



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 8 June 2006

Public Authority: Home Office

**Address: 2 Marsham Street
London
SW1P 4DF**

Summary Decision

The Information Commissioner's ("the Commissioner") decision in this matter is that he is satisfied that the Home Office was entitled by virtue of section 40 of the Freedom of Information Act to withhold the information requested by the complainant. Therefore the Commissioner's decision is that the Home Office has dealt with the complainant's request in accordance with Part 1 of the Freedom of Information Act 2000 (the "Act").

In view of the matters referred to above the Commissioner does not require any steps to be taken by the Home Office.

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

1.1 The Commissioner has received an application for a decision whether 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 Act.

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

- the 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- the application has been withdrawn or abandoned,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.



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2. The Complaint

2.1 On 18 February 2005 the complainant requested the following information from the National Probation Directorate in accordance with s.1 of the Act:

“disclosure of the names of the Probation Officers involved in the care of Mr P and also details of any actions taken against them”

The National Probation Directorate is part of the Home Office.

2.2 The Home Office replied on 1 April 2005 stating that no disciplinary action was taken against the Probation Officers (the “officers”). The Commissioner is satisfied that no information is therefore held in respect of this part of the complainant’s request. However it stated that the names of the officers would not be disclosed because it considered this information was exempt from disclosure under s.36 (prejudice to the effective conduct of public affairs) and s.40 (personal information) of the Act.

2.3 The Home Office carried out an internal review at the complainant’s request on the 13 July 2005 but maintained its decision to withhold the information. It again invoked sections 36 and 40 of the Act as its basis for exempting the requested information from disclosure.

3. Relevant Statutory Obligations under the Act

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.”

4. Review of the case

4.1 The complainant wrote to the Commissioner on the 2 April 2005 before the outcome of the internal review by the Home Office.

4.2 Following the Home Office’s response on the 13 July 2005, the Commissioner began his investigation of whether the Home Office had dealt with the complainant’s request for information in accordance with the requirements of the



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Act. In particular, the Commissioner considered the Home Office's use of the exemptions at s.36 and 40 of the Act.

- 4.3 The information requested by the complainant followed an inquiry into the events surrounding the death of the complainant's husband, PC W in January 2003. PC W was killed whilst trying to apprehend Mr P, who had been released from prison on home detention curfew in September 2002, whilst serving a two year sentence of imprisonment for robbery. Mr P had not complied with a drug testing requirement, his licence had therefore been revoked and he was listed as wanted on the Police National Computer. The Inquiry was conducted by HM Chief Inspector of Probation Professor Rod Morgan and his findings were published on 1 February 2003.
- 4.4 The Report of the Inquiry revealed serious defects in the Probation Service and a number of recommendations were made. The Report did not however name the officers involved in Mr P's care. The Commissioner has considered the contents of this Report during his investigation of this case.
- 4.5 The Commissioner wrote to the Home Office on 4 Oct 2005. He asked the Home Office to explain why it considered the information was exempt under s.40 of the Act. He also asked the Home Office to provide further information about its decision to apply s.36 and how it took into account the public interest test.
- 4.6 The Home Office replied on the 18 November 2005 and explained why it believed the information should be withheld. The Commissioner sought further information from the Home Office about the role of probation officers in order to understand how they work and in what circumstances their identities would be disclosed. This was to assist him in understanding whether the disclosure of their names in this case would breach the principles of the Data Protection Act 1998.
- 4.7 The Home Office replied on the 27 January 2005. One of the points it made concerned the supervision by probation officers in the community. The Commissioner noted that offenders (and possibly family members, employers etc) may know the names of their supervising probation officers, but it is not publicly available information. It also explained there is an independently published directory of probation areas, with names of most full time staff. It does not give any information more specific than location, job title and possibly specialism. However, most staff are very careful about giving out personal information because of the risks associated in working with offenders and the possibility of violence / threats being made. The Home Office has advised that most are ex-directory.

5. The Commissioner's Decision

Section 40 (personal data)



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The Home Office invoked s. 40(2) to withhold the names of the officers. This is an absolute exemption and does not require consideration of the public interest test.

Section 40(2) of the Act states that:

“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 second condition below is satisfied.”*

Section 40 (3) states:

The first condition is:

(a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise under this Act would contravene-

- (i) any of the data protection principles, or*
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress).....”*

The Commissioner is satisfied that that information which identifies the officers involved in the care of Mr P does constitute personal data of which those officers are the data subjects. Personal data is defined 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....”*

The Home Office argued that disclosure would breach the first data protection principle. The first principle of the Data Protection Act 1998 (DPA) requires that:

“Personal data shall be processed fairly and lawfully, and, in particular, shall not be processed unless-

- (a) at least one of the conditions in Schedule 2 is met*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 2 is also met”*

The Home Office took the view that releasing the names of the officers would be unfair for the following reasons:



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1. The officers concerned were given an undertaking at the time of the Inquiry that their names would not be released. If it was to go back on that undertaking at this stage it would be against the expectations of the officers.
2. The Inquiry looked in detail at the circumstances of the case and concluded that it was not necessary or appropriate to disclose the names of the officers. There is therefore no basis for considering that the officers' expectations were unreasonable.
3. Disclosure would cause renewed distress to the officers concerned. The Home Office explained that the case attracted extensive media coverage following the publication of the Inquiry Report with almost 40 articles/features which were negative or critical of the Nottinghamshire Probation Area ("NPA"). It argued that disclosure would undoubtedly renew this media attention and intrude into the officers' private lives about a matter which they believed they had dealt with a number of years ago. The Home Office argued that releasing the officers' names into the public domain at this time would lead to the public apportioning blame to those officers and cause them distress and/or damage.
4. The Home Office pointed out that the officers concerned are still employed by the NPA and are still responsible for the care of those on probation in all risk categories. A lack of confidence in their abilities either from the public or from those for whom they are responsible could seriously impact on their working lives to the extent that there may be public pressure for them to relinquish certain roles or stop dealing with certain types of prisoner.
5. In reaching this conclusion the Home Office highlighted specific cases where officers have become the subject of public anger. In doing so it believes it has demonstrated the impact media coverage following a specific agenda can have. It is very concerned that the circumstances of this case may well attract the same negative attention if the names are disclosed.
6. The Home Office has taken into account the Commissioner's views on the circumstances in which information identifying public authorities' employees may be disclosed. It has noted that the more senior a person is, the less likely it will be unfair to disclose information about him or her acting in an official capacity. However the officers were not employed in a senior role and they could therefore not be expected to take responsibility for organisational or systematic failings.
7. The Home Office emphasised that at no point has individual blame been publicly apportioned to the officers. It has pointed out that pursuant to the report the Chief Officer of the NPA assumed full personal responsibility.
8. Although the report found there were some failings on the part of the officers, it also identified a number of organisational factors as reasons for this. The Report stated that the first officer was working "under enormous pressures for which the management of NPA must take responsibility."

The Commissioner has taken these views into account and is satisfied that in this case the disclosure of the officers' names would be unfair and would contravene



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the Data Protection Act 1998. This position is based largely upon the nature of the work carried out by probation officers and the particular risks associated with it. The Commissioner accepts, in other words that the officers do have a legitimate and reasonable expectation that their identities will not be disclosed.

In considering the competing positions of the complainant and the public authority, the Commissioner is mindful that section 40(3) provides that information is exempt if its disclosure to "a member of the public" would contravene any of the data protection principles and not whether disclosure to the particular applicant would result in a contravention. The Commissioner is satisfied that whatever the merits of the case advanced by the applicant and however difficult her circumstances, this "applicant-blind" approach is the correct one to take.

The Commissioner acknowledges this case aroused strong emotions both locally and at a national level. He appreciates the complainant's desire to understand the circumstances leading up to the death of PC W, and to have as complete a picture as possible. He is also aware of the complainant's belief that the officers involved should be held publicly accountable for any part they may have played in her husband's death. However, it is not the Commissioner's role to pass judgment on any failings on the part of the NPA or the officers concerned. Instead he has to consider whether the Home Office has correctly dealt with the complainant's request in accordance with Part 1 of the Freedom of Information Act 2000 (the "Act").

The Commissioner has decided that the Home Office was justified in withholding the information requested by the complainant on the basis of the exemption at s.40 of the Act. The Trust has therefore complied with its obligations under s.1(1) of the Act.

Section 36 (Prejudice to Effective Conduct of Public Affairs)

The Home Office also invoked Section 36(2)(c) as its grounds for withholding the information. This states that:

"Information to which this exemption applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act would –

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

The Home Secretary, in his capacity as the qualified person, expressed his opinion that the information withheld from the Complainant was exempt under section 36 of the Act. He argued that disclosure of the names of the officers could have a



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prejudicial impact on the effective conduct of public affairs as disclosure into the public domain would be likely to significantly disrupt the day to day workings of the NPA. He concluded that it would not be in the public interest to release this information.

The Commissioner has considered the application of s.36 and is satisfied that this exemption is engaged. Section 36 is a qualified exemption and subject, therefore to the public interest test. However in view of the fact that the Commissioner has decided that the Home Office has correctly applied s.40 which is an absolute exemption he has not reviewed the application of the public interest test in respect of s.36.

6. Action Required

In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial 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: [HYPERLINK "mailto:informationtribunal@dca.gsi.gov.uk"](mailto:HYPERLINK \)
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 8th day of June 2006



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Signed

Phil Boyd
Assistant Commissioner

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