

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 September 2009

Public Authority: Chief Constable of Cambridgeshire Constabulary
Address: Cambridgeshire Constabulary Headquarters
Hinchingsbrooke Park
Huntingdon
Cambridgeshire
PE29 6NP

Summary

The complainant requested to be informed of the contents of communications between the public authority and the Internet Watch Foundation concerning an image that had been temporarily removed from Wikipedia. The public authority refused to confirm or deny whether it held information falling within the scope of this request and cited the exemption provided by section 30(3) (information relating to investigations). The Commissioner finds that this exemption is not engaged and that the public authority failed to comply with the requirements of sections 1(1)(a) and 10(1) in not providing confirmation or denial of whether relevant information was held within 20 working days of receipt of the request. The Commissioner also finds that the public authority failed to comply with the requirement of section 17(1)(c) in that it did not provide any adequate explanation as to why the exemption was engaged. The public authority is required to confirm or deny whether it holds information falling within the scope of the request and, if any relevant information is held, either disclose this or provide a refusal notice valid for the purposes of section 17 of the Act.

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. On 8 December 2008 the complainant made the following information request:

“Please disclose...what is in the communications between the Police and the Internet Watch Foundation that relate to an image on Wikipedia of the cover of an album by rock band The Scorpions”.

3. The public authority responded to this on 6 January 2009 and refused to either confirm or deny whether it held information falling within the scope of the request. The public authority cited the exemption provided by section 30(3) (investigations). By way of explanation for this the public authority stated that it would neither confirm nor deny whether an investigation had taken place unless this had already been revealed through information in the public domain. The public authority did not, however, explain how information falling within the scope of the request would conform to any of the classes described in sections 30(1) or (2). The public authority briefly addressed the balance of the public interest and concluded that this favoured the maintenance of the exemption.
4. The complainant contacted the public authority again on 10 January 2009 and requested that it carry out an internal review. The public authority responded with the outcome of the review on 25 February 2009. The refusal to confirm or deny was upheld, but no reasoning for this decision was provided.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner on 28 February 2009 and specified as the grounds for his complaint the refusal of the public authority to confirm or deny whether it held information falling within the scope of his request. The complainant also raised concerns about the thoroughness of the internal review carried out by the public authority.

Chronology

6. The Commissioner contacted the public authority on 4 June 2009 and asked that it respond with further explanation of its reasoning as to why the exemption provided by section 30(3) was engaged and why the balance of the public interest favoured the maintenance of this exemption.
7. The public authority responded by letter dated 18 June 2009. The public authority stated that its reasoning for refusing to confirm or deny whether it held the requested information was to ensure that it did not become known which police force the Internet Watch Foundation (IWF) had consulted about the image referred to in the request. The public authority stated that it had been disclosed that the IWF had consulted a police force about this, but not which police force. The position of the public authority was that it was necessary for all police forces that received a similar request to maintain a neither confirm nor deny stance in order to avoid disclosing which police force the IWF had contacted.
8. The public authority did not, however, provide any explanation for how

information falling within the scope of the request would fall within any of the classes specified in sections 30(1) or 30(2). Neither did it provide any explanation of the harm it believed would occur through disclosure of which police force had advised the IWF.

Analysis

Exemptions

Section 30

9. Section 30(3) provides an exemption from the duty to confirm or deny in relation to any information, whether held or not, that falls within any of the classes specified in sections 30(1) or 30(2). The public authority has not specified to which of the classes in sections 30(1) or (2) it believes any information it holds that falls within the scope of the request would conform. In the absence of this clarification, and on the basis that the public authority referred in the refusal notice to its reluctance to confirm whether or not an investigation had taken place, the Commissioner has focussed on sections 30(1)(a)(i) and (ii). On this point, the Commissioner also notes that sections 30(1)(b) and 30(1)(c) are only available to public authorities with powers to conduct criminal proceedings. In relation to police investigations, the prosecuting authority is the Crown Prosecution Service. Section 30(2) relies first on the information being in any of the classes specified in section 30(1), as well as relating to the obtaining of information from confidential sources, so need not be considered separately here.
10. Section 30(1)(a)(i) provides an exemption for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person should be charged with an offence. Section 30(1)(a)(ii) provides the same for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person charged with an offence is guilty of it. The task for the Commissioner is, therefore, to reach a conclusion on whether, if the public authority does hold information falling within the scope of the request, that information would conform to the classes specified in section 30(1)(a)(i) and / or (ii). This exemption is also qualified by the public interest.
11. Only those public authorities with duties and powers to carry out investigations of the kind described in this subsection may cite this exemption. In considering whether this exemption is engaged, it is necessary first to consider whether the public authority has powers to carry out investigations of the kind specified in sections 30(1)(a)(i) and (ii). As the public authority in this case is a police force, it is clear that it does have such powers.
12. Turning to whether information falling within the scope of the request would fall within the classes specified in these subsections, as noted previously the public authority has provided no explanation on this point. In the absence of any such explanation, it is not clear how communications between the public authority and the IWF would be information held for the purposes of an investigation with a view

to charging or ascertaining the guilt of any person.

13. The Commissioner would anticipate that the information falling within the scope of the request would take the form of a record of communications between the public authority and the IWF in which the IWF seeks advice about the availability on Wikipedia of the image referred to in the request. On the basis of the wording of the request, it is not clear that information falling within its scope would relate to an investigation of any kind, regardless of whether this investigation would conform to the classes specified in sections 30(1)(a)(i) and (ii).
14. The arguments that the public authority has advanced relate to its wish to avoid disclosing which police force advised the IWF. It appears that the public authority believed that disclosing this would result in harm. That harm may result through disclosure is not, however, relevant to the question of whether this class based exemption is engaged. In any event, the public authority has provided no description of the harm it believes would result through confirming which police force advised the IWF.
15. The conclusion of the Commissioner is that the exemption provided by section 30(3) is not engaged. This conclusion is based on the absence of an explanation from the public authority as to how any information falling within the scope of the request would conform to the classes specified in sections 30(1)(a)(i) and (ii) and it not being clear from the wording of the request that any information within its scope would fall within these classes. As this conclusion has been reached at this stage it has not been necessary to go on to consider the balance of the public interest.

Procedural Requirements

Section 1

16. In failing to provide confirmation or denial on the basis of an exemption that the Commissioner finds is not engaged, the public authority did not comply with the requirement of section 1(1)(a).

Section 10

17. In failing to provide confirmation or denial within 20 working days of receipt of the request on the basis of an exemption that the Commissioner now finds is not engaged, the public authority did not comply with the requirement of section 10(1).

Section 17

18. In failing to provide any adequate explanation as to why the exemption provided by section 30(3) was engaged at either the refusal notice or internal review stage, the public authority failed to comply with the requirement of section 17(1)(c).

The Decision

19. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it refused to confirm or deny whether it held information falling within the scope of the request on the basis of an exemption that the Commissioner now finds is not engaged and, in so doing, did not comply with the requirements of sections 1(1)(a) and 10(1). The Commissioner also finds that the public authority failed to comply with the requirement of section 17(1)(c) in not providing an adequate explanation as to why the exemption provided by section 30(3) was engaged.

Steps Required

20. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- provide to the complainant confirmation or denial of whether information falling within the scope of the request is held, and
 - in relation to any information that is held, either disclose this or provide a refusal notice that complies with the requirements of section 17.
21. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

22. 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.

Other matters

23. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
24. When giving the outcome to the internal review, the public authority gave no explanation for this outcome. Paragraph 39 of the section 45 Code of Practice states the following:

"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt

information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue.”

25. The internal review response from the public authority did not reflect that a reconsideration of the request conforming to the description above took place. The Commissioner would advise the public authority that a response giving the outcome to an internal review should state the reasoning for why the initial refusal was upheld and should reflect that there has been a genuine reconsideration of the request.
26. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

27. 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

28. 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.
29. 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 21st day of September 2009

Signed

**Lisa Adshead
Senior FOI Policy Manager**

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

Legal Annex

Section 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.”

Section 10

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 17

Section 17(1) provides that -

‘A public authority which, in relation to any request for information, 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 30

Section 30(1) provides that –

‘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,*
- (b) *any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or*
- (c) *any criminal proceedings which the authority has power to conduct.'*

Section 30(2) provides that –

'Information held by a public authority is exempt information if-

- (a) *it was obtained or recorded by the 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 30(3) provides that –

'The duty to confirm or deny 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) or (2).'