

**Date: 28/11/2022**

**Our Reference: FOIA-2022-105**

**RE: Freedom of Information Act 2000 Request**

I write in response to your Freedom of Information Act 2000 (or 'FoIA 2000') request dated 31/10/2022:

"1. The General Data Protection Regulation (GDPR), Data Protection Act 2018 (DPA 2018) and the Regulation of Investigatory Powers Act 2000 (RIPA) does not prohibit individuals from making recordings for personal use either overtly, or covertly. In the Home Office Guidance, "Police Officer Misconduct, Unsatisfactory Performance and Attendance Management Procedures", it states that:

*3.18 In any unsatisfactory attendance case it is essential that managers and the force ensure compliance with their obligations under the Equality Act.*

*3.19 Compliance with other statutory obligations including the Data Protection Act 1998 must also be ensured.*

2. Has the College issued any guidance to the Police Service regarding the recording of appointments by police officers undergoing the ill health retirement process?

3. In these circumstances, would any overt, or covert recording of an appointment by the police officer concerned for their own personal use be considered a breach of discipline?"

When a request for information is made under 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.

It is important to note that a freedom of information request is not a private transaction. Both the request itself and any information disclosed are considered suitable for open publication, that is, once access to information is granted to one person under the legislation, it is then considered public information and must be communicated to any individual should a request be received. In light of this, our responses and disclosures are published on our external website at a later date. This should be borne in mind where a request is made for personal data of named individuals.

## **Decision**

I have addressed each element of your request below.

1. The current version of the Home Office Guidance (February 2020) is - Conduct, Efficiency and Effectiveness: Statutory Guidance on Professional Standards, Performance and Integrity in Policing<sup>1</sup>. Chapter 19 details Attendance Requirements and 19.3 requires forces to develop a policy. The paragraphs referenced as 3.18 and 3.19 have their nearest equivalence in the current Home Office Guidance at paragraphs 19.33 and 19.21.
2. In line with section 1(1) of the FoIA, I can confirm the College does not hold the information you require. The College has not issued any guidance in relation to ill health retirement. However, the Home Office Guidance referenced above does include provisions around ill-health management procedures. This should be read in conjunction with the Police Negotiating Board Joint Guidance on Improving the Management of Ill-Health issued under Home Office circular 021/2003<sup>2</sup>.
3. In line with section 1(1) of the FoIA, I can confirm the College does not hold the information you require. Every case is fact sensitive and would depend on the circumstances of the case. Whilst there is the potential for such a matter to be assessed

---

<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/863820/Home\\_Office\\_Statutory\\_Guidance\\_0502.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/863820/Home_Office_Statutory_Guidance_0502.pdf)

<sup>2</sup> <https://webarchive.nationalarchives.gov.uk/ukgwa/20130126151753/http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2003/021-2003/>

as misconduct, this would need to consider the purpose of the recording, the extent of the individual's culpability and the subject matter of the recording. There is broad case law from employment tribunals concerning the admissibility of recordings.

Your rights are provided in **Appendix A**.

Yours sincerely,

**College of Policing**

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

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

## **Appendix A**

### **Rights**

If you are dissatisfied with the handling procedures or the decision of the College of Policing made under the Freedom of Information Act 2000 (the Act) regarding access to information you can request that the decision is reviewed internally.

Internal review requests should be made in writing, within **forty (40) working days** from the date of the refusal notice, and addressed to: FOI team, Central House, Beckwith Knowle, Otley Road, Harrogate, North Yorkshire, HG3 1UF or email: [FOI@college.police.uk](mailto:FOI@college.police.uk)

In all possible circumstances the College of Policing will aim to respond to your request for internal review within **20 working days**.

### **The Information Commissioner**

If, after lodging an internal review request with the College of Policing you are still dissatisfied with the decision you may make application 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 <https://ico.org.uk/for-the-public/official-information/>.

Alternatively, write to:

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

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**

**Phone: 0303 123 1113**