the review process and one additional email has come to light. However concerns have been raised in releasing the attachment to the email as this could lead to the identification of individuals and disclose information covered by prohibitions - therefore the following exemptions have been engaged.

Section 40 (2) Personal Information.

Section 44 (1) (a) Information Covered By Prohibitions on Disclosure.

The interests of third parties could be jeopardised by the release of information that could lead to their identification.

There are also legal restrictions in place to protect the identity of individuals i.e. Sexual Offences (Amendment) Act 1992 provides anonymity that was once only given to victims of rape, to victims of most other sexual offences. Schedule 2 (as amended by Schedule 6 of the Sexual Offences Act 2003, provides a list of offences, the victims of which are guaranteed anonymity under the provision of Section 1.

Section 40 is a class based exemption, therefore it is not necessary to evidence harm caused by disclosure.

Sections 44 is an absolute and class based exemption which means that the legislators have identified that harm would be caused by release and there is no requirement to consider the public interest test.

Section 40 (2) –Personal Information (absolute exemption)

The information you have requested constitutes personal data of which you are not the subject and the information falls within paragraphs (a) to (d) of the definition of 'data' in Section 1(1) of the Data protection Act 1998 and disclosure of the information to a member of the public otherwise than under this act would contravene data protection principles.

Section 40 is a class based exemption, therefore it is not necessary to evidence harm caused by disclosure.

The data protection rights of a third party would be breached by disclosure, therefore section 40(2) is an absolute exemption and a Public Interest Test is not necessary. This is so because personal data is governed by another law (The Data Protection Act 1998) and there are two elements to this exemption.

All requests made under FOIA are applicant blind. A request must be treated as such and a public authority will always view any disclosure as into the public domain. Thus North Wales Police must be satisfied that any release of information will be potentially available to the general public. It is therefore on this basis that the following is relevant.

The first element of this exemption is engaged if the information requested constitutes personal data and is made by the data subject. The information will be covered by section 40(1) and the request will be dealt with under section 7 of the Data Protection Act, rights of access.

The second element of this exemption is engaged if the personal data is about someone other than the applicant. Where someone makes an application for information other than the data subject, disclosure of that information will often constitute a breach of the Data Protection Act covered by section 40(2).

Personal data is regulated under the principles of the Data Protection Act and when information contains personal data about a third party it can only be refused if disclosure would breach any of the data protection principles.

As previously highlighted, any disclosure under the FOIA is a public disclosure and release of the identity of an individual would breach principles 1 & 2 of the Data protection Act 1998.

These principles require personal data to be: 1) processed (defined to include 'obtain') fairly and lawfully and 2) obtained only for specified and lawful purposes and not processed incompatibly with the specified purposes.

'Data subjects' are provided with certain legal enforceable rights under the Data Protection Act 1988. The fact that the information is held for lawful policing purposes, disclosing it onwards would breach the principles, and would be incompatible with the data subject's right that their data is held securely. By disclosing this information, the force could be subject to enforcement proceedings under the act if it breaches any of those principles.

Therefore, in accordance with the Freedom of Information Act 2000, this letter acts as a Refusal Notice under section 17 (1) of the legislation.

All other emails retrieved have been sent to you in your original response with the exception of any personal information. I have re-assessed the information in the emails and some additional names are being released to you. The section 40 originally applied to the other names still stands. Please see the attached information.

To address your reasons for review; you have been provided with all information held by North Wales Police at the time of your original request and that are relevant to the question posed. Therefore only emails between North Wales' Press Department and members of media both local and national that make reference to Ched Evans have been disclosed.

I can confirm that all emails are genuine. The emails are correspondence with external media and the press department are representing North Wales Police.

THIS INFORMATION HAS BEEN PROVIDED IN RESPONSE TO A REQUEST UNDER THE
FREEDOM OF INFORMATION ACT 2000, AND IS CORRECT AS AT 18/10/2013