



**Date:** 15<sup>th</sup> June 2020

**Our Reference:** FOIA-2020-061

## **RE: Your request for information under the Freedom of Information Act 2000**

I write in response to your Freedom of Information Act 2000 (FoIA) request dated **29/05/2020**, in which you requested:

“My request is for a list of discipline cases for officers involving the use of private messaging apps (such as Whatsapp etc, not open view social media such as Facebook or Twitter).

I would like to know:

1. How many cases there have been in the last three years?
2. What the circumstances of the alleged misuse of the app (racist, homophobic, or transmission of indecent pictures (and whether solicited or not) etc)?
3. How those offences were categorised (misconduct or gross misconduct)?
4. What the sanction of the subsequent hearings were?
5. Which Force they occurred in?”

## **Decision**

When a request for information is made under the FoIA 2000, a public authority has a general duty under section 1(1) of the Act to inform an applicant whether the requested information is held. There is then a general obligation to communicate that information to the applicant. If a public authority decides that the information should not be disclosed because an exemption applies, it must, under section 17(1), cite the appropriate section or exemption of the Act and provide an explanation for relying upon it.

Under section 1(1), I can confirm the College holds **some recorded information** within the scope of your request. Specifically, recorded information is held in relation to those who have been dismissed following gross misconduct proceedings. There are a number of other potential outcomes following gross misconduct proceedings, however the College only holds details of those who are dismissed. The information held by us

in relation to officers, police staff, and special constables, who are dismissed following gross misconduct proceedings, is retained through the Barred List.

As a result, in response to your third and fourth question, all offences held by the College will be categorised as gross misconduct, and dismissal will be the only outcome recorded by the College. The Barred and Advisory legislation commenced on the 15th December 2017, just under three years ago. Therefore, we have provided all information held from the date of creation of the Barred List that has any reference to WhatsApp.

On a number of cases, there is **only a small reference** to WhatsApp, alongside numerous other reasons as to why both the case as a whole, and the finding, result in gross misconduct and a subsequent dismissal.

I will deal with each part of your request below:

**1. How many cases there have been in the last three years?**

12 cases.

**2. What the circumstances of the alleged misuse of the app (racist, homophobic, or transmission of indecent pictures (and whether solicited or not) etc)?**

Several of the twelve cases refer to the same circumstance below, hence why there are only nine.

- Offensive WhatsApp messages to a colleague
- Sexually explicit conversation over WhatsApp
- Inappropriate comments in a WhatsApp conversation
- Contacted a vulnerable victim through WhatsApp for personal reasons
- Sent and received racist, homophobic and derogatory comments with a WhatsApp group
- Sending and receiving of inappropriate messages that were of an anti-religious, racist, sexist, homophobic, misogynistic and offensive nature.
- Inappropriate comments on WhatsApp that were racist, homophobic and derogatory in nature
- Sent racist comments to partner on WhatsApp.
- Exchanged WhatsApp messages with a vulnerable victim which were of a sexual and flirtatious nature.

**3. How those offences were categorised (misconduct or gross misconduct)?**

As above, all 12 recorded cases were categorised as gross misconduct.

**4. What the sanction of the subsequent hearings were?**

As above, all 12 recorded cases resulted in dismissal.

#### **5. Which Force they occurred in**

Information withheld under section 40(2) FoIA.

Please find an explanation of our decision to apply section 40(2) below. Your rights are provided at the bottom of this letter.

Yours sincerely,

**Kate Kaufman | Legal Researcher**

**Legal Services**

**College of Policing**

Email: [FOI@college.pnn.police.uk](mailto:FOI@college.pnn.police.uk)

Website: [www.college.police.uk](http://www.college.police.uk)

## **Section 40(2) of the Freedom of Information Act 2000 – Personal Information**

Section 40(2) FoIA states:

“Any information to which a request for information relates is also exempt information if-

- (a) It constitutes personal data which do not fall within subsection (1), and
- (b) Either the first or the second condition below is satisfied.”

Essentially, under section 40(2) FoIA (by virtue of section 40(3A)), personal data of a third party can be withheld if any of the data protection principles would be breached by disclosing that data. Personal data is defined in section 3(2) of the Data Protection Act 2018 (DPA) as being:

**“Any information relating to an identified or identifiable living individual”.**

Section 3(3) DPA defines an identifiable living individual as:

“a living individual who can be identified, directly or indirectly, in particular by reference to –

- (a) an identifier such as a name, an identification number, location data or an online identifier, or
- (b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual”.

As is stated above, the two main elements of personal data are: that the information must ‘relate’ to a living person and that the person must be identifiable. Information will relate to a person if it is: about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, and has them as its main focus or impacts on them in any way.

We acknowledge that certain categories of personal data, such as providing the name of a police force, may not in itself, constitute personal data. However, when grouped with other categories of data, or combined with other information already in the public domain, it creates a substantial risk of an individual being identified. As such, it is our view that the information you have requested is personal data, and should consequently be withheld under section 40(2) FoIA. If we were to release the information you have requested, it is our view that this may lead to the identification of a living individual.

For example, if we were to provide you with the force names, you may be able to identify the identity of an individual through other information published by that force, or other sources. The data protection principles are provided under Article 5 of the General Data Protection Regulations 2018 (GDPR). Article 5(1)(a) states that personal data shall be:

**“processed lawfully, fairly and in a transparent manner in relation to the data subject”.**

As was explained at the beginning of this letter, we only hold information relating to those who have been dismissed following misconduct hearings. We hold this on the Barred List. Those whose details feature on the Barred List are made aware information shared with the College in respect of their misconduct proceedings, is only published via a searchable list, and would not be provided in a permanent, publicly accessible, form. The Barred List can only be accessed by a 'lock and key' mechanism. If the name of an individual is known, you can search for the details relating to that individual only. The list was not created to allow all records it contains to be publicly available, as this would interfere with the privacy rights of those on the list. Furthermore, the Barred List works on a rolling basis. Names are added, and after a maximum of five years, individuals can place a request to have their name removed.

If we were to provide you with the requested information, it would provide a snapshot of a moment in time and a permanent record of misconduct information that we hold. This would be unfair to individuals, who will in time, potentially have their details removed. If this information were to be released into the public domain, the College would have no subsequent control over it. This may impact their future employment and potentially impact their family. Furthermore, this would also prevent an individual from being able to enforce their right to erasure and right to rectification, under GDPR, as the College would no longer have any control over the data.

We are committed to openness and transparency and recognise the wider public interest in information relating to gross misconduct hearings being available. However, we also have a legal duty to ensure that the rights to privacy of individuals are protected and we do not believe that it would be fair to disclose the requested information. We are satisfied that publishing the information in a searchable format ensures that the rights and freedoms of data subjects and the public interest in the integrity of policing are balanced, and that the disclosure of the withheld information would not be fair, lawful nor transparent and therefore would be in breach of the first data protection principle under Article 5(1) (a) GDPR

## **Your right of review**

Under the Freedom of Information Act 2000 you have a right to request an internal review if you are dissatisfied with our handling of your request. Review requests should be made in writing (by email or post) within **40 working days** from the date of our original response. We will aim to respond to your review request within **20 working days**.

### **The Information Commissioner's Office (ICO)**

If, after lodging a review request you are still dissatisfied, you may raise the matter with the ICO. For further information you can visit their website at <https://ico.org.uk/for-the-public/official-information/>. Alternatively, you can contact them by phone or write to them at the following address:

#### **Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**

**Phone: 0303 123 1113**