

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2019

Public Authority: Chief Constable South Yorkshire Police

Address: South Yorkshire Police Headquarters

Carbrook House

Carbrook Hall Road

Sheffield

S9 2EH

Decision (including any steps ordered)

1. The complainant requested information relating to the child grooming scandal in Rotherham, including details of payments made to the victims.
2. South Yorkshire Police provided some information within the scope of the request but refused to provide the remainder, citing sections 38(1) (health and safety) and 40(2) (personal information) of the FOIA.
3. The Commissioner has investigated South Yorkshire Police's application of section 38(1) to the requested information relating to payments made to victims.
4. The Commissioner's decision is that South Yorkshire Police was entitled to rely on section 38(1)(a) in relation to that information.
5. The Commissioner requires no steps to be taken as a result of this decision.

Background

6. The Commissioner has previously considered a case involving a request for information about compensation and legal costs associated with the child grooming scandal in Rotherham - FS50718317¹.
7. In that case, the Commissioner's decision was that South Yorkshire Police was entitled to rely on section 38(1)(a) in relation to both the overall total compensation paid and the individual compensation payments.

Request and response

8. On 13 August 2018, the complainant wrote to South Yorkshire Police and requested information in the following terms:

"1. I would like details of how much you have paid to victims of the sex grooming gang for period 1997 - 2013 for the Rotherham scandal (the period covered by the Independent Inquiry into Child Sexual Exploitation in Rotherham (1997 - 2013) (A. Jay).

I would like it broken down as follows:

Number of payments per year.

Amount paid in that year.

Reason for payment - for example Police breached duty of care.

2. List name and rank of all officers and staff who have been disciplined as a result of the scandal, the behaviour complained of, and the action taken against them - i.e. words of advice, dismissed etc".

9. The request was made via the 'whatdotheyknow' website.
10. South Yorkshire Police provided its substantive response on 10 September 2018. It refused to provide the requested information, citing the following exemptions as its basis for doing so:
 - section 38 (1)(a)(b) (Health and Safety)
 - section 40(2) (Personal Information)

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259444/fs50718317.pdf>

11. It did, however, confirm that, at the time of the request, the number of settled claims was eight.
12. Following an internal review, South Yorkshire Police wrote to the complainant on 18 September 2018. It upheld its original position. In reaching that conclusion, South Yorkshire Police advised that it had taken into account the ICO decision notice, issued on 9 July 2018, relating to a request for similar information (ICO Reference FS50718317).

Scope of the case

13. Following earlier correspondence, the complainant provided the Commissioner on 16 October 2018 with the relevant documentation and arguments to support his complaint about the way his request for information had been handled.
14. He told the Commissioner:

"I do not agree with FS50718317.... The public interest in this area is very strong. Police accountability is very important".
15. During the course of the Commissioner's investigation, South Yorkshire Police revisited its handling of part (2) of the request. As a result, it wrote to the complainant providing him with a response to that part of the request.
16. With respect to its application of section 38 in this case, South Yorkshire Police told the complainant:

"The following exemption applies to the disclosure of the information:

Section 38 (1)(a)(b) Health and Safety".
17. Having considered the arguments provided by South Yorkshire Police, the Commissioner considers they relate to section 38(1)(a).
18. Accordingly, the analysis below considers South Yorkshire Police's application of section 38(1)(a) of the FOIA to the information requested at part (1) of the request.
19. That information comprises details of the compensation paid to victims of the child grooming scandal in Rotherham and the reason for the payment.

Reasons for decision

Section 38 (health and safety)

20. Section 38(1)(a) states that information is exempt information if its disclosure would, or would be likely to, endanger the physical or mental health of **any** individual (including the applicant, the supplier of the information or anyone else).
21. The Commissioner considers an individual's mental wellbeing to fall within the scope of section 38. The arguments provided by South Yorkshire Police relate to this limb of section 38(1)(a).
22. The Commissioner considers that the term 'endanger' in section 38(1) should be interpreted in the same way as the term 'prejudice' in other FOIA exemptions.
23. For the exemption to be engaged it must be at least likely that the endangerment identified would occur. Even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

South Yorkshire Police's view

24. In this case, the South Yorkshire Police told the complainant that survivors of child sexual exploitation:

"... can suffer from long-term effects on their general emotional wellbeing, mental health and can lead to a number of long-term concerns".
25. It further argued:

"These psychological impacts can have significant detrimental impact on a survivors quality of life including fear, anger, guilt, self-blame and confusion".
26. South Yorkshire Police told the complainant that the release of any further details was likely to cause further significant upset and distress to any individual involved.
27. It explained:

"The settlement of a compensation claim should be a position in time when they can start to have some closure and begin to rebuild their lives. By breaking down the compensation payments into individual payments will further endanger their emotional wellbeing".

28. It also argued, albeit with regard to the public interest test, that jeopardising the wellbeing of the survivors may cause distress to the families concerned.

The complainant's view

29. The complainant did not provide South Yorkshire Police with any reasons for disputing its application of section 38 in this case. However, referencing a case in which she had previously considered a similar request for information, the complainant told the Commissioner:

"SYP has quoted FS50718317 - I don't agree with the ICO".

30. He subsequently explained:

*"If a person who received compensation (or who received **no** compensation) reads the data, I do not believe that, on the balance of probabilities, that this would be a risk to health and safety [sic]"*.

31. In support of his view, he argued that health and safety "does not cover being disappointed".

The Commissioner's view

32. In order to engage the exemption, the Commissioner must be satisfied that the nature of the endangerment, and the likelihood of it occurring as a result of disclosure of the information in question, is real, actual and of substance, rather than trivial or insignificant. She must also be satisfied that a causal relationship exists between the potential disclosure and the stated endangerment.
33. The Commissioner is mindful that the complainant has stated that he does not agree with the position taken by the ICO in case reference FS50718317.
34. While she accepts that each case must be considered on its merits, she notes that South Yorkshire Police referenced FS50718317 in its correspondence with the complainant. South Yorkshire Police was the public authority in that case and the subject matter was details of compensation and legal costs associated with the child grooming scandal in Rotherham. The Commissioner therefore considers that, in the context of the request in this case, the arguments put forward in that case – and the decision reached – are relevant to her consideration here.
35. The Commissioner acknowledges that both in this case and in FS50718317, South Yorkshire Police's arguments relate both to mental health and to endangerment to emotional wellbeing.

36. In her published guidance on section 38² the Commissioner recognises that:

"Endangering mental health implies that the disclosure of information might lead to a psychological disorder or make mental illness worse. This means that it has a greater impact than stress or worry".

37. Having considered the arguments put forward by both parties, the Commissioner is satisfied that the applicable interests in this case are the emotional wellbeing and mental health of the survivors and members of their families.
38. She is also satisfied that South Yorkshire Police has demonstrated a causal link between the potential disclosure and the stated endangerment. She accepts that coming to terms with abuse would be of significant distress, that the settlement of compensation could allow the closure process to begin, and that re-opening matters, by way of disclosure of the requested information to the world at large, has the potential to endanger the mental wellbeing of the parties concerned.
39. In relation to disclosure of the requested information, the Commissioner is satisfied that the level and nature of the endangerment identified would be likely to go beyond stress or worry and constitute an endangerment to the mental health of any individual.
40. Accordingly, she is satisfied that section 38(1)(a) is engaged on the basis that there is a real and significant likelihood of the endangerment occurring.

The public interest test

41. Section 38 is a qualified exemption. This means that, even if the information requested is exempt from disclosure, the public authority must go on to consider and decide whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.
42. The Commissioner's published guidance on section 38 states:

"In the case of section 38 this would involve weighing up the risks to the health and safety of an individual or group against the public

² <https://ico.org.uk/media/for-organisations/documents/1624339/health-and-safety-section-38-foia.pdf>

interest in disclosure in all circumstances of the case. The test must be applied on a case by case basis”.

Public interest arguments in favour of disclosure

43. South Yorkshire Police acknowledged the public interest in transparency, telling the complainant:

“There is a public interest in articulating how public finances are spent by the Authority and disclosure of the information would promote accountability and transparency in the spending of public money”.

44. South Yorkshire Police also recognised the importance, given the high profile of the subject matter in this case, that the public were aware of the existence of compensation payments.

Public interest arguments in favour of withholding the information

45. South Yorkshire Police reminded the complainant that disclosure under the FOIA is disclosure to the world at large. In that respect it said:

“The wellbeing of the individuals may be jeopardised which may cause distress to the families concerned, by the release of the information into the wider public domain.

The release of all the details could seriously endanger the mental health of any person(s) involved”.

46. It also told him that it would not be in the public interest if release of the information resulted in loss of confidence in its ability as a public authority to protect such sensitive information.

Balance of the public interest

47. The Commissioner acknowledges the public interest in favour of disclosure. There is a public interest in openness, transparency and accountability and in members of the public having access to information.
48. She recognises the Rotherham scandal as a high profile case that has received significant coverage in the public domain.
49. As such, in the context of this case, she accepts the disclosure of the withheld information would enable the public to understand more closely how much the victims of the Rotherham scandal were paid and the reason for such payments.

50. The Commissioner has taken into account both the content and context of the information when determining the appropriate weight to be given to the benefits and detrimental effects of disclosure in this case.
51. On this occasion, the Commissioner considers that the strength of the arguments favouring disclosure is clearly outweighed by the public interest in maintaining the exemption in order to safeguard the mental health of the victims of child sexual exploitation and their families. Therefore, in all the circumstances, the Commissioner has decided that the balance of the public interest favours maintaining the exemption at section 38(1)(a) of the FOIA.

Right of appeal

52. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

53. 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.

54. 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

**Deborah Clark
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