



FOI Reference: 012/2012

Request:

1. As of 01.01.12 how many of your force's officers were suspended on full pay? Please provide me with a breakdown showing the number of officers suspended in each rank of your force as of 01.01.12.
2. Please also provide me with a list showing the date (month/year) that each officer suspended as of 01.01.12 was first suspended from duty on full pay.
3. How many of the suspended officers as of 01.01.11 returned to work, were dismissed, resigned or are still suspended?

Clarification:

This request for information relates to police officers only.

Responses 1 - 3:

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

Where exemptions are relied upon Section 17 of the Freedom of Information Act 2000 requires Dyfed Powys Police, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states (if that would not otherwise be apparent) why the exemption applies.

I can confirm that Dyfed-Powys Police holds the information that you have requested. However, I can confirm that we are withholding that information since we consider that the following exemptions apply to it:

Section 30(1)(a) Investigations

Section 40(2) Personal information

Section 40(2) Personal Information

Section 40(2) applies to third party personal data and is exempt from disclosure under the Freedom of Information Act 2000 if disclosure would breach any of the data protection principles contained within Part 1 of Schedule One under Section 4 (1) and (2) of the Data Protection Act 1998. Such information would not be released under the Freedom of Information Act 2000 unless there is a strong public interest. One of the main differences between the Freedom of Information Act 2000 and the Data Protection Act 1998 is that any information released under FOI is released into the public domain, not just the individual requesting the information and disclosure under the Act must be made with that in mind. As such, any release that identifies an individual through releasing their personal data, even third party personal data is exempt. Personal data is defined under Section 1 (1) (e) of the Data Protection Act (1998) 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 is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.* “

All persons whose personal data is processed by the Force regardless of whether they be members of the public or staff have an intrinsic right to privacy and these rights are protected by virtue of the Data Protection Act 1998. Release of the information subject to the exemption is likely to compromise those rights.

The Section 40 exemption is an absolute exemption (except in some limited circumstances). This therefore means that it is not necessary to carry out a public interest test. Information Commissioner's Office (ICO) guidance "*The exemption for personal information*" provides a detailed explanation on the interface between the Freedom of Information Act 2000, the Data Protection Act 1998 and the use of the Section 40 exemption. ICO guidance suggests that consideration should be made to the following:

- *“Is the information personal data?”*
- *“If so, will disclosure breach one of the data protection principles?”*

In the present case the issue under consideration is that the persons concerned could be identified by the disclosure of the information in its entirety which would breach Principle One of the Data Protection Act 1998.

Principle One:

“Personal data shall be processed fairly and lawfully and in particular shall not be processed unless

- (a) at least one of the conditions in Schedule 2 is met, and*
(b) in the case of sensitive personal data at least one of the conditions in Schedule 3 is also met.”

Members of the public and staff are entitled to protection under the Data Protection Act 1998. The Force would be failing in its lawful duty were it to breach the Data Protection Act in order to furnish a disclosure under the Freedom of Information Act 2000. The Force has a duty to protect the personal data of all individuals regardless of whether they are members of the public or staff. Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 30(1)(a) Investigations

Section 30(1) Information held by a Public Authority is exempt information if it has at any time been held by the authority for the purposes of

- (a) any investigation which the Public Authority has a duty to conduct with a view to it being ascertained (i) whether a person should be charged with an offence or (ii) whether a person charged with an offence is guilty of it*

The Section 30 exemption is a class-based qualified exemption. This means that the legislators when writing the legislation considered that the release of such information under the Freedom of Information Act 2000 would cause harm to the public authority or individual concerned. There is therefore no requirement to carry out a HARM Test in respect of such information. However there is a requirement to carry out a Public Interest Test in order to establish whether the public interest in maintaining the exemption may be outweighed by a wider public benefit in disclosure.

Public Interest Test

Considerations favouring disclosure:

Considerations favouring disclosure of the information would be use of public funds in relation to the investigation of such matters as well as accountability and public awareness of the possible improper actions of public officials and satisfaction that such investigations were conducted properly.

Considerations favouring non-disclosure:

This exemption covers information held at any time for the purposes of an investigation, whether the case is on-going, closed or abandoned. To release details of on-going criminal/disciplinary investigations as in this case would undermine and prejudice those investigations which would impinge on the alleged offenders' right to a fair trial under Article 8 of the Human Rights Act. This may result in sub-judice and Dyfed-Powys Police being held in contempt of court.

Balancing Test

After considering the advantages and disadvantages in disclosure it falls upon Dyfed-Powys Police to conduct a balance test on the issues. The strongest arguments for disclosure which are accountability and public awareness need to be weighed against the strongest arguments for non-disclosure, which in this case is that the release would undermine and prejudice those investigations which would impinge on the alleged offender's right to a fair trial under Article 8 of the Human Rights Act.

Therefore, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.