

10th April 2018

Freedom of Information Request – Reference No:20172119

REQUEST

Please provide copies of all communications that relate to the attempted felling of trees that happened on the streets of Sheffield on Monday 27th November 2017.

In particular:

- Any communication with "Sheffield City Council" or employees thereof.***
- Any communication with any companies which have "Amey" as part of their name.***

RESPONSE

Section 17 of the Freedom of Information Act 2000 requires South Yorkshire 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.

The following exemptions apply to the disclosure of the information:

Section 40(2) Personal Information:

This is an absolute exemption and therefore a Public Interest Test is not relevant.

However, for clarity, I will explain my rationale for engaging this exemption. Section 40(2) provides that information is exempt if it is the personal data of someone other than the applicant and disclosure would breach any of the data protection principles. The term 'personal data' means data that relates to a living individual who can be identified.

Section 41(1) – Information Provided in Confidence

41(1) Information is exempt information if —

- (a) it was obtained by the public authority from any other person (including another public authority), and,**
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.**

Information has been provided in confidence to the data controller by Amey.

In assessing whether the disclosure of the information would constitute a breach of confidence I have applied the test of confidence as set out in *Coco v A N Clark (engineers) Limited* [1968] FSR 415 which considers three elements usually required to bring an action for a breach of confidence.

Firstly, does the information have the necessary quality of confidence? The requested information is neither trivial or otherwise accessible to any person other than the author and the data controller with which it has been shared. The requested information has not

entered the public domain via any other route and therefore there is an expectation that the confidentiality of the information will be retained.

Secondly, is there an obligation of confidence? In this case, the provider of the information has clearly indicated that the information is provided to the data controller in confidence and that any further dissemination should not occur as the document is Legally Privileged. The document has been provided clearly annotated "Legally Privileged and Subject to Common Interest Privilege". The data controller accepts this as an indication that he is obliged to maintain confidentiality in respect

Finally, would disclosure of the information under the FOIA constitute an unauthorised use? As the information has been provided subject to Common Interest Privilege, disclosure to any other party would constitute unauthorised use of the information.

Whilst there is always a public interest in openness and transparency there is a wider public interest in maintaining the confidentiality of the document which, in turn, also maintains the principle of legal privilege. The principle safeguards the confidentiality and openness of all legal or legally related communications and is fundamental to the wider administration of justice.

Section 31(1) (a)(b)(c) Law Enforcement

This exemption requires the Public Authority to articulate both the Harm and the Public Interest Test.

Harm

It is important to stress that disclosures under the Freedom of Information Act are disclosures to the world, not just to the individual making the request, and as such responses may be published on a public facing disclosure log. Modern day policing is intelligence led and this is particularly pertinent with regard to law enforcement. The public expect police forces to use all powers and tactics available to them to prevent and detect crime and disorder, and maintain public safety.

Disclosing the information could lead to more crimes being committed which would impact on police resources and place individuals at risk – including those reporting incidents, victims, witnesses etc., who may be 'recognised' or indeed, mis-identified by a disclosure.

Section 31 Factors favouring disclosure

- A full release of information would show that SYP is proactive in its operational policing
- Disclosure would provide better awareness, which may reduce crime or lead to more information from the public.

Section 31- Factors against disclosure

- Police resources and the Force's ability to operate effectively and efficiently, would be affected as this information can be used by those with criminal intent to determine where officers may or may not be deployed at any one time.
- More crime would be committed by those individuals intent on committing offences by changing their behaviour to avoid detection. Which would impact of the force and the safety of members of the public.

Balancing

The principle of the Freedom of Information Act 2000 is to make public bodies more open and accountable and to help people to understand how public authorities carry out their duties. There is considerable public interest in the current Tree Felling Programme.

The Police Service is charged with enforcing the law, preventing and detecting crime and protecting the communities we serve.

Although I am fully aware of the need for Public Authorities to demonstrate a level of openness and transparency, I am of the opinion that protecting our operational capability is a more compelling argument. South Yorkshire Police cannot risk compromising the ability of Officers to effectively carry out law enforcement and protect the public from those engaged in criminal activity.

It is therefore my opinion that releasing this information in full may engaged the above exemptions.

With this in mind, I am prepared to disclose as much detail as possible without triggering the above exemptions. Please see the attached document.

If you are unhappy with the way your request for information has been handled, you can request a review by following the advice contained in the separate notice enclosed with this correspondence:

If you remain dissatisfied with the handling of your request or complaint, you have a right to appeal to the Information Commissioner at:
The Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,

Cheshire, SK9 5AF.
Telephone: 08456 306060 or 01625 545745
Website: www.ico.gov.uk

Yours sincerely

Louise Holmes
Information Compliance Clerk
South Yorkshire Police
Information Compliance Unit
Professional Standards Department
Unit 20 Sheffield 35A Business Park
Churchill Way
Sheffield
S35 2PY

Please note that police forces in the United Kingdom are routinely required to provide information and statistics to government bodies and the recording criteria is set nationally. However, the systems used for recording these figures are not generic, nor are the procedures used locally in capturing the data. It should be noted that for these reasons this forces response to your questions should not be used for the comparison purposes with any other response you may receive.

South Yorkshire Police provides you the right to request a re-examination of your case under its review procedure (copy enclosed). If you decide to request such a review and having followed the Constabulary's full process you are still dissatisfied, then you have the right to direct your comments to the Information Commissioner who will give it consideration.

The South Yorkshire Police in complying with their statutory duty under sections 1 and 11 of the Freedom of Information Act 2000 to release the enclosed information will not breach the Copyright, Designs and Patents Act 1988. However, the rights of the copyright owner of the enclosed information will continue to be protected by law. Applications for the copyright owner's written permission to reproduce any part of the attached information should be addressed to The Force Solicitor, South Yorkshire Police, Police Headquarters, 5 Carbrook Hall Road, Sheffield, S9 2EG

Appeal Process for Freedom of Information

Using this process will not affect your right to appeal directly to the Information Commissioner. However, it will usually be quicker if matters can be resolved locally using this process.

Who can appeal?

Anyone who has requested information from the Force in writing can appeal within 20 working days from the date of the response provided. If you have requested information and you are not satisfied with the way we have dealt with your request, you can use the appeal process to have it looked at again. If someone who requested information would like to appeal but cannot do so themselves you can appeal on their behalf, but it will help us if you make it clear that you are doing so.

What can I appeal about?

You can appeal about the range, amount and format of information we have sent following a request. You can also appeal about the way a request was handled – for example, the time it took to respond, or the way letters were worded.

How do I appeal?

You can appeal by writing, emailing or faxing your appeal/complaint to the address below. To deal with your appeal as quickly as possible, it will help if you can give us as much information as you can about the request made, such as the reference number, and the reason for your appeal/ complaint.

What happens to my appeal?

Once we have enough details to identify the request you are concerned about, a qualified person, other than the initial decision maker, will deal with the internal review.

How long does it take?

Whatever their conclusion, you will be informed of the result as soon as possible, and in any case within 20 days of submitting your appeal.

If you are still not satisfied, you may then appeal to the Information Commissioner.

Appeal Address

**Information Compliance Unit South Yorkshire Police Professional Standards
Department Unit 20 Sheffield 35A Business Park Churchill Way Sheffield S35 2PY**

Email foi@southyorks.pnn.police.uk