



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 6 April 2006

Public Authority: Warwickshire Police Authority

**Address: PO Box 9
Shire Hall
Warwick
CV34 4RR**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 1(1). This failure arose directly out of the failure of the public authority to correctly apply exemptions in Part 2 of the Act to the information requested by the complainant.

In the light of the fact that the Commissioner is now satisfied that no information held by the public authority has not been disclosed previously to the complainant, no steps to ensure compliance are specified in the Notice.

1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or**
- the application is frivolous or vexatious, or**
- the application has been subject to undue delay, or**
- the application has been withdrawn or abandoned,**

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The Complainant has reported that on 4 January 2005 the following information was requested from the Public Authority in accordance with section 1 of the Act.

“all information relating to my complaint against [name of officer], and your subsequent investigation into it.”

- 2.2 On 8 February 2005, the complainant was supplied with copies of some 30 documents. It was stated that almost all of these documents were already in possession of the complainant. It was further stated that one document, an “Internal Misconduct Report” had been withheld in reliance on the exemptions found at section 30 (“Investigations”), section 32 (“Court Records”) and section 42 (“Legal Professional Privilege”).
- 2.3 It was stated that this letter was to be regarded as a refusal notice issued pursuant to section 17 of the Act.
- 2.4 The complaint made it clear by letter to the Commissioner that he remained dissatisfied with the partial refusal of his request.

3. Relevant Statutory Obligations under the Act

- 3.1 **Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

- 3.2 **Section 2** provides that section 1(1) is disapplied where any provision of Part 2 of the Act applies.

4. Review of the case

- 4.1 The complaint was pursued by telephone call and correspondence. On 20 May 2005, Phil Boyd, Assistant Commissioner, requested a copy of the information which had been withheld from the complainant. Mr. Boyd also queried the grounds for reliance upon some of the exemptions cited in the refusal notice.

- 4.2 On 9 June 2005, the public authority suggested that another exemption might be relevant, namely s.31 (“Law enforcement”). The authority also suggested “by way of a compromise, to disclose to the complainant a copy of the Report which is edited to remove any sensitive information, including that information which would fall within the remit of the Data Protection Act.” The authority offered to provide an unedited version of the Report to the Commissioner.
- 4.3 After some delay, a copy of the redacted report, dated 10 April 2003, was supplied to the complainant who informed the Commissioner on 30 September 2005 that an unedited version of the same report had in fact been previously supplied to him. The complainant provided further clarification of the information which he had been seeking, namely a report considered by a disciplinary sub-committee of the Police Authority on 8 April 2004. A copy of the unredacted report was supplied to the Commissioner on 20 September 2005.
- 4.4 On 1 March 2006, the Commissioner served an Information Notice on the Police Authority requiring it to supply a copy of the Report considered by the disciplinary committee on April 8 2004.
- 4.5 On 7 March 2006, the Police Authority confirmed that the report presented at the meeting of 8 April 2004 was in fact that dated 10 April 2003.

5. The Commissioner’s Decision

- 5.1 The Information Notice dated 1 March 2006 placed the public authority under a legal duty to provide the Commissioner with the information which the complainant has continued to state exists and has been withheld from him. The Commissioner must accept that, in the light of the assurance given on 7 March 2006, the requested information had previously been supplied to the complainant.
- 5.2 In the light of this, the Commissioner concludes that the public authority was incorrect to argue that the information was exempt by virtue of any of the stated provisions in Part 2 of the Act. Although the authority may have been able to rely upon the exemption at section 21 (“Information accessible to the applicant by other means”), the Commissioner has not been asked to consider whether this would have been justifiable.

6. Action Required

- 6.1 In the light of the above matters, the Commissioner requires no steps to be taken by the public authority.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 6th day of April 2006

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**