

Freedom of Information Request Reference N°: FOI 000526-19

I write in connection with your request for information received by Suffolk Constabulary on the xxx 2019 in which you sought access to the following information:

"FOI REQUEST: Margaret Nelson, Twitter

You are referred to your Tweet of 1:16 PM - 4 Feb 2019 -

"Suffolk Police

Verified account

@SuffolkPolice

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Replying to @Flashmaggie @realjlauniere and 2 others Hi Margaret, we had a number of people contact us on social media about the comments made online. A follow-up call was made for no other reason than to raise awareness of the complaints.

Kind regards, Web Team.

1:16 PM - 4 Feb 2019"

REQUEST

- 1. Provide all force guidance, criteria, etc. regarding when to make a 'follow-up' call to a member of the public when there is no suspicion of an offence being committed following a comment made on the internet.*
- 2. Provide all data relating to the call, including but not limited to the contacts made on social media about the comments. This should include the police rank of the person who decided to make the call.*
- 3. Disclose how you came to have Margaret's phone number.*
- 4. Disclose what databases or other recording systems Margaret has been added to as a result of this contact and the criteria for same.*

UPDATED EMAIL:

Ms. Nelson has updated her Twitter:-



Margaret Nelson

@Flashmaggie

Following Following @Flashmaggie

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Had a very friendly chat with a @SuffolkPolice DCS this morning who phoned to apologise and admitted they'd "got it wrong". Told him about the online stalkers hiding behind the Challenors' list. I've no ill-feeling towards the county's cops but think their training needs review.

11:03 AM - 5 Feb 2019"

As Ms. Nelson has fully shared these events, section 40 FOIA exemption does not apply.

<https://ico.org.uk/media/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

92. There may be situations in which the data subject has deliberately done something which has put their sensitive personal data in the public domain. This is possible because of the wide ranging definition of sensitive personal data in the DPA, which includes the data subject's political opinions and religious beliefs "or other beliefs of a similar nature".

Response to your Request

The response provided below is correct as of 19 February 2019

Suffolk Constabulary has considered your request for information and the response is below.

1. The police and Criminal Evidence Act 1984 provides a framework and duty for Police officers to investigate incidents and criminal offences.

This would be a case specific issue and any response made would depend on the circumstances of either the incident or investigation. For any incident it may be that a contact is or isn't necessary and the victims wishes in this regard would be part of the consideration.

2. The case was reviewed by a Detective Sergeant and agreed a course of action to close the incident, dealing with the matter proportionally.

Provision of specific call data and contacts made to the Constabulary has not been provided as a result of exemptions within the Act. The data will include personal data of a third party and will also incorporate sensitive operational information.



Section 17 of the Freedom of Information Act 2000 requires that Suffolk Constabulary, when refusing to provide such information (because the information is exempt) is to provide you the applicant with a notice which:

- (a) States that fact
- (b) Specifies the exemption(s) in question and
- (c) States (if that would not otherwise be apparent) why the exemption(s) applies.

The information is exempt from disclosure by virtue of the following exemption;

Section 40(2) – Personal information

Section 31(1) – Law Enforcement

Section 40 is an absolute; class based exemption and applies to third party personal data. This would not be released under the FOIA unless there is a strong public interest. This is because any release would breach the Principles contained within Article 5(1) of the GDPR and Part 2 of the Data Protection Act 2018.

One of the main differences between the Data Protection Act and the Freedom of Information Act is that any information released under FOI is released into the public domain, not just to the individual requesting the information. As such, any release that identifies an individual through releasing their personal data, is exempted unless there is a strong public interest in its release. The public interest is not what interests the public but what benefits the community as a whole.

Personal data is defined under the Data Protection Act as data that is biographical in nature, has the applicant as its focus and/or affects the data subject's privacy in his or her personal, professional or business life. It is defined by information relating to an identifiable living person who can be identified, directly or indirectly, by the disclosure of an identifier such as a name or an identification number. A name and epaulette would therefore be considered relevant to this definition.

Principle (a) of Article 5(1) states that information must be processed fairly, lawfully and in a transparent manner. When considering this principle, we first consider the lawfulness aspect in the disclosure of the officer's names or epaulettes. Lawfulness refers to occasions where disclosure would breach statute or common law obligations.

In this case we consider the Human Rights Act 1998. Third party individuals would have an expectation that any information supplied to the Constabulary would be done so in confidence and not further disclosed under FOI responses. The Constabulary considers it



would be in breach of the Human Rights Act by disclosing details that may identify them and therefore disclosure would not be lawful.

With regards to the fairness aspect, the processing of information should be in a manner that individuals would reasonably expect, not in a way that could result in unjustified adverse effects on them. In this case, the individuals would have a reasonable expectation that information would not be processed if it resulted in their identification. Disclosure of this nature can equally lead to an individual being misidentified from the disclosure. The Constabulary has a duty to ensure data is processed in accordance with Data Protection Legislation. We feel in this occasion, it would not be fair to process this data outside of usual policing processes.

FOIA disclosures are to the world at large and will remain in the public domain indefinitely. Therefore, provision of this information would exceed the original Policing requirement for the processing of the information and would not be lawful or fair to the individuals in question.

It is for these reasons outlined above; that I feel the principle would be breached by this disclosure and the Section 40 exemption remains in place. I am not obliged to consider any further principle in my arguments.

This is an absolute, class-based exemption and, as such, there is no requirement to consider the public interest test.

Section 31 is a qualified and prejudice based exemption and I am therefore obliged to consider the harm in the information being disclosed and conduct a public interest test.

3. The information has not been provided as a result of exemptions within the Act. The information relates to operationally sensitive information that should not be disclosed under FOI.

Section 17 of the Freedom of Information Act 2000 requires that Suffolk Constabulary, when refusing to provide such information (because the information is exempt) is to provide you the applicant with a notice which:

- (a) States that fact
- (b) Specifies the exemption(s) in question and
- (c) States (if that would not otherwise be apparent) why the exemption(s) applies.

The information is exempt from disclosure by virtue of the following exemption;

Section 31(1) – Law Enforcement



Section 31 is a qualified and prejudice based exemption and I am therefore obliged to consider the harm in the information being disclosed and conduct a public interest test.

4. The Constabulary can neither confirm nor deny whether any information is held in relation to this part of the request. Disclosure of such would reveal whether or not the Constabulary holds information concerning a specific individual and consequently we would not wish to disclose this level of information in relation to a person as to do so would be in breach of the Data Protection Act 2018.

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at s1(1)(a) is to confirm or deny whether the information specified in a request is held. The second duty at s1(1)(b) is to disclose information that has been confirmed as being held.

Where exemptions are relied upon s17 of FOIA requires that we provide the applicant with a notice which:

- a) States that fact,
- b) Specifies the exemption(s) in question and
- c) States (if that would not otherwise be apparent) why the exemption applies.

The Suffolk Constabulary can **neither confirm nor deny** that it holds the information you have requested as the duty in s1(1)(a) of the Freedom of Information Act 2000 does not apply, by virtue of the following exemptions:

Section 40(5)(b)(i)(ii) – Personal Information

Section 40 is an absolute; class based exemption and applies to third party personal data. This would not be released under the FOIA unless there is a strong public interest. This is because any release would breach the Principles contained within Article 5(1) of the GDPR (Part 2 Chapter 2 of the Data Protection Act 2018).

One of the main differences between the Data Protection Act and the Freedom of Information Act is that any information released under FOI is released into the public domain, not just to the individual requesting the information. As such, any release that identifies an individual through releasing their personal data, even third party personal data, is exempted unless there is a strong public interest in its release. The public interest is not what interests the public but what benefits the community as a whole.



Personal data is defined under the Data Protection Act as data that is biographical in nature, has the applicant as its focus and/or affects the data subject's privacy in his or her personal, professional or business life.

Principle 'a' of Article 5(1) states that information must be processed lawfully, fairly and in a transparent manner. In this case it would not be fair or lawful to disclose any information that may identify whether or not an individual has any information recorded on Constabulary systems pertaining to them. Any persons regardless of the situation would have a reasonable expectation that information would not be processed if it confirmed whether or not data had been recorded about them. Although the information placed on twitter confirmed that contact had been made, this does not confirm to what extent, if any, information was recorded about the named individual concerning this incident.

FOIA disclosures are to the world at large and will remain in the public domain indefinitely. Confirmation or denial of what if any, information is held, would exceed the original Policing requirement for the processing of information and would not be lawful or fair to any individual.

This should not be taken as conclusive evidence that any information that would meet your request exists or does not exist.

Harm and Public Interest Test – Section 31

Information concerning policing tactics, including the way in which information is gathered for operational purposes would not be disclosed if to do so would prejudice policing capabilities.

This would undermine the law enforcement capabilities of the Constabulary and therefore it is confirmed that Section 31 is engaged.

Factors favouring disclosure

Information that relates directly to the operational effectiveness and efficiencies of the Constabulary is a positive factor favouring disclosure. The public have a right to know that they are being protected in an appropriate and diligent manner.

Public knowledge of the Constabulary will ensure informed public debate, retaining the Constabulary's open and honest approach.

There is information in the public domain concerning this case in particular and consequently, harm in information being disclosed may be reduced if the level of data being requested has already published.



Factors favouring non-disclosure

Disclosure of information that can affect the current and future law enforcement capabilities of the Constabulary will always favour non-disclosure. On this occasion, confirming how the Constabulary obtained a personal phone number will reveal tactical information about constabulary processes with regards information gathering and processing.

Although it can be argued that information placed in the public domain confirms we do hold a relevant phone number, this information does not disclose how that number was obtained. It would not be fair on that individual to disclose this information and future law enforcement capabilities may be compromised if we confirm how such data is collated.

Although public knowledge of the Constabulary's capabilities is a positive factor, this is not unlimited and there are aspects of policing that must remain confidential.

Balancing test

Public knowledge of how their funds are being spent and assurance that the Police service are doing all they can to ensure public safety is maintained, is always a positive factor in disclosure.

On balance however, disclosure of this nature is more likely to have the opposite affect causing the criminal fraternity to have prior knowledge of Police operational capabilities, compromising the prevention and detection of crime and administration of justice.

The Police service has a duty to ensure public safety is never compromised and disclosures under FOI should always ensure this is maintained.

It is the Constabulary's decision that disclosure lies in non-disclosure and application of the exemption is maintained.

Should you have any further queries concerning this request, please contact Clair Pack, FOI Decision Maker, quoting the reference number shown above.

A full copy of the Freedom of Information Act (2000) can be viewed on the 'Office of Public Sector Information' web-site;

<http://www.opsi.gov.uk/>

Suffolk Constabulary is not responsible for the content, or the reliability, of the website referenced. The Constabulary cannot guarantee that this link will work all of the time, and we have no control over the availability of the linked pages.



Your Right to Request a Review of Decisions Made Under the Terms of the
Freedom of Information Act (2000).

If you are unhappy with how your request has been handled, or if you think the decision is incorrect, you have the right to ask Suffolk Constabulary to review their decision.

Ask Suffolk Constabulary to look at the decision again.

If you are dissatisfied with the decision made by Suffolk Constabulary under the Freedom of Information Act (2000), regarding access to information, you must notify Suffolk Constabulary that you are requesting a review within 40 working days of the date of its response to your Freedom of Information request. Requests for a review should be made in writing and addressed to:

*Freedom of Information Decision Maker
Information Management Department
Suffolk Constabulary
Police Headquarters
Martlesham Heath
Ipswich
Suffolk
IP5 3QS
OR
Email: information@suffolk.pnn.police.uk*

In all possible circumstances Suffolk Constabulary will aim to respond to your request for us to look at our decision again within 20 working days of receipt of your request for an internal review.

The Information Commissioner.

After lodging a request for a review with Suffolk Constabulary, if you are still dissatisfied with the decision, you can apply 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.ico.org.uk or contact them at the address shown below:

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