

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 December 2009

Public Authority: The Chief Officer
Address: Greater Manchester Police
Police Headquarters
Chester House
Boyer Street
Old Trafford
Manchester
M16 0RE

Summary

The complainant initially made a six-part request to Greater Manchester Police (GMP) relating to burglaries at two specified locations. The complainant contacted the Commissioner to complain about GMP's refusal to supply him with the information he sought at parts 5 and 6 of his initial request; that is the number of burglaries reported in Honeysuckle Close and for the years 2004, 2005 and 2006 and similarly the number of burglaries reported for Tunshill Road for the same years. GMP refused to supply the requested information in reliance of section 40 (Personal information) and section 31 (Law enforcement). The Commissioner has determined that GMP was wrong to rely on section 31(1) on the basis that the public interest in withholding this information was not greater than the public interest in its disclosure. The Commissioner also finds that section 40(2) was not engaged as the requested information does not represent personal data. The Commissioner finds that GMP breached sections 17(1) and 17(1)(b) by failing to provide an adequate refusal as required by this section.

The Commissioner's Role

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

2. The complainant wrote to GMP on 7 January 2007 making the following request for information:

- 1) "How many Burglaries were reported to the Greater Manchester Police or any part of it in the M23 postcode in 2006, 2005 and 2004?"
- 2) Of these burglaries in the M23 postcode, how many took place in houses that were unoccupied? Please break the numbers down into the three specified years.
- 3) Of these burglaries in the M23 postcode, how many took place in houses where someone was inside the house at the time? Please break the numbers down into the three specified years.
- 4) How many offenders were charged in connection with burglaries in the M23 postcode in the three specified years?
- 5) How many burglaries were reported on Honeysuckle Close in M23 in 2006, 2005 and 2004?
- 6) How many burglaries were reported on Tunshill Road in M23 in 2006, 2005 and 2004?"

3. GMP acknowledged the complainant's request on 9 January 2007 and on 9 February 2007 made its formal response to it. GMP confirmed that it held the requested information. In response to item 1 it provided burglary statistics for 2005 and 2006 for the beat areas covered by the M23 postcode. It was unable to provide the same statistics for 2004 due to changes in geographical beat boundaries. For items 2, 3 and 4, GMP claimed that the information could not be provided as to do so would exceed the appropriate limit. GMP responded to points 5 and 6 by informing the complainant that:

"... the force regularly provides crime statistics if requested under the Freedom of Information Act, the information is only produced where the data can be expressed in aggregate form. This approach attempts to ensure anonymity of data through the adoption of areas that are assumed to be large enough to contain enough households to eliminate the potential for matching a crime, with a household and as such, an individual."

In addition to this statement, GMP provided the complainant with burglary statistics for the beats within the Brooklands area which include the specified locations.

4. The complainant wrote to GMP on 10 February 2007 concerning its response to items 5 and 6 of his request. He asserted that GMP's response failed to meet the requirements of the Freedom of Information Act by failing to cite an appropriate exemption, failing to cite section 12 if disclosure would exceed the appropriate limit, or by failing to provide him with the information he sought.

5. On 12 February 2007 GMP acknowledged the complainant's letter. It noted that he had asked GMP to review its response to items 5 and 6 of his original request.
6. GMP concluded its internal review and communicated its decision on 10 April 2007. It informed the complainant that disclosure of crime statistics at street level is exempt under the exemptions provided by section 40 (Personal information) and section 31 (Law enforcement). In respect of its application of section 31, GMP provided the complainant with its public interest test considerations.

The Investigation

Scope of the case

7. On 11 May 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The Commissioner wrote to the complainant on 15 April 2008. He informed him that he would restrict his investigation to GMP's refusal to provide the information requested by items 5 and 6 on the basis that he had restricted his request for internal review by GMP solely to these items.

Chronology

9. GMP provided the Commissioner with the burglary statistics for Honeysuckle Close and Tunshill Road on 9 May 2008.
10. On 27 May 2008 the Commissioner wrote to GMP making enquiries about its application of the exemptions provided by sections 40 and 31 of the Act to the withheld information.
11. GMP responded to the Commissioner's initial enquiries on 26 June 2008.
12. The Commissioner wrote to GMP once more on 7 July 2008, making further enquiries arising from its previous response.
13. GMP responded to the Commissioner's final enquiries on 21 July 2008.

Analysis

Exemptions

Section 31 – Law enforcement

14. Section 31 provides that:

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would likely to, prejudice –

- (a) the prevention or detection of crime,*
- (b) the apprehension or prosecution of offenders,*
- (c) the administration of justice,...*”

15. In response to the Commissioner’s enquiries GMP stated that subsections (a), (b) and (c) of section 31(1) were applicable to the burglary statistics sought by the complainant.

16. GMP did not explicitly state whether disclosure of the burglary statistics ‘would’ or ‘would likely’ result in any prejudice to the identified subsections. Rather, GMP determined that disclosure of the statistics ‘could’ bring about such prejudice.

17. In consequence of GMP’s stance the Commissioner will therefore consider the lower threshold; whether disclosure would be likely to result in the prejudice identified in subsections (a) (b) and (c) . GMP failed to clearly specify which of the three subsections it cited are engaged by the requested information.

18. In order for the Commissioner to conclude that prejudice would likely result from the disclosure of the requested information, the likelihood of prejudice must be real and significant and more than hypothetical or remote. This is the approach taken by the Information Tribunal in the case of *John Connor Press associates Limited v The Information Commissioner* (EA/2005/0005) in which the Tribunal stated:

“the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.”

19. GMP informed the Commissioner that one of its priorities is to gain confidence within the community, so as to encourage its members to report incidents of crime, particularly where the person is a victim of crime or a witness to a crime.

20. GMP asserts that people reporting crimes have an expectation of confidentiality in their dealings with the police, particularly concerning their identity, their address, the information they provide and the type of crime reported. GMP asserts that disclosure of burglary statistics for such a small geographical area and for such a small data set could potentially lead to the identification of, or speculation about, the identity of the person reporting these crimes. Therefore, disclosing the type of information requested by the complainant could risk GMP’s work within the community and jeopardise the work done in increasing the public’s confidence.

21. GMP informed the Commissioner that it has not made any disclosure of this or similar information before and is therefore unable to provide evidence of the

jeopardy to the public's confidence in GMP's work that such disclosure would have. Nevertheless it believes that disclosure of statistics at such a low level would result in an erosion of the public's confidence in reporting crime to the police. The Commissioner is not persuaded by GMP's assertion that victims of crime would not report incidents of crime in the future should the statistics be disclosed as he does not believe that statistics are at such a level of granularity as to erode public confidence.

22. GMP asserts that there is evidence to suggest that where a burglary has occurred that crime will be repeated. This is due to the likelihood that the stolen property will be replaced following an insurance claim. To release the burglary statistics at street level for the specified time would increase the possibility that burglars could identify these properties and put the victims at risk of further crime. The Commissioner considers that this would not present a real and significant impact on the ability of the police to prevent crime and to apprehend offenders and therefore he has determined that the exemptions provided by section 31(1)(a) and (b) are not engaged. He considers that other factors are more likely to contribute to repeat burglaries, such as local knowledge amongst local criminal gangs and local media reports. It is also important to note that the data does not identify individual properties and would therefore be of limited assistance. He has not been presented with a convincing explanation that the disclosure of this information would exacerbate a problem that already exists. He also notes that the data stretches over 3 years and the risk would be greatest for a short period after the burglary. Additionally, he has not been presented with specific arguments that 31(1) (c) is engaged.
23. Section 31(1)(a) (b) and (c) are not engaged and therefore the Commissioner has not considered the public interest test.

Section 40 – Personal information

24. GMP informed the complainant that disclosure of crime statistics at street level is exempt under section 40 of the Act.
25. 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 the second condition below is satisfied.”*

(3) Provides that –

“The first condition is-

- (a) *in a case where the information falls within any of 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, or*
 - (ii) *section 10 of that Act (right to prevent processing likely to cause damage or distress), and ..."*

26. In order to reach a view on GMP's arguments, the Commissioner has first considered whether the withheld information is the personal data of third parties. He has therefore referred to section 1 of the Data Protection Act 1998. This defines personal data as information which relates to a living individual who can be identified:

- from that data, or
- from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

27. In cases where statistics are anonymised to the extent that individuals may not be identified from them the Commissioner does not consider those statistics to be personal data. This approach is supported by paragraphs 24 and 25 of Lord Hope's judgment in the House of Lords' case of the *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47, where it was said:

"...Rendering data anonymous in such a way that the individual to whom the information from which they are derived refers is no longer identifiable would enable the information to be released without having to apply the principles of [data] protection..." (para 25).

The Commissioner has respectfully noted the finding of the Information Tribunal in *Department of Health v Information Commissioner & Pro-Life Alliance* (EA/2008/0074) but will not follow this decision as he disagrees with Tribunal's finding on the issue of anonymisation and the definition of personal data. . This decision of Tribunal is currently under appeal by the DoH at the High Court, where the Commissioner will be a respondent.

28. First, the Commissioner has examined the statistics in isolation from additional data or other information. He has determined that it is not possible to identify any individual from those statistics. In consequence of this determination the Commissioner has then considered other factors and information which might assist in the identification of any individual.

29. The Commissioner has established that there are 13 and 83 properties in Honeysuckle Close and Tunshill Road respectively. He considers that the number of properties and the statistics are relatively small, but he is not persuaded that, taken together, they would allow for the identification of any individual.

30. GMP has provided arguments about how local knowledge would lead to individuals being identified from the information. The Commissioner notes this is a difficult task and has carefully considered the specifics of this case.
31. The Commissioner accepts that the attendance of the police at any address would be visible to neighbours of that address and also to passersby. He does not accept that anyone would be able to determine the reason for the police attendance, purely on the basis they were seen at a particular address. In this respect, disclosure of the burglary statistics would not allow the identification of any particular person; it would be difficult to link those statistics and police attendance at any given property, particularly since the request only concerns burglary statistics which form only a part of the overall crime in an area.
32. The Commissioner understands that there were few other crimes committed at these locations. He therefore accepts that this slightly increases the chance that the victims of burglary may be identified from the information. Nevertheless this factor alone does not provide sufficient grounds for determining whether the statistics can be properly regarded as personal data.
33. The requested burglary statistics are collated from individual reports of burglaries made to the police. The police responded to these reports and may or may not have visited the addresses where the crime was committed. The attendance of the police at any given address may have been noticed by someone living in the vicinity or by someone simply passing by. In addition to visiting the burgled address, the police may or may not have made enquiries about the burglary by visiting neighbouring properties, or may have informed other residents of the crime through a focussed leaflet drop. In this case it was a leaflet received by the complainant that alerted him to a nearby burglary and this in turn provided, at least in part, the motivation for his request for information.
34. The Commissioner is aware that not all visits by the police to a person's address will have resulted from a report of a crime. A visit may have been prompted by a request from a resident who seeks crime prevention advice.
35. There is nothing from the facts and circumstances of this case which lead the Commissioner to determine that the requested statistics represent personal data. Similarly GMP has failed to provide the Commissioner with sufficient reasons why he should draw the conclusion that the statistics are personal data.
36. In light of the above the Commissioner has determined that the requested statistics are not personal data and therefore section 40(2) is not engaged.
37. The Commissioner acknowledges that Police Forces are proactively releasing 'maps' of the incidence of crime into the public domain. In doing so they are setting their own parameters to the level at which they make this information available. The Commissioner understands that the parameters used by the police reflect the differing sensitivities of crimes and are chosen to minimise the risk that a victim, witness or vulnerable perpetrator of a crime can be identified. The Commissioner supports this approach of setting general parameters for crime

mapping; however the case in question requires a focus on the specifics and he does not believe the two approaches are incompatible.

38. The focus of this case is a specific request relating to one type of crime. The Commissioner's decision relates solely to that request and to the singular circumstances which surround it. The Commissioner would emphasise that his decision is not a general adjudication on crime mapping or routine disclosures of crime-related information. Rather, it is a decision based on the Commissioner's case-by-case approach to complaints raised under section 50 of the Act.

Procedural Requirements

Section 17 – Refusal of request

39. Section 17(1) requires 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.
40. GMP's initial response to the request was to provide information which 'related' to it. The information it provided consisted of statistics which GMP itself determined it was willing to disclose. The statistics GMP provided were not those which the complainant had specified in his request. GMP provided its rationale for its disclosure of information but failed to provide the specific response required by section 17(1) of the Act, and therefore breached this subsection.
41. The Commissioner notes that GMP went some way to rectify its procedural error when it concluded its internal review. It refused the complainant's request and stated that section 40 and 31 applied to the requested information but failed to specify the appropriate subsections.
42. The Commissioner finds that GMP therefore breached the requirements of section 17(1)(b) of the Act by failing to specify that it was relying on section 40(2) and section 31(1). The Commissioner has concluded that the information at issue was not exempt by virtue of sections 31 and 40, and GMP therefore breached section 1(1)(b) in failing to disclose this information, and section 10(1) by failing to provide it within the statutory time limit.

The Decision

43. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. In failing to disclose information that was not exempt, it breached sections 1(1)(b) and 10(1). In failing to provide an adequate refusal notice it breached sections 17(1) and 17(1)(b).

Steps Required

44. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

GMP is required to provide the complainant with the burglary statistics as specified in parts 5 and 6 of his request.

45. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

46. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

47. 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.
Website: 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 17th day of December 2009

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Refusal of request

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.”

Law enforcement

Section 31(1) provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

Personal information

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(2) provides 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 the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of 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, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”