



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2019/0013

**Decided without a hearing, on the papers
On 11th July 2019 and 2nd December 2019**

Before

**JUDGE
FIONA HENDERSON**

**TRIBUNAL MEMBERS
GARETH JONES
DAVE SIVERS**

**Between
GLEN MARKEY APPELLANT
and
THE INFORMATION COMMISSIONER RESPONDENT
And
STAFFORDSHIRE POLICE SECOND RESPONDENT**

DECISION AND REASONS

Decision

1. The Appeal is allowed in part, however, in relation to the majority of the information the appeal is refused and should be withheld under s40(2) and s40(5) FOIA and s38(1) FOIA.

Introduction

2. This is an appeal against the Information Commissioner's decision notice FS50745966 dated 20th December 2018 which upheld Staffordshire Police's reliance on s38(1), s40(2) FOIA (Personal Data) and s40(5) FOIA to withhold the requested information.

Background

3. The Appellant's daughter tragically took her own life. The Police were called to the scene and took statements from witnesses, they investigated but there were no criminal proceedings. There was an inquest and the Police file was forwarded to the Coroner. Prior to the inquest the Police visited the Appellant and gave him an

oral summary of some of the witness statements in order to forewarn him of what he was likely to hear at the inquest. He attended the inquest. Following the inquest he was provided with a CD recording of the inquest hearing itself. He wrote to the Coroner asking for a full copy of the material that was prepared for and presented to the Coroner for use at the inquest¹. The Coroner provided him with:

- 4 typed witness statements,
- Confirmation that 2 witnesses had not provided written statements,
- A 7 page “Summary of Incident” compiled by the investigating officer, which included a synopsis of 17 witnesses (including the 4 witnesses for whom full statements had been provided).

4. The coroner clarified by letter dated 1st August 2017 that:

“At the inquest use was made of the main documents from the police file. There are various other documents but it is not normal practice to disclose documents not used. If you wish to pursue this I would suggest that you contact the police first of all”.

Information Request

5. On 14th August 2017 the Appellant wrote to Staffordshire Police asking:

“On [date removed] my daughter [name removed] took her own life, following an interview at [school details removed]. Police officers from the region deal with this case and took witness statements and created a file for the inquest which was held on [date removed]. Investigating officers included, [names removed]. I believe they were working on behalf of [name removed] who oversaw the collation of the case file for the Coroner.

I recently wrote to the Coroner [name removed] and was able to attain some of the information used in the inquest, but he was unable to supply anything further and suggested that I contacted the Police for the fuller information. To that end, under the FOI act I am now requesting to receive copies of ALL information that the Police hold in relation to this case please. This should include, but not be limited to:-

Original initial witness statements (not summaries) from ALL witnesses interviewed including: -

[7 names redacted]

The road traffic and air ambulance witness reports and subsequent hospital reports

The Police Form A and Form C information

The case file (in full) that was presented to the Coroner for use at the inquest, including the summarised witness statements, the road traffic photographs of accident etc.

I hope I have given you enough background information her[sic] to be able to retrieve all information that is available? I am more than happy to cover any administrative fees. I presume there should be no problem with this request as the information is essentially public domain material? I also hope that my

¹ Letter 14.6.17 attached to Appellant’s adjournment evidence.

request has been channelled through the correct route: If not, I would very much appreciate you letting me know as to where I should send this request”.

6. Staffordshire Police provided a substantive response on 2.10.17 indicating that it held some of the requested information but refusing to confirm or deny whether they held the witness statements of the named individuals (relying upon s40(5) FOIA. They refused to provide the information that they held subject to s30(1)(a), s38(1) (health and safety), s40(2) FOIA (Personal Data) FOIA. The Appellant asked for an internal review which upheld² the exemptions relied upon and explained that:
 - i. Under FOIA it is not possible to release information to a single applicant, disclosure is considered to be available to the world at large.³
 - ii. With respect of data already in the public domain *“this has been summarised by the coroner and is a synopsis of what he has seen fit to release, summarised in his own words and released in an abridged format”*.⁴
 - iii. With reference to the witness statements
 - a) A statement by an individual is recorded information about that individual,
 - b) The statements were made in confidence in the belief that their public use would be limited to legal proceedings. Disclosure would breach those individuals’ rights under DPA and may be upsetting.
7. The Appellant wrote on 12.2.18⁵:
 - a) Asking if he could have access to view the information (rather than being provided with a copy).
 - b) Arguing that as the case file was handed to the Coroner it was already in the public domain.
 - c) Asking if there was any other way open to him to access the information.
8. Staffordshire Police responded on 27.2.19 that:
 - i. viewing the information would be a breach of the Data Protection Principles and there was no provision for inspection to him alone under FOIA or any other services provided by the Central Disclosure Unit.
 - ii. Passing the file to the Coroner did not place it in the public domain, individuals would have to be in Court to hear the information and limited information was reported by the media.

Complaint to the Commissioner

9. The Appellant complained to the Commissioner on 11.5.18 about the way his request for information had been handled arguing:
 - i. As his late daughter’s father he should have the right to see all the information.

² It was dated 27.11.17 but not received by the Appellant until resent on 15.1.18

³ Arising from correspondence on 11.11.17 when the Appellant had offered to keep any data provided confidential and to abide by a legal framework to enforce this undertaking of confidentiality.

⁴ Arising from correspondence on 11.11.17 when the Appellant had argued that the information was in the public domain as it had been released to the coroner for the public inquest. The information used at the inquest was based on the requested information and the Coroner has provided the Appellant with summaries.

⁵ The Appellant had been sent consent forms Staffordshire Police subsequently explained this would have enabled a subject access request to be made by the witnesses under DPA but it was not certain how much information would be disclosed via application made in that manner. And that it appeared that the forms were sent in error.

- ii. He had suggested controlled methods in which the data could be released.
 - iii. Access to the data would provide substantial closure and denial was causing a tremendous amount of stress.
 - iv. The refusal raised suspicions as to why the data was not being released.
10. During the Commissioner's investigation Staffordshire Police revised its position and provide the complainant with: a reconstruction diagram, photographs of the scene and a Police officer's statement (the officer had consented to disclosure). They withdrew their reliance on s30(1)(a).⁶ The Commissioner upheld Staffordshire Police's decision.

Appeal

11. The Appellant appealed on 12/01/2019. His grounds can be summarised as:
- i) a challenge to the application of s40 FOIA in particular the expectations of data subjects and the legitimate interests assessed in considering fairness under the Data Protection Act.
 - ii) A challenge that s38 was engaged and the application of the public interest test.
 - iii) Disclosure with redaction of identifying personal data and the details of the suicide event and medical treatment afterwards should be considered.
12. The Commissioner opposes the appeal relying upon her Decision Notice and the Chief Constable of Staffordshire Police was joined as Second Respondent on 26.2.19 and also opposes the Appeal relying upon her submissions before the Commissioner.
13. All parties have consented to the case being determined on the papers. The appeal was considered at a paper hearing on 11th July 2019 and adjourned as the panel did not have sufficient information to determine the issues raised by the appeal. The Tribunal has had regard to all the documentary information before it: an open bundle of 215 pages, a closed bundle and the evidence and submissions in response to the Tribunal's adjournment directions.⁷ The Tribunal is in receipt of submissions from all parties on:
- the impact or relevance of the provisions of the Coroner's Rules 2013.
 - Expectation of witnesses in light of the fact of an inquest.
- It has been provided with, a copy of the documentary evidence disclosed by the Coroner. Additionally, 5 pages of the closed material and an email previously withheld under rule 14 were disclosed with redactions. The Tribunal is satisfied that it has been provided with a copy of the information within scope that is held and that it now has sufficient information to determine the case.
14. The Tribunal has a continuing duty to review rule 14 and is satisfied that further material from the redacted email should be disclosed namely the first redaction on p2 of the email. The Tribunal is satisfied from information disclosed by the Coroner that the Appellant is aware of this information. The Tribunal is satisfied

⁶ Investigations and proceedings conducted by public authorities

⁷ Dated 13th August 2019

that no harm will arise from its disclosure and it is in the interests of justice to do so as its redaction makes the rest of the email harder to read. The Tribunal reminds itself that disclosure pursuant to the appeal is different from disclosure under FOIA as there is power to restrict the use of information disclosed under rule 14 although on the facts of this case the Tribunal does not make such an order in relation to this sentence.

Scope:

15. The Appellant has made various arguments as to the application of the Coroner's Rules in his case:

- He questions what the Coroner meant by being "content" to disclose parts of the information,
- He questions what the status is of the Coroner's reliance on "normal practice".
- He argues that the wording of rule 13(b) (The Coroners (Inquests) Rules 2013 entitles him to the entirety of the file.
- He questions whether he should have been directed to rule 23(d) to be provided with a copy of written evidence.

These issues are outside of our jurisdiction as disclosure to an interested person is a separate issue to disclosure under FOIA, we have no power to review the lawfulness of the Coroner's application of the Coroner's Rules.

16. In his open adjournment comments of 11.09.19 the Appellant gives reasons as to why he wishes disclosure of Child Death Overview Panel Form A. This was specified in his initial request, however, in his email of 13/09/2017 the Appellant indicated (contrary to his original request):

"it is not the Form A and Form C themselves I wish to see, but any supporting information that the Police hold which would have fed into these forms⁸."

This clarification was received prior to the complaint to the Commissioner. Despite the Appellant stating in the same letter:

"...I would like to receive the fullest set of information possible that the Police hold on file in relation to this case. Essentially from the initial notification to the police, through to final case file production for the coroner."

we are satisfied that Staffordshire Police were entitled to rely upon the Appellant's explicit exclusion of those documents notwithstanding the generality of the rest of the information he sought. Consequently, we are satisfied that Form A and C are not within the scope of the request.

S40 FOIA personal data

17. S40 FOIA provides:

⁸ P102 open bundle

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data... and

(b) the first ... condition below is satisfied.

(3) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

(a) would contravene any of the data protection principles...

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles ...

Is the withheld information personal data?

18. Staffordshire Police have clarified that within the withheld information are statements from a wide range of individuals, some in their professional role i.e. NHS, school staff, third parties and some as passers-by to the incident. They state that it is clear from the Appellant's request that he does not know who has or has not made statements as some of the names he has quoted are not individuals that Staffordshire Police have been in touch with and therefore they rely upon s40(5) not to confirm nor deny that they hold that information. The withheld information was divided into the following categories by the Commissioner in her decision notice:

- Details of witnesses and witness statements
- Information about the driver
- Incident summary pack
- Traffic and case management documents
- Communications re inquest
- Traffic collision details
- Officer notes

19. Personal data is defined in s1(1) of the DPA 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;

20. From this we are satisfied that information about the Appellant's daughter is her data and does not fall within the definition of personal data as she is deceased, consequently it cannot fall within the s40 FOIA exemption. The Commissioner does not appear to have considered this separately.⁹ Information relating to her is still capable of falling within the personal data of a 3rd party where it defines their relationship with the deceased (e.g. that she is a data subject's relative, friend or pupil). Similarly, their knowledge about her is personal data about them (e.g. to use an example that does not apply in the closed material a postcard from her that has been received by them). We have had regard to the withheld information and we are satisfied that the majority of the information constitutes personal data recording as it does the personal details of those in contact with the Police relating to the incident and its investigation. Where we are satisfied that the information is solely the deceased's personal data this has been considered under s38 FOIA.

The first data protection principle

21. The first data protection principle states that personal data shall be processed fairly and lawfully and in particular shall not be processed unless a least one of the conditions in schedule 2 is met. We are satisfied that disclosure would constitute processing (as it is an action taken with respect of the data). In assessing fairness we adopt the approach taken by the Commissioner and take into account:
- i. The reasonable expectation of the data subject,
 - ii. The consequences of disclosure (would it cause unnecessary or unjustified damage or distress to the individual concerned?)
 - iii. The balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

Reasonable expectation

22. The Appellant argues that the data subjects' reasonable expectation can be ascertained by seeking their consent to disclosure. This was done in relation to the Officer in the case whose statement was disclosed. Whilst we accept that consent is relevant to reasonable expectation, in this case none of those whose data is being withheld have consented. FOIA does not require that the public authority actively seek out consent of every data subject. We have had regard to the enquiries that Staffordshire Police have made in relation to obtaining consent¹⁰ and are satisfied that these efforts are proportionate on the facts of this case. We have had regard to

⁹ Paragraph 33 Decision Notice

¹⁰ As summarised at p 59-60

the seniority of the professional witnesses, the views on disclosure received, the nature of the incident and the level of involvement of those named in the withheld information in forming this view.

23. It is not disputed that at the time when witnesses made statements an inquest was inevitable and we are satisfied that any reasonable person would have been aware of the possibility of legal scrutiny in the form of an inquest and possibly other proceedings such as a criminal or civil case (which had not yet been ruled out). We accept that an inquest is a public process wherein the press and public can attend. The Appellant is an “interested person” (for the purposes of the Coroners Rules 2013) as the Father of the deceased¹¹ and as such was provided with a CD recording of the inquest hearing and copies of some of the witness statements and other summaries pursuant to his rights under rule 13 of the Coroners Rules 2013 which provides:

13.(1) Subject to rule 15, where an interested person asks for disclosure of a document held by the coroner, the coroner must provide that document or a copy of that document, or make the document available for inspection by that person as soon as is reasonably practicable.

(2) Documents to which this rule applies include—

(a) any post-mortem examination report;

(b) any other report that has been provided to the coroner during the course of the investigation;

(c) where available, the recording of any inquest hearing held in public, but not in relation to any part of the hearing from which the public was excluded under rule 11(4) or (5);

(d) any other document which the coroner considers relevant to the inquest.

The exceptions in rule 15 include the situations where:

(c) the request is unreasonable; ...

(e) the coroner considers the document irrelevant to the investigation.

24. The Appellant argues that the witnesses had no expectation of confidentiality. His evidence was that he was afforded the opportunity to ask questions of witnesses at the inquest, he was not provided with copies of the witness statements prior to the inquest but the Police visited the Appellant prior to the inquest to run through some of the content that was likely to be used at the inquest with the objective of lessening the impact of the details in advance. This took place by way of an oral reading of selected documents and no documents were provided.

25. The Appellant relies upon the fact that:

- There was no onward restriction on the information he was provided with verbally by the Police.
- The documents from the Coroner were provided with no onward restriction as to use.

¹¹ CJA 2009 s 47(2)(a)

He argues that this means that they are disclosed to the world at large and should therefore be disclosed under FOIA.

- The witnesses had no control as to how much of their statement would be given out loud at the inquest (the information was available for the Coroner to use) and the Appellant could have chosen to ask questions exercising his right under the rules.
- Under rule 23 Coroner's Rules there is the possibility that the statement in its entirety might be read out and placed on the record.

The Appellant's case is that by volunteering the information they have consented to the onward use of their information without restriction.

- In relation to some witnesses the complete typed statement has been provided,
- In relation to others their names and a summary of their statement has been provided.
- This information has been provided without separate consent having been sought from the witnesses.

He argues that the ability of the Coroner to disclose this information and put it into the public domain is consistent with there being no expectation that the information would not become public.

26. The Commissioner and Police argue that none of the factors relied upon by the appellant translate into an expectation that the witness statements (or information provided to the Police) would be disclosed to the world at large under FOIA. Although the Appellant has certain rights these are specific to him as a bereaved father and are exercised by the Coroner (rule 13) and the investigating police force (by way of family liaison¹²). Disclosure by the Coroner is subject to an interested person asking for the information, the recipient's choice as to whether they would choose to disclose the information more widely and it is subject to a gatekeeping process both by the Police when they update the family and the Coroner who has discretion in determining what is relevant to the investigation. The Appellant appears to acknowledge this point stating:

"the Coroner would need to be selective as part of his judgment about what is required for the purposes of facilitating the Inquest".¹³

27. We are not assisted by rule 23 as specific criteria have to be met and we do not consider it likely that a witness would have this in mind at the time of speaking to the Police. We observe from the typed statements provided to the Appellant under rule 13 that they are headed "*Restricted (when complete)*" and that the signature is prefaced with:

"This statement is true to the best of my knowledge and belief and I make it, knowing that if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true".

28. We are satisfied that this colours the expectation of disclosure of the typed witness statements indicating that it is not expected to be generally available but that it may need to be in the context of legal process. The use of the word "*if* [it is tendered in evidence]" in our judgment allows for the expectation that it may not be used in

¹² presumably the legitimate interest of informing a bereaved parent outweighing the rights and freedoms of the data subjects. However, this is not under FOIA.

¹³ P3 019 119019 adjournment submissions

which case the expectation from the header would be that it would not become public. We are satisfied that the disclosure by the Police and Coroner to the bereaved family is consistent with its use as part of the legal process. We are not persuaded by the Appellant's argument that the breadth of the information potentially caught under rule 13 means that the same information should be disclosed under FOIA, as this is the exercise of a separate right. Disclosure under FOIA cannot take into consideration the relationship of the requestor to the deceased, as the same response would have to be given to a journalist, activist, or any other member of the public.

29. We are satisfied that there would be even less expectation of disclosure without restriction into the public domain of the raw information that went into the making of witness statements or which could have been put in witness statements if (as the appellant suspects witness statements were not taken from everyone that the Police were in contact with). The Appellant believes that the raw information would include: radio and telephone calls, handwritten notes and draft statements. This type of information if it is held, we are satisfied would be provided in the expectation that it would be used to assist the Police with their enquiries but not yet with the expectation that it would be used in open Court or placed in the public domain. We are satisfied that the general public is familiar with the concept of a witness statement and would expect to have the opportunity to check the accuracy and completeness of information attributed to them and to discuss whether they were prepared for it to be used in Court proceedings as evidenced by the declaration upon and process of making a witness statement.

The consequences of disclosure (would it cause unnecessary or unjustified damage or distress to the individual concerned?)

30. We have had regard to the distressing nature of the incident. All those whose personal data is contained within the withheld material can be expected to have been traumatised by the incident (whether as someone who knew her, who witnessed the incident or who had to deal with the aftermath). We accept the evidence that some witnesses received counselling, staff at the school were traumatised; with one not returning to work for 18 months following the event. The headmaster when spoken to 2 years after the incident stated that staff were still fragile.
31. The Appellant contends that consideration of whether disclosure would be upsetting was based on judgments made in 2015 when the information request was later. In our judgment whilst the passage of time can be expected to lessen the psychological impact; as memories become less immediate, nevertheless we are satisfied that being confronted with the detail of personal involvement in such a distressing event would be likely to reopen psychological wounds that had been repairing. Statements and calls to the Police use the own words of the witnesses, this can be expected to be raw, frank and explicit. We are satisfied that witnesses confronted with the repetition of their own words in the public domain without warning, out of context (in that it would not be pursuant to legal proceedings) would find this particularly shocking.

32. The Appellant has stated that he “*has no such intentions of releasing information to the world at large*”¹⁴ However, there is no power to restrict usage under FOIA. Additionally, the Commissioner observed that the Appellant had “*a contingent intention to share the information widely, depending on his personal assessment of it*”. The Appellant disagrees with this¹⁵ however, the Tribunal understands it to be a reference to the Appellant’s observation that::

“I do not intend to disclose any information once I have received it, unless there was anything untoward in the content.”¹⁶.

The Commissioner in her reply has stated that “*the Appellant having made clear that he is seeking to probe the result of the inquest in order to identify blame. This necessarily indicates an intent to test or challenge individual’s evidence and is likely to be highly distressing for them*”. The Commissioner relies upon examples of the Appellant having stated that:

- “he wants to understand the basis of the information used for the case file for the Coronial process”.
- “Every recorded incident could be assessed for assurance”.
- “Establishing if all relevant information was used to create a fair and balanced process”

The Appellant’s case is that he does not want to assign blame “*but to conclude with assurance that there is nothing of any concern evident in the information*”¹⁷”

33. Whilst we accept that the Appellant is seeking peace of mind in relation to a devastating family tragedy, we accept that the Commissioner’s interpretation of his comments when taken together is reasonable. In our judgment the sense that the Appellant was considering whether there was a basis to reopen a matter that they were entitled to consider was concluded which would necessitate them confronting their involvement after several years, would be likely to add to any distress associated with disclosure.

34. We have considered whether anonymisation would be appropriate. In relation to witness evidence, the Appellant has the summary as such there would be no purpose in redacting the details of information from any of those individuals. The Appellant argues that he should not be penalised because of his involvement within the case¹⁸. However, we are obliged to as s 1(1)(b) DPA requires the Tribunal to have regard to “*those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.*” The Tribunal must have regard to the fact that the Appellant and others would be able to go behind redactions relating to these individuals. The Appellant believes that some witnesses were spoken to, notes were made but no formal witness statement taken. Anonymisation would not assist in that situation either as the witnesses could self

¹⁴ P5 adjournment submissions 151019

¹⁵ P72

¹⁶ P34 emphasis added

¹⁷ P68

¹⁸ P71

identify or be identified by anyone with them at the time. The Tribunal is satisfied however, that redaction in relation to procedural documents has a qualitative difference in that it would protect the data subject from unwarranted contact and scrutiny unwarranted by their seniority whilst enabling the factual situation relating to process to be disclosed.

The balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

35. The Appellant argues that access to the raw data is necessary because:
- the summary document provided by the Police to the Coroner is subjective (in that the author has chosen what to include).
 - The Coroner's decision of what is important and should be included in the inquest or disclosed under rule 13 is also subjective.
 - The process of putting notes, and records of initial conversations (radio and telephone calls) into draft and then typed witness statements involves a process of abridgement and subjectivity as to what is material.
 - The Appellant believes that some witnesses were spoken to, notes were made but no formal witness statement taken.
36. The Appellant views this as critical data because family and friends need raw data to enable them to assess consistency between "raw data" and the "final product" that was provided to the Coroner. He relies upon the example of his wife's statement which contains less information than conveyed in conversation with the Police. However, he has not detailed anything material that was omitted that would disturb the Coroner's conclusion, neither has he suggested that she objected to the omissions when she signed her statement. He has stated that he wants to conclude with assurance that there is nothing of any concern evident in the information. We have had regard to the fact that this is a matter that has been through a Police investigation and has been scrutinised by the Coroner. Whilst we recognise the Appellant's legitimate interest of wishing to obtain closure and peace of mind; we are satisfied that the information that is accessible to him specifically as an interested person under the Coroner's Rules, addresses the concerns he has raised in this context.
37. We have had regard to the legitimate interest in the public being satisfied that investigations and inquests are reliable, accurate and complete as well as the general need for closure and peace of mind from those who are not interested persons under the Coroners Rules. In our judgment there is no specific concern relating to inquests in general or the conduct of this particular inquest and investigation that overrides the rights and freedoms of the data subjects. Similarly, the scrutiny of the investigation through the inquest process and the public nature of the information used at the Inquest in our judgment reduces the weight attached to this legitimate interest.
38. We accept that there is no presumption that openness and transparency should take priority over personal privacy. This Tribunal considers this apparent from the fact

that disclosure under s40 FOIA can only take place subject to the protections as set out in the DPA 1998.

39. For these reasons and those detailed in the open table below and with reference to the closed material in the closed annex, we are satisfied that it would not be fair to confirm or deny whether Staffordshire Police hold statements relating to the named individuals in the request nor to disclose the majority of the withheld information. We are satisfied that disclosure of certain administrative documents would not be unfair. In relation to these documents alone we have gone on to consider whether their disclosure meets a Schedule 2 condition.

Condition 6 Schedule 2

40. The first data protection principle as set out in Part I of Schedule 1 provides that personal data that has been processed fairly and lawfully shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met,

The relevant condition in Schedule 2 is condition 6 which provides:

(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

41. The Tribunal accepts that in assessing fairness the Tribunal must balance the reasonable expectations of the data subject and the potential consequences of disclosure on the data subject against the legitimate public interest in disclosing the information. In doing so we apply *Goldsmith International Business School v The Information Commissioner and Home Office [2014] UKUT 0563 (AAC)*.

42. In considering the disclosure of the administrative documents identified in the closed schedule we are satisfied that:

- the legitimate interest being pursued is transparency and an understanding of the process of investigating and preparing a case for the Coroner.
- Disclosure is necessary because it will inform and provide greater detail relating to the process.
- Disclosure of the names of the staff involved would be unwarranted due to their lack of seniority and the intrusion that personal contact details would enable. Similarly, personal data of those mentioned in the administrative documentation would be intrusive in its detail and context.
- However, in our judgment applying the test of reasonable necessity we have considered alternative measures, and so “a measure would not be necessary if the legitimate aim could be achieved by something less”; accordingly, the measure must be the “least restrictive” means of achieving the legitimate aim in question. In this regard we are satisfied that any prejudice to the rights and freedoms or legitimate interests of the data subjects can be mitigated so that it is not unwarranted, by redaction.

43. The Tribunal has considered self identification notwithstanding redaction and any distress caused by association with the event. In relation to personnel their involvement is administrative and thus less distressing than personal involvement. In relation to those who have a personal involvement with the deceased we are satisfied that distress would be limited by the context of the documentation which is reporting the factual process of preparing for the inquest which is a matter of record rather than the detail of the incident itself. For these reasons we are satisfied that condition 6 of schedule 2 is met once the identifying information has been redacted.

Health and safety.

44. In relation to the documents to which the Tribunal's decision in relation to s40 FOIA is that they can be disclosed in redacted form, we have considered whether they should be withheld under s38 FOIA. We have also had regard to documents which contain the deceased's personal data alone and therefore do not fall within s40 FOIA.

45. S38 FOIA provides that:

(1) Information is exempt information if its disclosure under this Act would, or would be likely to—

(a) endanger the physical or mental health of any individual...

This exemption is subject to the balance of public interest pursuant to s2(2)(b) FOIA

46. We accept the Commissioner's approach¹⁹, namely that we must be satisfied that:

- i. The harm envisaged must relate to the applicable interest described in the exemption.
- ii. There is a causal relationship between the potential disclosure of the withheld information and the endangerment that the exemption is designed to protect against.
- iii. The disclosure "would or would be likely" to result in the endangerment alleged, this is lower than the balance of probabilities but there must be a real and significant likelihood of the endangerment occurring to satisfy the requirement.

47. S38 includes endangerment to mental health and is widely drawn. We are satisfied that emotional and psychological wellbeing including the causation of significant distress is included within the ordinary meaning of the term. Staffordshire Police rely upon:

- The traumatic nature of any suicide for family, friends, colleagues and witnesses to the incident and the aftermath.
- The evidence that staff at the school were traumatised, with one not returning to work for 18 months following the event, and the headmaster's assessment 2 years after the event that the staff were still fragile.

¹⁹ As set out in paragraphs 49-51 Decision Notice and para 24 of their Response

- The evidence that it was documented that some individuals who were witnesses received counselling.

Their case is that disclosure of the withheld information would be likely to cause those affected to revisit the incident, to prevent them from being able to draw a line under the incident and to cause psychological harm and distress.

48. The Tribunal has had regard to the nature of the withheld information. In relation to the administrative documents, whilst they reference the fact of the suicide and the subsequent investigation and inquest they are not detailed or specific in terms of the event or what led up to it. They do not record the involvement of specific individuals or witnesses. As such we are not satisfied that the causal link between the disclosure of these documents in redacted form and the psychological distress alleged would be likely to occur. For this reason, the Tribunal is not satisfied that s38 is engaged with regard to these documents.
49. The Tribunal has considered documents which contain the personal data of the deceased. In assessing these documents, we have looked at the context of the case and the prior knowledge that friends, family and teachers may have had of this information. Although the Appellant points to the distressing nature of information that he was provided with (including diagrams and photos of the scene) we distinguish that from the withheld information in question because the information already disclosed deals with the objective facts which we understand were dealt with in detail at the Inquest.
50. We are satisfied that it would be likely that the psychological impact of seeing the withheld information in question (that would have been personal to the deceased) exposed in the public domain would be likely to cause those who knew her to revisit and reflect upon the incident. In light of the distressing nature of the suicide of a young schoolgirl and the lasting impact that we are satisfied that it had on those involved, we are satisfied that this would be likely to cause distress and psychological harm. We are satisfied therefore that the harm envisaged relates to the applicable interest (namely endangerment of mental health) and that the causal link is evident. In light of the severity of the impact that it had on those who were involved and who knew the deceased (that was still apparent 2 years after the event), that we can be satisfied that it would be likely to result in the endangerment alleged when the request was being considered by Staffordshire Police.
51. We have considered the public interest balance. The Appellant argues that it is in the public interest that the distress to family and friends arising out of unanswered questions and not having access to the withheld information outweighs the likely distress caused by disclosure. We observe that most of his arguments in this regard relate to the raw data associated with witness statements when what is being considered here is personal data relating to the deceased. Whilst we accept that there is a public interest in transparency and knowing the depth and thoroughness of a Police investigation and scrutiny of the circumstances surrounding such a tragic event, in our judgment this is largely met by the transparency and public scrutiny arising from the Coronial process and the Appellant's independent rights as an interested person under the Coroners Rules 2013. In our judgment it is outweighed by the public interest in avoiding psychological harm to those affected

by the incident. For this reason this part of the information should be withheld pursuant to s38 FOIA.

Conclusion

52. For the reasons set out above the appeal is allowed in part and the Tribunal is satisfied that the information should be withheld or disclosed as set out in summary in the open table below and in more detail in the closed annex.

Type of information following the Commissioner's breakdown ²⁰	Reasoning	Decision
Witness statements	Although the Appellant has received some statements from the Coroner this was pursuant to rule 13 in light of his rights as an interested person NOT under FOIA. Whilst there appears to be no onward restriction as to their use by him, the Tribunal has to consider whether it would disclose them to another person should they be requested under FOIA. We rely upon the expectation that the Coroner and Police perform a gatekeeper role, witnesses should be entitled to expect to move on from a distressing event and the marking of "restricted when complete". There is insufficient legitimate interest to outweigh the rights of the data subject in light of the scrutiny by the Coroner and the public nature of the Coronial process.	Withheld s40(2)
Rough drafts, notes and information received by radio or telephone	The Appellant has asked for the raw data behind the witness statements and data which never made it into witness statements. The Tribunal does not confirm the extent to which this is held but makes the following general observations. The Tribunal repeats the points relating to witness statements but considers there would be even less expectation of this type of material being disclosed because the witness has not had the opportunity to fact check and agree the information. Making	Withhold s40(2)

²⁰ Traffic collision details were a category identified by the Commissioner but plans and photographs have now been disclosed by Staffordshire Police so the tribunal does not consider them here.

	a statement is an agreed process with an element of consent for specified onward use contained within. Disclosure under FOIA of information provided outside of that process would therefore be a greater invasion of privacy.	
Information about the driver	There were no charges or criminal proceedings. This will have been a traumatic incident for the driver, disclosure under FOIA would be invasive and an unwarranted breach of his privacy.	Withheld s40(2)
Incident summary pack	Although the Appellant has been provided with the witness summaries this, this is pursuant to his rights under rule 13 Coroners rules and is not disclosure to the world at large. The Tribunal must consider what it would do if the request were made by a member of the public who was not an interested person. We repeat the points relating to witness statements and rely upon the scrutiny and open Coronial process in satisfying the legitimate interests.	Withheld s40(2)
Traffic and case management documents	Disclose with personal data redacted. These are administration documents, reflecting facts that are of public record (e.g. the fact of there being an Investigation and an Inquest). As such they are less distressing (in a way that first hand accounts or a reminder of personal involvement would be) and we are not satisfied that s38 is engaged. The redaction of personal data to enable disclosure would be proportionate due to lack of seniority and protection from intrusion.	Disclose as per closed schedule
Communications re inquest	Disclose with personal data redacted. These are administration documents, they reflect the fact of there being an Investigation and an Inquest as such they are not distressing (in a way that first hand accounts or a reminder of personal involvement would be) and we are not satisfied that s38 is engaged. The redaction of personal data to enable disclosure would be proportionate due to lack of seniority and protection from	Disclose as per closed schedule

	intrusion.	
Officer Notes	<p>The Appellant has asked for the raw data behind the witness statements and data which never made it into witness statements. He includes rough drafts of witness statements, Officer notes and information received by radio or telephone within this heading. The Tribunal does not confirm the extent to which this is held but makes the following general observations</p> <p>The Tribunal repeats the points relating to witness statements but considers there would be even less expectation of this type of material being disclosed because the witness has not had the opportunity to fact check and agree the information. The process of making a statement is an agreed process with an element of consent for specified onward use contained within. Disclosure under FOIA of information provided outside of that process would therefore be a greater invasion of privacy.</p>	Withhold s40(2)
Information containing solely the personal data of the deceased ²¹	As defined in paragraph 20 above. We rely on paragraphs 50-51 above.	Withhold s38

Steps

53. Staffordshire Police are directed within 35 days to disclose the information identified by the Tribunal for disclosure in the closed schedule.
54. This decision is unanimous.

Signed Fiona Henderson
(Judge of the First-tier Tribunal)

Date of Decision: 20th December 2019
Date Promulgated: 03rd January 2020

²¹ This was not identified by the Commissioner as a separate category