

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 17 March 2008

**Public Authority:** The Chief Officer of Northumbria Police  
**Address:** Police Headquarters  
Ponteland  
Newcastle upon Tyne  
NE20 0BL

### Summary

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The complainant sought reports made by officers of Northumbria Police concerning allegations he made against a District Judge. The complainant also requested copies of forensic reports and correspondence held by the police in relation to his complaint. The Commissioner has examined the requested information and had determined that it is the complainant's personal data. Consequently the Commissioner's decision is that the requested information is exempt from disclosure under section 40(1) of the Act and Northumbria Police was therefore not in fact obliged to confirm or deny whether it held the requested information by virtue of section 40(5) of the Act. The Commissioner considers that the police should have treated the request as a subject access request under section 7 of the Data Protection Act 1998. He has completed a separate assessment under section 42 of that Act. The outcome of the assessment was communicated to the complainant in a separate letter dated 14 January 2008.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 23 November 2006 the complainant wrote to Northumbria Police to make a request for information citing the Freedom of Information Act 2000. The complainant asked:

"... for the supply of reports by [a named officer] and [a second named officer regarding a complaint made by me against District Judge[name redacted] of

Newcastle Combined Court. I would also be obliged for copies of all forensic reports and all correspondence between Northumbria Police and Newcastle Combined Court which relates to my complaint.”

3. Northumbria Police responded to the complainant's request on 24 November 2006. The police told him that the information he was seeking was his personal data and was therefore exempt under section 40(1) of the Act. The complainant was advised that the requested information may be provided to him, subject to certain exemptions, under the provisions of section 7 of the Data Protection Act 1998 (DPA). The complainant was also told how to make a subject access request. However the Commissioner notes that the complainant has also explained that he was later informed by the Professional Standards Department within the public authority that the request should be processed under the Act rather than the DPA. It therefore appears that he received conflicting information from different departments within the public authority about whether the request was subject to the Act or the DPA.
4. The complainant did not accept that his request was for his personal data. He wrote to the police on 4 December 2006 insisting that his request was made under the Freedom of Information Act 2000.
5. Northumbria Police acknowledged the complainant's request on 3 January 2007. On 30 January 2007 the police issued a Refusal Notice which cited section 30(1) and (2) – Investigations and Proceedings Conducted by Public Authorities and 32(1)(c) – Court Records.
6. The complainant wrote to the police on 31 January 2007. He challenged the application of the exemptions the police cited and refuted the arguments advanced by the police in support of its public interest arguments. On 2 February 2007 the complainant telephoned the police to confirm that he required an internal review of its decision to withhold the requested information.
8. The police concluded its internal review and informed the complainant of its decision on 2 March 2007. The police determined that its original decision to withhold the requested information was correct.

## The Investigation

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### Scope of the case

9. On 7 April 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. For the sake of clarity, the Commissioner has investigated and made a decision about the request dated 4 December 2006, though he has referred to the earlier request of 23 November 2006. The Commissioner has deemed the complaint about the 4 December 2006 request as eligible because the complainant has supplied the requisite documentary evidence, such as a copy of his request and internal review.

### Chronology

10. On 1 June 2007 the complainant telephoned the Commissioner to request that his case be prioritised. The complainant was informed that the Commissioner had requested copies of the material he was seeking in order to determine whether his case should appropriately be dealt with under the FOI Act or the DPA. During this conversation the complainant explained the background to his request.
11. The case officer reviewed the material provided by Northumbria Police and noted that there appeared to be some information within the scope of the request which was not included. A request for copies of the additional information identified was sent to Northumbria Police on 2 October 2007. An email chasing a response to the request was sent by the case officer on 9 October 2007. The information was supplied to the case officer on 23 November 2007. The case officer then consulted colleagues responsible for DPA issues about the complaint to seek input about whether or not the information was the complainant's personal data.
12. On 10 January 2008, the case officer wrote to the complainant to inform him that the Commissioner's view was that all of the information relevant to his request had been reviewed and the conclusion reached that it was all his personal data. The complainant was advised that he was not entitled to the information under the FOI Act but that he may be entitled to it under the DPA.

### Analysis

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13. Section 40(1) states 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”.

Subsection (5) states that:

“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)".
14. The Commissioner has examined the information sought by the complainant and is satisfied that it is the complainant's personal data. In reaching this decision the Commissioner has taken into account his guidance about what is personal data. This can be viewed on his website at the following link [http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf).
  15. The requested information relates to the investigation into an allegation that the complainant made against a District Judge. He alleged that the Judge had tampered with court tapes of proceedings to which the complainant was a party. The Commissioner is satisfied that the requested information is the complainant's personal data because it records information about the way in which his allegations and complaints against the Judge were investigated. Further, it reflects details used to inform the final decision about the complainant's allegations. The outcome of that investigation arguably affects the complainant as well as the Judge. Although the Commissioner is satisfied that all of the information is the complainant's personal data he recognises that it is also the Judge's personal data. In addition, the material includes personal data about other third parties. Nevertheless because in the Commissioner's view all of the information is the complainant's personal data section 40(1) applies.
  16. The Commissioner has determined that, in view of the above, Northumbria Police was in fact not obliged to confirm whether or not it held the information sought by the complainant, by virtue of section 40(5). However, the request should have been treated under section 7 of the Data Protection Act 1998. This is referred to in the 'Other Matters' section below.

## The Decision

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17. The Commissioner's decision is that the information sought engages section 40(1) of the Act and therefore attracts this exemption. The Commissioner has further concluded that the Northumbria Police was not obliged to comply with the requirements of section 1(1)(a) of the Act in relation to this information by virtue of section 40(5).

The Commissioner notes that Northumbria Police's response to the 23 November 2006 request on 24 November 2006 correctly cited section 40(1). However, the complainant's letter dated 4 December 2006 was treated as a new request and the public authority cited alternative exemptions, namely sections 30(1) and 32(1)(c). The responsibility for applying exemptions and determining whether a request should be considered under the Act or the DPA rests with the public authority and not the applicant. In this case the Commissioner recognises that there are other exemptions besides section 40(1) which may have been applicable. However in this case the Commissioner's decision is that Northumbria Police was not in fact obliged to comply with section 1(1)(a) by virtue of section

40(5). This is on the basis that the information requested was the complainant's personal data and therefore the request should have been considered under the DPA.

18. The Commissioner has not ordered any remedial steps in relation to this complaint.

### **Other matters**

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19. The Commissioner wishes to highlight the following matters of concern:
20. Section 7 of the Data Protection Act 1998 gives an individual the right to request copies of personal data held about them – this is referred to as a right of Subject Access. The Commissioner has made an assessment under section 42 of the DPA of Northumbria Police's compliance with that Act. He has communicated the outcome of his assessment to the complainant separately by way of a letter dated 14 January 2008. This assessment does not form part of this Decision Notice. An assessment under section 42 of the DPA is a separate legal process from consideration under section 50 of the FOI Act.
21. The Commissioner notes that this request should have been dealt with as a subject access request under section 7 of the DPA. He would encourage public authorities to consider requests under the correct regime at the first instance. In this case he appreciates that the public authority responded to an earlier request dated 23 November 2006, citing section 40(1). The complainant was advised that the request should be processed as a subject access request, subject to payment of the £10 fee and the provision of relevant identification documents. In the Commissioner's view it was appropriate for the police to process that request under the DPA. Further, it would also have been appropriate for it to have considered the 4 December 2006 request under the DPA.

## Right of Appeal

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22. Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

**Dated the 17<sup>th</sup> day of March 2008**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

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

## Legal Annex

### Freedom of Information Act 2000

**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 17(1)** provides that -

“A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 40(1)** provides that –

“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.”

**Section 40(5)** provides that –

“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) he 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 or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

**Section 30(1)(a)** provides that –

“(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

- (i) whether a person should be charged with an offence, or
- (ii) whether a person charged with an offence is guilty of it”.

**Section 30(2)** provides that –

“(2) Information held by a public authority is exempt information if –

(a) it was obtained or recorded by the public authority for the purposes of its functions relating to –

- (i) investigations falling within subsection (1)(a) or (b),
- (ii) criminal proceedings which the authority has power to conduct,
- (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
- (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and

(b) it relates to the obtaining of information from confidential sources”.

**Section 32(1)(c)** provides that –

“(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in –

(c) any document created by –

- (i) a court, or
- (ii) a member of the administrative staff of a court,

for the purposes of proceedings in a particular cause of matter”.



## Data Protection Act 1998

### Section 7 Right of access to personal data

(1) Subject to the following provisions of this section and to sections 8 and 9, an individual is entitled—

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

(b) if that is the case, to be given by the data controller a description of—

(i) the personal data of which that individual is the data subject,

(ii) the purposes for which they are being or are to be processed, and

(iii) the recipients or classes of recipients to whom they are or may be disclosed,

(c) to have communicated to him in an intelligible form—

(i) the information constituting any personal data of which that individual is the data subject, and

(ii) any information available to the data controller as to the source of those data, and

(d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking.