

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 15 February 2010**

**Public Authority:** The Independent Police Complaints Commission  
**Address:** 90 High Holborn  
London  
WC1V 6BH

### Summary

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The complainant requested documentation and procedures with regard to personal data sharing. The Independent Police Complaints Commission (IPCC) claimed that the information it disclosed in response represented all the information it held that was relevant to the request. The Commissioner is satisfied that, at the time of the request, the IPCC did not hold any further information within the scope of the request and accordingly requires no steps to be taken.

### 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 Independent Police Complaints Commission (IPCC) deals with complaints and conduct matters against police officers and staff in England and Wales. It also considers appeals made by members of the public about their complaints. It is also responsible for the way serious complaints against members of Serious Organised Crime Agency, HM Revenue and Customs and UK Border Agency staff are handled.
3. The Data Sharing Review report, written by Richard Thomas, the Information Commissioner at the time, and Mark Walport, a Director of the Wellcome Trust, was published on 11 July 2008. The report was undertaken at the request of the Prime Minister and the Justice Secretary.

4. The review was set up to:
- consider whether there should be any changes to the way the Data Protection Act 1998 operates in the UK and the options for implementing any such changes;
  - provide recommendations on the powers and sanctions available to the regulator and courts in the legislation governing data sharing and data protection; and
  - provide recommendations on how data-sharing policy should be developed in a way that ensures proper transparency, scrutiny and accountability.

## The Request

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5. The complainant wrote to the Independent Police Complaints Commission (IPCC) on 23 July 2008 with the following request:
- 1) *'Can you please identify the controls and the clear lines of accountability in place in order to safeguard the personal information that the IPCC holds and shares.*
  - 2) *Can the IPCC please supply all information that demonstrates that they act in line with the principle of minimising the amount of data collected and used and how it collects and shares only as much personal information as is essential and stores it only for as long as is necessary.*
  - 3) *Can you please supply information as to how the IPCC train their staff to understand the risks of handling personal information and to meet the reasonable expectations of those whose data they hold, and of the regulator.*
  - 4) *Can you please supply all official information as to how the IPCC decides whether or not personal information should be shared?*
  - 5) *Can the IPCC provide all official information that shows that the sharing of personal information is adequately documented and subject, for example, to privacy impact assessments.*
  - 6) *Can the IPCC also provide all official information that shows that when they share personal information they ensure that they pay particular attention to inherent risks such as: perpetuating or exaggerating inaccurate or outdated data; mismatching data; losing data; and intruding excessively into private lives'.*
6. The IPCC wrote to the complainant on 12 August 2008 seeking clarification of his request, in particular asking him to *'specify the particular types of personal data that you have in mind'.*
7. The complainant responded on the same day:
- 'Please regard my request as purely involving personal data sharing in order to ensure compliance with the Data Protection Act 1998 and associated statutory obligations in particular in relation to the security surrounding such data sharing. I refer you to the attached report from the IPCC in relation to HMRC at 244 to 249*

*which may assist in your compliance with the FoIA 2000. I also refer you to the Thomas/Walport Data Sharing review as attached. Specifically I refer to page 53, Recommendations, Box 5: Ground Rules upon which I based my request. In particular I am interested in personal data as regards third parties, such as [named individual] and [named individual], being shared between other third party public authorities.*

*.....In a nutshell, I am interested in all of the protocols, policies and procedures in place at the IPCC that protect the security and integrity of privileged and private personal data shared with other public agencies, such as Social Service referral files, when accessed by members of staff of the IPCC at other agencies subject to the same protocols, policies and procedures.*

*I think that I have made this quite clear that I am only interested in personal data sharing and have based this request upon a facet of the Information Commissioner's own data sharing review. In fact the Information Commissioner has developed some simple ground rules that he thinks aid sound decision making about sharing personal information. These simple ground rules are the basis of my request. And I am interested in how these simple ground rules manifest themselves procedurally at a public authority such as the IPCC'.*

8. The IPCC wrote to the complainant on 27 August 2008, advising him that '*the Commission has not produced any policies of its own in line with the "Ground Rules" in the Data Sharing Review Report published on 11 July 2008*'. The IPCC also disclosed to the complainant a number of documents it considered fell within the scope of his request and advised him of relevant notifications published on the IPCC website.
9. The complainant requested an internal review on 1 September 2008.
10. The IPCC responded on 19 September 2008. In its response, the IPCC upheld its decision that it had provided the complainant with all the information it held in relation to his request.

## **The Investigation**

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### **Scope of the case**

11. On 14 October 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
12. The complainant has told the Commissioner that he has not been provided with the information he requested '*even though every public authority has to have such procedures*'. In this respect, the Commissioner notes that the Freedom of Information Act gives the right to access recorded information held by public authorities. It does not require a public authority to create information or provide comment. Accordingly, the focus of his investigation has been the question of whether or not information relevant to the request was recorded by the IPCC at

the time of the request, specifically with respect to the 'ground rules' in the data sharing review report.

13. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

## Chronology

14. The Commissioner wrote to the Independent Police Complaints Commission (IPCC) on 18 August 2009 asking for clarification of its response.
15. The IPCC responded on 14 September 2009.
16. The Commissioner wrote to the IPCC on 1 November 2009 seeking further information about the searches it had conducted in relation to the request for information. The IPCC responded on 27 November 2009.

## Analysis

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### Substantive Procedural Matters

17. Section 1(1) of the Act states:

*'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 1(2) provides that:

*'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'*

Section 1(3) provides that:

*'Where a public authority –*

- (a) reasonably requires further information in order to identify and locate the information requested, and*
- (b) has informed the applicant of that requirement,*

*the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.'*

18. Section 1(1) therefore creates two obligations on the public authority: the duty to confirm or deny to the applicant whether the information is held, and the duty to communicate the information to the applicant. In this case, the Commissioner notes that the IPCC sought clarification of the complainant's request and, in accordance with section 1(3) of the Act, was not obliged to comply with section 1(1) until it received such clarification.
19. In its correspondence of 14 September 2009, the IPCC advised the Commissioner that it responded to the complainant's request '*based upon the clarification he gave from his email of 12 August 2008*'. Accordingly, it told the Commissioner that '*those documents which [the complainant] was provided with were considered to be relevant further to his clarification*'.
20. In bringing his complaint to the Commissioner's attention, the complainant told the Commissioner:  
  
*'I only require the procedures and protocols of the IPCC that ensure that data sharing is secure and enacted lawfully. They have never supplied any even though every public authority has to have such procedures'*.
21. In cases, such as this one, where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
22. In discussing the application of the balance of probabilities test, the Tribunal in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) stated that:  
  
*'We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.'*
23. The Commissioner has therefore taken the above factors into account in determining whether or not the requested information is held on the balance of probabilities.

#### *The initial analysis of the request*

24. The Commissioner notes that the IPCC wrote to the complainant on 12 August 2008 seeking clarification of his request. It advised that '*some of the questions*

*will require a number of different answers dependent upon the particular IPCC context concerned*.

25. As described above, the complainant clarified that his request related purely to personal data sharing. The Commissioner notes that the complainant referred the IPCC to a set of procedures belonging to another public authority which he considered '*would adequately cover this request if they were applicable to the IPCC*'.
26. The Commissioner is satisfied in this case that the IPCC took appropriate steps to clarify the complainant's request.

#### *Searches undertaken*

27. In response to his questions, the IPCC has provided the Commissioner with details of the searches that it would have undertaken in this case. It explained that '*the searches were undertaken in the places mentioned as they would have been the most appropriate places to where the clarified information could have been held*'.
28. It also told him that '*the search terms that would have been used would most likely have been data sharing, data protection and data security*'. From this, it appears that the IPCC has not kept a record of the actual search terms used. The Commissioner considers it a matter of good practice that details such as these are included when a public authority records the actions it has taken in response to a request for information.
29. The IPCC has also told the Commissioner that contact was made with its Information Manager '*to ensure that there was nothing that had been missed*'.

*Is the IPCC likely to hold relevant information beyond that which has already been disclosed?*

30. The complainant has argued that '*the IPCC should have stringent, clear and absolutely undeniable procedures over and above Thomas/Walport*'.
31. In its response to the complainant on 27 August 2008, the IPCC noted that his request '*is particularly concerned with the rules relating to the sharing of data for the purposes of the Commission's investigations and casework functions*'. It went on to explain that:

*'A large amount of personal information is received from the police to enable the IPCC to carry out its casework and investigation functions. This information is provided to the IPCC pursuant to section 17(2) of the Police Reform Act 2002'*.

32. The Commissioner understands that section 17(2) of the Police Reform Act 2002 relates to the provision of information to the IPCC and states that:

*'(2) It shall also be the duty of every police authority and of every chief officer —*

*(a) to provide the Commission with all such other information and documents specified or described in a notification given by the Commission to that authority or chief officer, and*

*(b) to produce or deliver up to the Commission all such evidence and other things so specified or described,*

*as appear to the Commission to be required by it for the purposes of the carrying out of any of its functions'.*

33. The IPCC also advised the complainant that *'case related information is shared by the IPCC with others in limited circumstances only'*. The IPCC provided him with details of these limited circumstances.

34. The IPCC explained to the complainant that:

*'IPCC casework managers are not required in the normal course of their casework duties to share data with anyone other than complainants, police and, perhaps other participants in the complaints process such as relatives and persons complained against. No data sharing procedures have been developed for casework personnel because there is no requirement for the sharing of data in the casework context other than insofar as is necessary to enable the Commission to carry out its statutory functions under the Police Reform Act 2002. Casework personnel are unlikely to become involved in disclosures to other parties as such tasks do not form part of the work they are normally required to perform'.*

### Conclusion

35. In reaching a conclusion in this case, the Commissioner has considered what information he would expect the IPCC to hold and whether there is any evidence that the information was ever held. In doing so the Commissioner has taken into account the responses provided by the public authority to the questions he has posed during the course of his investigation as well as those it provided to the complainant. The Commissioner is also mindful of the Tribunal decision highlighted above.

36. The Commissioner is satisfied in this case that, on the balance of probabilities, the IPCC provided the complainant with all the information it held at the time of the request that falls within the scope of this request.

### The Decision

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37. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

## Steps Required

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38. The Commissioner requires no steps to be taken.

## Right of Appeal

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39. Either party has the right to appeal against this Decision Notice to the Information Tribunal. 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 served.

**Dated the 15th day of February 2010**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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



## Legal Annex

### S.1 General right of access

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 1(2) provides that -

*'Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.'*

Section 1(3) provides that –

*'Where a public authority –*

*(c) reasonably requires further information in order to identify and locate the information requested, and*

*(d) has informed the applicant of that requirement,*

*the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.'*

Section 1(4) provides that –

*'The information –*

*(a) in respect of which the applicant is to be informed under subsection (1)(a), or*

*(b) which is to be communicated under subsection (1)(b),*

*is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.'*