



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 20 July 2006

Public Authority: The Chief Officer of Police

Address: North Yorkshire Constabulary
Police Headquarters
Newby Wiske Hall
Northallerton
North Yorkshire
DL7 9HA

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. The public authority withheld information under sections 21 and 40. The Commissioner finds that section 21 was applied correctly, but that section 40 was applied incorrectly. The public authority is required to provide the information withheld under section 40 to the complainant within 35 days of the date of this notice.

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

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').

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- the application has been withdrawn or abandoned,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.

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

The complainant has advised that on 4 January 2005 the following information was requested from the public authority in accordance with section 1 of the Act:

“1. a copy of all policies, practices and procedures in place in North Yorkshire Police prior to 1 April 2003 relating to the administration, including referral to an SMP, and determination of an application for a policeman’s injury award under Regulation B4 of the Police Pensions Regulations 1987, together with the dates and minutes of the meeting at which they were approved, and any and all associated advice and guidance including the criteria upon which the statutory medical questions were to be decided;

2. a copy of all policies, practices and procedures in place in North Yorkshire Police on and after 1 April 2003 relating to the administration, including referral to an SMP, and determination of an application for a policeman’s injury award under Regulation B4 of the Police Pensions Regulations 1987 (as amended), together with the dates and minutes of the meeting at which they were approved, and any and all associated advice and guidance including the criteria upon which the statutory medical questions are to [be] decided.”

The public authority responded to the information request on 28 January 2005. This response stated what information had been provided. It also stated that some information “may” have been withheld from this response as it was exempt. The public authority did not state what information had been withheld or under what exemption and did not state why these exemptions were believed to apply. Although this response raised the issue of whether this was an adequate refusal notice for the purposes of section 17, this issue is not covered in this notice as this possible breach was later remedied when the public authority carried out an internal review.

The complainant sent several letters to the public authority to complain about the response to the information request and in a letter dated 10 May 2005 requested that the public authority carry out an internal review of its handling of his information request. The public authority responded on 20 May 2005 to acknowledge the request for internal review. Further correspondence was exchanged between the complainant and the public authority in which the complainant clarified the grounds for his request for an internal review. The public authority responded on 27 July 2005 with the results of the internal review. This reply confirmed that information had been withheld under sections 21 and 40. This reply also confirmed the web address at which the information withheld under section 21 could be found.

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.”

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 40 provides that –

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) 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.

(3) 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 than under this Act would contravene –

- (i) any of the data protection principles”

4. Review of the case

The Commissioner contacted the public authority initially by letter dated 20 January 2006. This correspondence raised the issue of the complaint and requested that the public authority reply giving their stance in relation to the complaint.

The public authority responded by letter dated 6 March 2006. This response confirmed that information had been withheld under sections 21 and 40 and provided some information about the reasons for this. The public authority also stated that the complainant had raised issues about the procedures of the public authority for carrying out internal reviews. The complainant also raised this issue with the Commissioner. In response to this, the complainant was advised that internal reviews are a requirement of a Code of Practice rather than the Act itself and therefore would not be included in any Decision Notice issued under section 50.

Following the receipt of the response from the public authority, the complainant was contacted by letter dated 7 March 2006. The complainant was also asked to clarify whether he did wish the application of exemptions by the public authority in this instance to be considered by the Commissioner. The complainant confirmed that he did wish the Commissioner to consider the application of exemptions by the public authority and stated that he believed that information had been withheld from the response to his information request that was not cited as being exempt.

The Commissioner contacted the public authority by letter dated 31 March 2006 and asked that they supply further information about the application of exemptions in this case. In response to this, the public authority stated that information had been withheld under section 21 as it was available on the Home Office website. Meeting minutes containing the names of third parties had been withheld under section 40 as the public authority believed that disclosing these names would contravene the data protection principles.

5. The Commissioner's Decision

Section 1-

The complainant alleges that information has been withheld which the public authority has not cited as being exempt. However, there is no information which is available to the Commissioner that suggests that this is the case and this aspect of the complaint is not upheld.

Section 21-

The public authority provided to this office details of the web addresses at which the information withheld under this provision can be found. The Commissioner has verified that the information in question is available at these web addresses. The decision of the Commissioner is that, insofar as information was available via the web, it was therefore reasonably accessible to the applicant by other means. However, whether in its refusal notice or in fulfilment of its duty to provide advice and assistance, the public authority should have explained to the applicant how this information could have been accessed.

Section 40-

The Commissioner has seen an unredacted version of the meeting minutes and is satisfied that the information withheld does constitute personal data.

Although the public authority has not referred to the first principle explicitly, the Commissioner has worked on the assumption that the public authority believes that the first principle would be contravened through the disclosure of personal data. The first data protection principle requires that personal data be processed fairly and lawfully.

Each case must be considered on its merits. The Commissioner accepts that

there will be cases in which there would be clear unfairness to individuals in the disclosure of their names alone. For instance, it may be unfair (and therefore a breach of the first data protection principle) to disclose the names of staff working in the prison service or in controversial scientific research.

However, in this particular case, the Commissioner does not agree that there would have been any unfairness to police staff if their names had not been removed from the meeting minutes that were supplied to the complainant in response to his information request. Although the Commissioner does accept that there may be a valid argument for withholding the details of police officers, the public authority has not stated that the personal data in question relates to police officers. Neither has the public authority argued that these personal data should be withheld due to sensitivity issues of the identities of police employees being disclosed.

The Commissioner concludes that the public authority applied the Act inappropriately by redacting the names of its employees. Whilst the names of these individuals do constitute personal data, disclosure would not breach any of the data protection principles and therefore the public authority cannot rely on the exemption at section 40(2) of the Act.

6. Action Required

The Commissioner requires that the meeting minutes from which personal data were redacted shall be provided to the complainant with the personal data included. This action shall be taken within 35 days of the date of this Decision Notice.

7. Right of Appeal

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

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

Reference: FS50086060

Dated the 20th day of July 2006

Signed

Phil Boyd
Assistant Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF