

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 27 May 2010

**Public Authority:** Staffordshire Police  
**Address:** Police HQ  
Cannock Road  
Stafford  
ST17 0QG

#### Summary

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The complainant made a request to Staffordshire Police (the “public authority”) for policies or procedures followed during the vetting of staff from partner agencies or outside employees. The information requested was partly withheld under the exemption at section 31(1)(a), (b) and (c) of the Freedom of Information Act 2000 (“the Act”).

The Commissioner’s decision is that the exemption at section 31 is not engaged. The complaint is upheld.

The public authority’s handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

#### 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.

#### Background

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2. The public authority has stated that the Police Service bases its vetting policy on the “Security Policy Framework”, which is found on the

Cabinet Office's website<sup>1</sup>. This replaces the former "Manual of Protective Security" which contained a section entitled "National Security Vetting Policy".

3. It has further stated that:

*"... the document on the Cabinet Office's website is the Security Policy Framework which contains a section on recruitment vetting, this essentially relates to Government procedures for national security vetting whereas for vetting in the Police Service the ACPO National Vetting Policy for the Police Community applies. It does incorporate the common standards for national security vetting levels but with regard to NPPV (Non Police Personnel Vetting) this is a standard used solely by the police Service. Thus there is some contradiction in what can be gleaned from the Cabinet Office publication (for example on appeals, as for NPPV vetting in the Police Service there is no right of appeal although I believe most Forces will consider a review of the vetting decision)."*

4. There is a useful slide show provided by the Association of Chief Police Officer ("ACPO") available on line, which includes some more background information about NPPV vetting<sup>2</sup>.
5. The Commissioner also found the following information, which includes examples of NPPV policies, on the websites of different police forces:

<http://www.hampshire.police.uk/NR/rdonlyres/3CB350FA-E758-486F-BEEE-5AFOCA1CC0C5/0/30101.pdf>

[http://www.dorset.police.uk/pdf/p27-2009vetting\\_policyv1\\_0.pdf](http://www.dorset.police.uk/pdf/p27-2009vetting_policyv1_0.pdf)

<http://www.herts.police.uk/accreditation/FORM%20D%20CSAS%20VettingForm.pdf>

<http://www.kent.police.uk/About%20Kent%20Police/policies/i/I11%20Non-police%20Personnel%20Vetting.html>

## The request

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6. On 21 April 2009 the complainant made the following request for information:

*"... I would like a copy of the policies and procedure that are followed when vetting partner agencies/outside employees working within Staffordshire Police. I would also like a copy of*

<sup>1</sup> <http://www.cabinetoffice.gov.uk/spf/faqs.aspx>

<sup>2</sup> <http://www.acpoprofessionalstandards.co.uk/pages/2009pres/SimonCole.ppt#291,23,National Police Vetting - TAINT>

*the policies and/or procedure that is to be followed when the vetting is denied and I would also like a copy of the subsequent route of appeal that is then to be taken".*

7. On 11 May 2009 the public authority responded. It provided some information but withheld the remainder under the exemption at section 31 (1)(a), (b) and (c) (law enforcement) of the Act.
8. The complainant sought an internal review of this refusal on 16 May 2009.
9. On 26 May 2009 the complainant wrote to the Commissioner as she believed her request would be refused again. The Commissioner contacted the public authority on 6 July 2009 to advise it that he considers 20 working days to be a reasonable time in which to conduct an internal review, exceptionally extending this up to 40 working days.
10. On 10 August 2009 the public authority sent out its internal review. It maintained its earlier position.
11. On 7 September 2009 the complainant wrote to the Commissioner again.

## **The investigation**

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### **Scope of the case**

12. On 7 September 2009 the complainant contacted the Commissioner again to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - the lateness of the internal review; and
  - the withholding of some of the information.
13. On commencing his investigation the Commissioner was provided with a full copy of the withheld information. On reading this he was made aware of further appendices which he believed may also come within the scope of the request. These were requested and provided. It is the Commissioner's view that these appendices do all fall within the scope of the request and their disclosure is therefore also covered by this Notice.

## Chronology

14. On 28 January 2010 the Commissioner wrote to the complainant to advise her that he was commencing his investigation. He clarified that she required him to consider the delay in providing an internal review as well as the public authority's withholding of the redacted information.
15. On 2 February 2010 the Commissioner commenced his enquiries with the public authority. The withheld information was provided immediately and the Commissioner was then made aware of further information which he believed could fall within the scope of the request. He sought a copy of this further information which was provided on 8 February 2010.
16. On 2 March 2010 the Commissioner advised the public authority that he believed the additional information did fall within the scope of the request and he invited the public authority to submit any further arguments to support its non-disclosure.
17. The Commissioner also drew attention to information which was substantially similar to the withheld information (albeit from a different source) which he had found on-line.
18. In its response the public authority maintained its position that the information was exempt. However, it did comment that its position was somewhat "scuppered" by the fact that similar information was already available online.

## Analysis

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### Exemption

#### Section 31 – law enforcement

19. In its refusal notice the public authority cited the exemption at section 31(1)(a), (b) and (c). This was maintained at internal review stage.
20. Section 31(1) provides that-

*"Information which is not exempt information by virtue of Section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] 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”.*

21. The public authority has cited this exemption in respect of a small amount of information within a partly withheld document - it has not stated whether (a), (b) or (c) applies to all or part of this information. For the Commissioner to agree that this exemption is engaged the authority must demonstrate that disclosure of the requested information would, or would be likely to, prejudice any one of the subsections cited. The Information Tribunal case *John Connor Press Associates Ltd v Information Commissioner* [EA/2005/0005] outlined its interpretation of “*likely to prejudice*”. It confirmed, at paragraph 15, that: “*the chance of prejudice being suffered should be more than a hypothetical possibility; there must be a real and significant risk*”.
22. The public authority has not stated whether it believes disclosure *would* or *would be likely to* cause prejudice within its arguments. The Commissioner has therefore considered the lower threshold of *would be likely* for the arguments provided and he has reviewed the redacted information accordingly.
23. The public authority advised the complainant that disclosure could result in the following harm:
  - “The deleted information relates to the titles of the various stages and elements of the Force Vetting Procedure. Revealing this information to the world at large could provide the knowledge which could contribute in assisting someone to defeat or undermine the vetting procedure. For example, this could help a person conceal/misrepresent personal details in order to infiltrate the police service and to improperly gain access to the Force and its assets, thereby endangering the interests identified in 31 subsections (a), (b) and (c) as above”.*
24. The complainant has refuted this argument by stating that disclosing the relevant stages of the vetting procedure would not mean that a person was more able to conceal / misrepresent their details, saying that she believed that such a person would make this attempt anyway. She also stated that the vetting forms, which applicants must complete themselves, clearly state that it is a criminal offence to intentionally conceal or misrepresent the facts.
25. The complainant also argued that those people who have been subject to the vetting process will also have some knowledge of the process and that they are not restricted in any way from divulging information about the process. She added that the vetting subject has no control

over how the police use the information that they supply and that she finds it:

*"hard to see how a process/procedure that an individual has ultimately no control over can be easily defeated by having prior knowledge of how that procedure works especially with all its existing safeguards".*

26. In response to the complainant's assertions the public authority added that it found it:

*"... naïve of anybody to assume that just because it states on a job application form (or any other form for that matter) that anybody giving false details may be subject to criminal charges or legal action; that that will be enough of a deterrent to prevent applicants from giving false details".*

27. The public authority went on to give some examples of people who had used false details to gain employment, including the following:

*"In 2003 [name removed], a Daily Mail journalist, landed a job as a footman at Buckingham Palace after providing a false CV and giving his local pub landlord as a character reference. He remained undetected for two months before breaking his scoop in November of that year."*

*"Also in 2003, a BBC Panorama reporter got a job as a carer for an agency called Care Connect, delivering homecare services to the elderly and infirm. She was offered the job on the basis of false references and a CV that was largely fabricated."*

*"Earlier this year, a BBC undercover reporter spent four months at Barclay's Bank uncovering incidents of mis-selling. She used her real name but created a fake job history and used bogus references".*

28. The Commissioner notes that in all the examples given the applicants appear to have given false details. The Commissioner is therefore of the opinion that the details cannot have been verified by the organisations involved. He does not know whether any of the people involved actually underwent NPPV vetting, or indeed any other type of police vetting; however, what would appear to be a common factor is the lack of any follow-up of the references or qualifications given. If such checking processes were in operation then the Commissioner believes it is much less likely that the people concerned would have evaded detection.

29. During his investigation the Commissioner has undertaken various searches on the internet to ascertain the extent of information which is already available on this subject matter. He has located similar information from other police forces, or bodies who deal with the police, some examples of which he has included in the "Background" section of this Notice. He therefore believes that anyone who wished to 'infiltrate' a police force dishonestly would already be able to research and ascertain the types of checks which would be undertaken. For example, the vetting procedure which is available on line for Hampshire Constabulary (see link in paragraph 5 above), clearly states that there are three levels of NPPV vetting which it categorises as levels NPPV1, NPPV2 and Full NPPV. It then goes on to clarify the differences between the levels and the types of checks which are done. The Commissioner is therefore of the opinion that any potential employee could look online and assess the type of checks which are likely to be undertaken for the type of employment they are seeking. It is clearly the actual checking processes themselves and whether adequate cross-checking is done which will determine whether or not any miscreant is identified prior to being employed. If a rigorous checking process is not in place then whatever details a potential employee submits will be taken on face value, and, presumably, mistakes may occur.
30. In order to engage this exemption, the public authority must demonstrate that there is a real and significant risk of prejudice rather than a hypothetical possibility. The Commissioner has reviewed the withheld information and has considered whether or not subsection (1) parts (a), (b) or (c) are engaged in respect of any of the withheld information. For the reasons given above, he has not identified any information which he believes would have the prejudicial effects stated if it were to be disclosed. He therefore does not find that any part of section 31(1) is engaged in respect of any of the information. It is therefore unnecessary for him to go on to consider the public interest test.

## **Procedural Requirements**

### **Section 1**

31. Section 1(1) of the Act 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".*

32. The Commissioner considers that the information withheld from the complainant should be released to her. Therefore the public authority has breached section 1(1)(b) of the Act by failing to communicate this information to the complainant in response to her request.

## **Section 10**

33. Section 10(1) of the Act 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".*

34. The Commissioner finds that the public authority did not provide the requested information to the complainant within the statutory time for compliance because it incorrectly applied the exemption at section 31(1). He therefore considers that it breached section 10(1) in relation to its obligation under section 1(1)(b) of the Act.

## **The Decision**

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35. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:
- it breached sections 1(1) and 10(1) by failing to disclose the requested information.

## **Steps Required**

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36. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- it should disclose the requested information.
37. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.



## Failure to comply

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38. 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

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39. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

### *Internal review*

40. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', published in February 2007<sup>3</sup>, the Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. In this case, the internal review took 58 working days to be completed.

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/foi\\_guidance\\_practice\\_guidance\\_5.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/foi_guidance_practice_guidance_5.pdf)

## Right of Appeal

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41. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

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 sent

**Dated the 27<sup>th</sup> day of May 2010**

**Signed .....**

**Lisa Adshead  
Group Manager**

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SK9 5AF**