

Freedom of Information Act 2000

Request for Internal Review of OPCC Decision dated 13 July 2021

FOI Ref: FOI/OPCC/21-017

Date of Request: 14 July 2021

Date of Response: 30 July 2021

Title of Request: Information request for applications made for the post of Chair of Police Misconduct Hearings

Dear requestor

I refer to your request dated 14 July 2021 for an internal review of the Office of the Police and Crime Commissioner's (OPCC's) decision to refuse your request for the actual applications made by persons who were subsequently appointed as Legally Qualified Chairs ("LQCs") for the past ten year period, citing the exemption provided by section 40(2) of the Freedom of Information Act 2000 ("FOIA") relating to personal information.

In conducting this review I have had regard to the following:

- Your original request dated 25 June 2021
- Email from [REDACTED] dated 5 July 2021 advising the request would be dealt with under the FOIA
- Response of the OPCC dated 13 July 2021
- Your request for an internal review dated 14 July 2021
- The Data Protection Act 2018
- The FOIA
- ICO Guidance to the Freedom of Information Act 2000

As a preliminary to this review, I would advise that your request relating to obtaining information about other living individuals as opposed to yourself has been correctly dealt with under the FOIA rather than the Data Protection Act ("DPA").

Turning to your request itself – you sought the applications of LQCs successfully appointed over the past ten years. This aspect of your request is incapable of being fulfilled since the data is only held for the first appointment period in January 2016 to the second appointment period beginning January 2020. The FOIA only relates to recorded information.

The substantive part of your request relates to the applications of successfully appointed LQCs.

These applications will contain personal information, some of which is sensitive personal information and subject to even stronger legal protection.

Section 40(2) provides that wherever an application for personal information is made by someone other than the data subject, the information to which it relates is exempt from disclosure under the FOIA where either of two conditions are satisfied. These conditions are set out in sections 40(3) and (4) respectively, however it is the first condition at section 40(3) that is relevant here. The first condition provides for exemption where disclosure of information by a public authority would contravene any of the data protection principles.

The OPCC contends that disclosure of the information you have requested would be unfair and breach the first principle of the DPA namely that information is used fairly, lawfully and transparently. Other relevant DPA principles require that information is

- Used for specified, explicit purposes
- Used in a way that is adequate, relevant and limited to what is necessary
- Handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction or damage.

The applicants in this case would be experienced solicitors or barristers and would be acutely aware of their right to have their applications processed in accordance with the law i.e. to have their information used only for the specified purpose of the recruitment exercise and not further disseminated to the public at large, especially where there is no justifiable public interest. Section 40(2) is an absolute exemption which does not require a public interest test. The OPCC is not only exempt from communicating this information by virtue of section 40(2) but could be subject to enforcement proceedings under the DPA if it were to do so.

In conclusion, I must advise you that I consider the OPCC has dealt with your request in accordance with the requirements of the FOIA. Accordingly, I uphold the decision to refuse the release of the information you have requested.

I understand you are in receipt of a copy of 'Satisfied with our Service' which explains your right of appeal to the Information Commissioner's Office.

I note in your earlier email that you have asked for links to the published details in respect of LQC chairs. Please find attached information that is in the public domain regarding LQCs.

[REDACTED] However, I would urge you to use the cambs-pcc@cambs.pnn.police.uk address for all correspondence as it is only by using the office mailbox can we ensure that all matters are appropriately dealt with as that is the only email that is consistently monitored.

Yours sincerely

Office of the Police and Crime Commissioner for Cambridgeshire and Peterborough

Enc - Links to Cambs OPCC website for LQC details