

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 November 2010

Public Authority: Chief Officer of Staffordshire Police
Address: Police Headquarters
PO Box 3167
Stafford
ST16 9JZ

Summary

The complainant requested information related to the deployment of officers of the public authority at the FIFA 2006 World Cup in Germany. The public authority advised that it was exempt from its duty to provide it to him with some of the information by virtue of section 40 of the Act (Personal data). It disclosed other information in transcribed form. The public authority also maintained that it did not hold certain information within the scope of the complainant's request.

The Commissioner is satisfied that on the balance of probabilities, the public authority does not hold certain information which the complainant believes is held. However, the Commissioner requires the public authority to disclose that information which is within the scope of the request, which remains withheld and which is not exempt by virtue of section 40. The Commissioner has also found that the public authority contravened a number of procedural provisions of the Act.

The complainant also expressed a further interest in the state of the document containing information which he had already received in transcribed form. The Act enables access to information and not to documents. Given that the complainant has already received the information in full, the Commissioner does not require the public authority to supply him with a copy of the document so that he can examine its state.

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.

Background

2. The complainant is a former officer of the public authority although at the time of the request he was still serving with it.
3. As part of Operation EPCOT, the public authority had responsibility for managing covert resources for all England football matches¹.

The Request

4. On 13 January 2009, the complainant requested information of the following description:
 - " 1. *The number of Staffordshire Police Officers that travelled to Germany in connection with the policing operation for the 2006 FIFA World Cup.*
 2. *Details of any equipment purchased for the police operation in Germany, which were subsequently retained by police officers for their private use.*
 3. *Details of any flights, hotel costs or other expenses provided for family or friends to visit police officers deployed in Germany.*
 4. *The cost of any items falling in to category outlined in 2 or 3 above.*
 5. *Clarification on whether the cost of deploying these officers was met from central Home Office funds or from the Staffordshire Police Authority Budget."*
5. The public authority provided a response on 10 February 2009. In response to the first request, it advised that 6 officers of Staffordshire Police travelled to Germany for the 2006 World Cup policing operation. In response to the second request, it asserted that it did not hold any information which provided authorisation for any items of equipment purchased for that operation to be retained by officers for their private use. In response to the third request, it asserted that no such visits were provided and that no information was held. In response to the fourth request, it referred back to its responses in relation to requests two and three and asserted that no information was held. In response

¹ http://www.hmic.gov.uk/SiteCollectionDocuments/Staffordshire/PSD_STF_20060630.pdf

- to the fifth requests, it stated that it met the salary costs of the officers in question and all other costs were met by central Home Office funds and by the German authorities in accordance with European agreements on this subject.
6. There then followed further correspondence between the parties. During that correspondence, the complainant stated that the public authority had fully dealt with the first request. However, he queried the public authority's response to the second and third requests and, as a consequence, its response to the fourth request. He stated that the fifth request had been fully deal with although he sought further clarification.
 7. The public authority undertook to provide further comments regarding the second request and reiterated that it held no information that fell within the description set out in the third request (and consequently the fourth request). It also confirmed that no such journeys were funded by either itself or the Home Office.
 8. The public authority wrote again on 19 February 2009 stating that it held no information regarding items of equipment purchased for the police operation which were subsequently retained for private use. It clarified a typographical error and with regard to the cost of any items falling within the categories of information described in the second and third requests, it stated that it held no information. It then offered an internal review of its decision.
 9. The complaint confirmed in a telephone conversation of the same day that he wished the public authority to conduct an internal review. The public authority emailed the complainant following this telephone call to confirm that it would carry one out.
 10. Delays followed where the public authority took the view it was necessary to call a review panel. During this time, there followed further email correspondence between the parties which the public authority deemed as being "outside the Act".
 11. In the course of this correspondence, it was established that the complainant was particularly interested in mobile phones, dual SIM adaptors and other items that were retained by officers for private use after their deployment in Germany. He made a specific request on 3 March 2009 for a "*photocopy of the invoice for the 6 mobile telephones and SIM cards purchased in Germany and a copy of other document [sic] relating to the purchase i.e., accounting record or receipts*".

12. It also came to light during this correspondence that there was a completed form entitled "Accounts Form 9" which appeared to relate to the purchase of 6 mobile phones and SIM cards at a cost of 119.70 Euros. The public authority asserted that this is the only equipment that was purchased for use during the 2006 World Cup policing operation which was subsequently retained for private use by officers deployed in Germany " *although [it was] unable to find any record which confirms that any of the telephones were 'retained by police officers for private use'* ". There was also some dispute as to whether the 119.70 Euros cost applied to the mobile phones and the SIM cards or just the SIM cards.
13. The public authority explained that a management decision had been taken to allow officers to retain the 6 mobile phones referred to above for private use. The public authority asserted there was no actual record of the management decision having been taken or of any terms, conditions or restrictions that were placed on the use of the mobile phones.
14. On 3 March 2009 the public authority wrote to advise the complainant of the existence of two reports which were written by two named officers at Superintendent grade and which covered the concerns he had raised ("Report 1" and "Report 2").
15. On 4 March 2009, following the complainant's clarification of his specific interest in six mobile phones that were, to his knowledge, used by officers of the public authority who were deployed to Germany, the public authority sent a further detailed letter.
16. In that letter, it set out further comments about the information requested on 13 January 2009 and confirmed information that had already been provided about the six mobile phones. It also confirmed that no record was held about trips made to Germany by friends or relatives of officers deployed there during the 2006 FIFA World Cup. It stated that it did not fund such journeys and that no such journeys were funded " *centrally* ". The Commissioner understands this to mean 'by the Home Office'.
17. The public authority also commented that although it could confirm the purchase of the six mobile phones " *this does not amount to confirmation that, these were items which exactly fall within your description 'Details of any items of equipment purchased for the police operation in Germany, **which were subsequently retained by police officers for their private use** [the public authority's emphasis].'* " However it did confirm that " *the Force holds details regarding information concerning the use of a mobile telephone.*

However it is believed that the information is exempt by virtue of the exemptions provided [sic] sections 21(1) and section 40(1) and (2) [of the Act]".

18. It set out the detail of these provisions and then explained that the information in question had been provided to him and remained available to him through "*internal procedures to which you have access*". It also explained that the information held concerned the complainant himself and a third party. It commented that disclosure of the information about the third party would "*conflict with the first data protection principle that information should be 'processed fairly and lawfully' "*".
19. Regarding the complainant's fifth request, the public authority confirmed that it met the salary costs for the officers concerned and that all other costs were met from central Home Office funds and by the German authorities. It also commented that it had now learned that "*payments for overtime incurred by officers was later reclaimed from central funds*".
20. It then explained the complainant's right to request an internal review and, ultimately, to complain to the Commissioner. As noted above, the public authority had already undertaken to conduct an internal review on 19 February 2009.
21. On 25 May 2009, the complainant wrote to the members of the panel that would be conducting the internal review. He set out for them the obstacles that he had encountered in resolving his concerns about the possible misuse of public funds. He explained that this was why he had felt it necessary to seek to access information about the matter under the Act. He also set out his grounds for appeal which related to incorrect application of exemptions and failure to disclose copies of certain information. He also raised concerns about the timeliness of responses under the Act. Finally, he raised other points which fall outside the scope of the Act.
22. On 26 June 2009, the public authority sent the complainant the outcome of its internal review. It upheld its position under the Act but invited the complainant to view Report 1 and Report 2 privately, outside the information access mechanism of the Act.
23. However, under the Act it also provided the complainant with a type-written copy of Accounts Form 9. It explained that were it to provide a photocopy of the original form, the person who completed the form could be identified by their handwriting. As such, disclosure of any part

of the handwritten document would constitute the unfair disclosure of personal data relating to that person.

The Investigation

Scope of the case

24. On 3 July 2009, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- incorrect application of exemptions; and
 - incorrect statements as to whether certain information is held.
25. 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

26. On 13 August 2009, the Commissioner wrote to both parties to acknowledge receipt of the complaint.
27. On 30 March 2010, the Commissioner wrote to the complainant to set out the scope of his investigation, to ask for copies of relevant correspondence and to clarify details regarding the complainant's personal knowledge of the events in question.
28. On 31 March 2010, the Commissioner wrote to the public authority to clarify preliminary details regarding access to the withheld information.
29. There followed a further exchange of correspondence between the Commissioner and the public authority on this matter. The Commissioner eventually received a copy of the withheld information on 22 April 2010.
30. The complainant emailed his comments to the Commissioner on 14 April 2010 and the Commissioner called him on 19 April 2010 to talk through the detail of those comments. The complainant made the following points:
- He had seen Report 1 but not Report 2;
 - He believed that mobile phones (of high specification) and dual SIM holders were purchased in the UK prior to deployment in Germany

- for use as part of that deployment. SIMs for use in Germany were bought in Germany as shown on Form 9;
- These mobile phones were then retained for private use by senior officers. This was highly irregular;
 - The mobile phones would have been purchased using the accounting cost code assigned to the operation in Germany;
 - His attempts to determine the facts regarding the purchase of the mobile phones (and their subsequent retention by senior officers for their private use) had been unexpectedly blocked;
 - He made comments as to the feasibility of irregular expenditure during the deployment to Germany;
 - He wanted to see a copy of the actual Form 9 (rather than a transcript of the information on it) so that he could see whether there was evidence of a receipt ever having been stapled to it;
 - He then wished to see the receipt or to find out why it was missing.
31. On 5 May 2010, the Commissioner wrote to the public authority regarding its assertions that some of the requested information was not held and regarding its use of exemptions as a basis for withholding the remainder of the requested information.
32. The public authority sent its response in a letter dated 1 June 2010. This response is analysed later in this Notice.

Findings of Fact

33. The public authority has made available to the complainant a transcription of a completed Accounts Form 9. The text it transcribed which relates to the purchase of mobile phones and associated paraphernalia is as follows:

*"Purchase of mobile phone German SIM Cards x 6 [Euros] 119.70
Receipt attached"*

Analysis

Application of exemptions

34. This Notice will deal first with the question of whether the public authority has properly withheld certain information from disclosure under the Act.
35. The public authority first thought that Report 1 and Report 2 fell within the scope of the complainant's request. Having examined Report 1, the

Commissioner is satisfied that the information within it falls outside the scope of the complainant's request. The Commissioner does not propose to describe the content of Report 1 on the face of this Notice because it relates to sensitive operational matters involving the public authority. However, given that he is satisfied that Report 1 falls outside the scope of the complainant's request, the Commissioner therefore will not consider it further in this Notice.

36. The public authority has argued that certain information within the scope of the complainant's request is exempt from disclosure under the Act. This information is contained in:
- Report 2
 - A copy of the original Form 9
37. The Commissioner notes that although the complainant has said that he has been allowed private access to Report 1, he has not been allowed private access to Report 2. The public authority contradicts this. In any event, the complainant has insisted that he should be entitled to access Report 2 under the Act, i.e., without restrictions being imposed on its further use (aside from copyright restrictions).

Section 21 – Information reasonably accessible to the applicant

38. As noted above, the public authority, when in correspondence with the complainant, initially sought to rely on section 21 as a basis for withholding Report 2. Section 21 is set out in a Legal Annex to this Notice. The Commissioner wrote to the public authority explaining that section 21 could not be applied where restrictions (other than copyright restrictions) are imposed upon the further use of the information in question. In support of his view, he cited the Information Tribunal's comments at paragraph 90 of *S v the ICO and the General Register Office* (EA/2006/0030)².
39. The Commissioner also drew the public authority's attention to the provisions of sections 21(2)(b) and (3) which describe information that can be considered to be reasonably accessible. Having considered the points made by the Commissioner, the public authority withdrew reliance on section 21.
40. In his letter to the public authority of 5 May 2010, the Commissioner identified three extracts of Report 2 which fall within the scope of the complainant's request. These extracts are reproduced in a Confidential Annex to this Notice.

² <http://www.informationtribunal.gov.uk/DBFiles/Decision/i147/S.pdf>

41. The Commissioner asked for clarification as to the meaning and context of parts of the three extracts and the public authority duly provided this clarification. The Commissioner also invited the public authority to provide arguments as to why the extracts were exempt from disclosure under the Act.

Report 2 – Extract 1

42. As regards Extract 1 (comprising three sentences), the public authority commented that this extract was outside the scope of the request.
43. Having considered the public authority's submissions on this point, the Commissioner agrees that the third sentence is outside the scope of the request but that, considering the context, most of the first sentence (apart from one word) and all of the second sentence is within the scope of the request. In the Commissioner's view, the information can readily be construed as *"details of any items of equipment purchased for the police operation in Germany which were subsequently retained by police officers for their private use"*.
44. The Commissioner notes that the second sentence of Extract 1 includes three words which are the name and rank of an officer of the public authority who was involved in covert duties in Germany during the FIFA 2006 World Cup. Anyone reading the officer's name in this context would reasonably conclude that this person's alleged actions have given rise to the complainant's concerns about improper expense claims at the public authority.
45. As noted above, the public authority did not agree with the Commissioner's view that Extract 1 was within the scope of the complainant's request. It therefore submitted no arguments as to why any of the information within that extract should be withheld. However, elsewhere in its submissions to the Commissioner, it cited and alluded to the application of other exemptions in relation to this officer's name or disclosure of the officer's identity in this context.
46. It argued that by virtue of section 40(2) disclosure of the officer's personal data would be unfair to the named officer.
47. In its letter of 1 June 2010 to the Commissioner, the public authority set out several arguments as to why disclosure of information identifying the officer would be unfair, as follows:
- *"because of the nature of [the named officer's] work, [disclosure under the Act], would be personally damaging to [that officer]"*.

- [disclosure] *"would reveal to the world at large the nature of the sensitive work in which [the named officer] has been and is involved in."*

48. In its letter to the complainant dated 4 March 2009, the public authority having set out the detail of the relevant provisions of section 40, commented that:

"the release of the third party related information would conflict with the first data protection principle that information should be processed 'fairly and lawfully'".

Section 40 – Unfair disclosure of personal data

49. Section 40 is set out in full in a Legal Annex to this Notice.
50. In analysing the application of section 40(2), the Commissioner therefore considered a) whether the information in question was personal data and b) whether disclosure of the personal data under the Act would contravene the first data protection principle.

Is the information personal data?

51. Personal data is defined in section 1 of the Data Protection Act 1998 (DPA) as data

"which relate to a living individual who can be identified from those data or those and other information in the possession of or which is likely to come into the possession of the data controller and includes expressions of opinions about the individual and indications of the intentions of any other person in respect of that individual".

52. Data is also defined in section 1 of DPA. The first of five categories of data within that definition is given as information *"which is being processed by means of equipment operating automatically in response to instructions given for that purpose"*. Section 1 of the DPA is set out in full in a Legal Annex to this Notice. The Commissioner is satisfied that the information in this case is held electronically and is therefore data for the purposes of DPA.

53. Where the Commissioner is wrong on this point, he would note that the fifth category of data within the definition set out in section 1 of DPA (also known as "category e) data") is given as *"recorded information held by a public authority and does not fall within any of paragraphs (a) to (d)." The Commissioner is satisfied that if the information is not held electronically, it falls within the definition of category (e) data.*

54. When considering whether the data is personal data, the Commissioner had regard to his own published guidance: “Determining what is personal data”³
55. The Commissioner is satisfied that the information in question is biographically significant. In the Commissioner’s view, the officer’s name of itself, is personal data because it relates to an identifiable living individual and, in this context, the name tells the reader that this individual’s name has been raised in connection with allegations of wrongdoing.
56. The alleged wrongdoing in question relates to concerns about irregular expense claims made during Operation EPCOT. If a police officer makes a false claim for expenses, the Commissioner is satisfied that this would constitute a criminal offence. As a consequence, the officer’s name in this context can be construed as information about an allegation of criminality against that officer. Where information about an individual includes an allegation of criminality, that information constitutes that individual’s sensitive personal data as defined in section 2 of DPA. Section 2 of DPA is set out in the Legal Annex to this Notice.
57. The Commissioner is therefore satisfied that the information in question is the named officer’s sensitive personal data. Having reached this conclusion, the Commissioner then considered whether disclosure would contravene the first data protection principle.

Would disclosure contravene the first data protection principle?

58. The first data protection principle has two main components and, in cases involving sensitive personal data, there is an additional component. These are as follows:
 - requirement to process all personal data fairly and lawfully;
 - requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data;
 - additional requirement to satisfy at least one DPA Schedule 3 condition for processing sensitive personal data (if applicable).
59. Both (or, where applicable, all three) requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

3

http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

Would disclosure be fair and lawful?

60. It is important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that:

"Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions" (paragraph 52)⁴

61. In considering fairness, the following are significant factors:
- What are the reasonable expectations of the individual in relation to the handling of their personal data?
 - What was that person told about what would happen to their personal data?
 - Is any duty of confidentiality owed to that person?

Fairness and sensitive personal data

62. Disclosure of sensitive personal data in this case would make public, through the publication of a name in this context, information about an allegation of criminality against the named officer. The Commissioner believes the public authority owes a duty of confidentiality to its staff where unsupported allegations of criminality have been made against them. The Commissioner also believes it would be wholly outside the individual's expectations that they would be named publicly as a person who had been the subject of an unsupported allegation of criminality. The Commissioner would add that he believes these expectations to be reasonable in this case.
63. At the time of the request, the complainant was a serving officer of the public authority. He himself acknowledged to both the Commissioner and the public authority that it was unorthodox for an officer of that authority to seek to pursue an investigation of alleged wrongdoing within the public authority via the Act. The complainant has observed that the most appropriate body to investigate alleged wrongdoing of

4

http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_info_comm.pdf.

this kind would be the public authority itself. However, the complainant has raised concerns that it has not done so with sufficient thoroughness.

64. The Commissioner acknowledges that the complainant remains concerned and that those concerns are felt genuinely and in the interest of ensuring appropriate use of the public purse. However, he is satisfied that, in this case, disclosure under the Act to the world at large of the named officer's sensitive personal data would be unfair. In particular, the Commissioner believes that, in this case, the complainant's unsupported concerns do not carry sufficient weight such that it would make disclosure fair.
65. As outlined above, where the Commissioner finds that one limb of the first data protection principle cannot be satisfied to allow disclosure, the information in question (the name of an officer of the public authority) is exempt from disclosure under section 40(2) by virtue of section 40(3)(a)(i).
66. Given that the Commissioner is satisfied that one limb of the first data protection principle cannot be satisfied, he has not gone on to consider in any detail whether any of the conditions for processing personal data would be met. For completeness, however, he would observe that he is unable to identify a condition under schedule 3 of the DPA for processing the officer's sensitive personal data.
67. The Commissioner would also observe that the public authority's arguments seem to focus more closely on protecting from disclosure the fact that a named officer is involved in the management of covert intelligence resources. The Commissioner is therefore surprised that the public authority did not seek to rely on section 31 as a basis for disclosure. Section 31 provides a number of exemptions relating to law enforcement matters. The Commissioner has previously considered the issue of disclosing identity of individuals involved in the management of covert resources under section 31 and has not upheld complaints about non-disclosure of such information⁵.

Report 2 – Extract 1 (remainder)

68. However, the Commissioner is unable to identify any basis for withholding the remainder of Extract 1 which falls within the scope of the request and therefore requires the public authority to disclose it. He believes the information is relatively innocuous and that it paraphrases the wording of the second of the complainant's requests.

⁵ http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs_50182444.pdf

The Commissioner recognises that the extract includes the name given to a police operation carried out during the FIFA World Cup 2006. However, the name of this police operation, Operation EPCOT, has already been made publicly available by Her Majesty's Inspectorate of Constabulary (see Footnote 1).

69. In failing to disclose Extract 1 in response to the complainant's request of 13 January 2009, the public authority contravened its obligations under section 1 and 10 of the Act. These provisions are set out in full in a legal annex to this Notice.

Report 2 – Extract 2

70. The public authority was silent regarding Extract 2. This extract relates directly to the second sentence in Extract 1 and refers specifically to the matters described in the complainant's request. This extract also includes the name of the officer discussed earlier in this notice. For reasons set out earlier in this notice, the Commissioner is satisfied that the name of the officer set out in Extract 2 can be withheld from disclosure under the Act by virtue of section 40(2).
71. In the absence of any arguments as to why the remainder of Extract 2 should be withheld from disclosure under the Act, the Commissioner believes the remainder of Extract 2 should be disclosed.
72. In failing to disclose the remainder of Extract 2 in response to the complainant's request, the public authority contravened its obligations under section 1 and 10 of the Act.

Report 2 – Extract 3

73. The public authority commented that it "*would however not contest the disclosure of the contents of the extracts [sic] described in your letter as Extract 3*". The Commissioner will therefore order its disclosure as a Step Required at the end of this Notice.

Disclosure of copy of Form 9

74. The complainant has confirmed that his primary interest in receiving a copy of the original Form 9 (rather than a transcript) is to examine it for evidence of staple marks. As is discussed later in this Notice, the complainant wishes to establish whether a receipt was ever attached to the original Form 9. If it was, he believes he should be entitled to a copy of it under the Act. The public authority has argued that the receipt is lost.

75. The Act enables access to information and not documents. The Commissioner recognises that a document will often contain more information than just the main text. For example, an email will contain transmission information in the header and footer and may contain contact details in the email signature. What a person's actual signature looks like on a letter will be information over and above their name. The exact wording or phrasing of a document is also part of the information. However, in the Commissioner's view, the physical characteristics or evidential quality of a document (e.g., the paper it is printed on, the value of an original over a photocopy as evidence) are not information recorded in that document. For the purposes of the Act a complete and accurate copy will record the same information as the original. In other words, a staple mark or absence thereof, does not constitute recorded information for the purposes of the Act.
76. The complainant has received a complete transcription of the information in the Form 9 in question including an inadvertent disclosure of the identity of an individual who is involved in covert operations. Given that the complainant has already received a complete transcription of the information set out in Form 9 and the complainant's interest is now focussed on the state of the document rather than the information contained in the document, the Commissioner will not consider further whether the complainant is also entitled to receive a copy of that document in either redacted or unredacted form.
77. That said, and for completeness, the Commissioner would agree with the public authority that the officer who submitted the Form 9 in question for approval could be identified from his handwriting were a copy of the document itself to be put into the public domain. For the reasons outlined above regarding the application of section 40(2), the Commissioner believes it would be unfair to that officer to disclose any information which would reveal their identity in this context.

Is requested information held?

78. When determining whether a public authority holds requested information, the Commissioner believes that the normal standard of proof that should be applied is the civil standard of the balance of probabilities.
79. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.

80. The complainant is convinced that six high specification mobile phones and dual SIM holders were purchased by the public authority for its officers for their official use on deployment to Germany during the 2006 FIFA World Cup, prior to that deployment. He is also convinced that those same high specification mobile phones were subsequently retained for private use by officers of the public authority.
81. As set out above, the complainant has focussed on three particular items of information within the scope of the description set out in his request relating to the mobile phones. He believes these items of information should be held by the public authority:
- The original receipt which was attached to Form 9
 - A further Form 9 relating to the purchase of high specification mobile phones with dual SIM holders
82. The Commissioner set out a series of questions for the public authority in order to learn more about the purchase of mobile phones to be used for deployment in Germany and about the searches undertaken by the public authority to determine whether it held any further information about the purchase of the mobile phones. He also asked about the public authority's document retention and destruction policy.
83. In response, the public authority described the searches it conducted in its accounts records archive for information relating to the purchase of mobile phones, in particular, for the original Form 9 and for any receipts. It also set out which of its staff it had contacted who would be likely to have relevant information as to the purchase of mobile phones for the deployment to Germany and the possible location of relevant records. It described these as the most logical and likely sources of information.
84. It said that its policy on the retention of receipts required them to be retained for two years plus the current year which meant that an accounts form generated in June 2006 (as was the case here) would have been subject to disposal on or after April 2009. However it had noted that at the time it conducted the searches outlined in the previous paragraphs no records due for destruction after April 2009 had been disposed of.
85. It said that its copy of the original accounts Form 9 was a copy of a copy but it did bear the impression of 2 staples which indicated that other documentation, "*probably a receipt or receipts*", were attached to the original. However, neither the original Form 9 nor the receipt relating to the purchase of mobile phone equipment could be found.

86. It also explained its rationale for purchasing mobile telephones in Germany for use there during the World Cup deployment rather than in the UK. It was satisfied that this decision had been made because it was more efficient and more economical to do so.
87. It also sought to argue that the complainant's request related to mobile phones purchased in the UK and that therefore information relating to mobile phones purchased in Germany fell outside the scope of the complainant's request. In other words, the information it disclosed to the complainant transcribed from a completed Account Form 9 was, in fact, outside the scope of the complainant's request.
88. The Commissioner disagrees with this view. He is satisfied that the complainant's written correspondence with the public authority does not set out a specific interest in mobile phones purchased in the UK for the deployment to Germany although he may have asserted such an interest during telephone conversations with the public authority. The Commissioner has seen no written evidence to show that the parties formally agreed to narrow the request in this way. He believes that the scope of the complainant's request is broad enough to include mobile phones purchased in either the UK or in Germany for use in Germany. The Commissioner notes that the wording of the complainant's request regarding the purchase of mobile phones is only qualified by the phrase "*which were subsequently retained by police officers for their private use*". In other words, if the public authority holds information about mobile phones which were purchased for use in Germany (either in the UK or in Germany) and which were subsequently retained for officers' private use then, in the Commissioner's view, such information would be caught by the scope of the complainant's request.

Is the receipt still held?

89. The public authority provided the Commissioner with a copy of its accounts record which correlates with the submission of the Form 9 in question. The text of this record will be discussed shortly. However, it is clear from other parts of the same record which are unrelated to this information request that the public authority would have recorded the absence of a receipt in relation to the purchase of the mobile phone equipment when the Form 9 in question was submitted. The Commissioner believes it is safe to conclude that a receipt for the mobile phone equipment was attached to the Form 9 in question when it was submitted.
90. Based on the date of the complainant's request, the public authority's document retention policy and the comments the public authority has

made regarding the retention of documents in excess of its retention period, the Commissioner believes that the receipt *should* still be held. The Commissioner is satisfied that the public authority has conducted sufficiently thorough searches to find the missing receipt. Based on the outcome of these searches, the Commissioner is also satisfied that the receipt is lost. In the Commissioner's view, there is no evidence to suggest that the absence of the receipt indicates anything other than an unfortunate administrative failure to protect documentation submitted in support of an expense claim.

Record of purchase of high specification mobile phones and dual SIM holders

91. It is the complainant's contention that the public authority did not, as it claimed, purchase six mobile phones with SIM cards in Germany for use in Germany. He believes that high specification mobile phones and dual SIM holders were purchased in the UK prior to the deployment in Germany and that these are the mobile phones which were retained by certain officers following an irregular management decision. The public authority has stated categorically that no such high specification phones were purchased for official use and then retained for private use by its officers. The complainant cites in support of that view, the ambiguity found in the exact wording of the claim set out in transcript of the Accounts Form 9 that was supplied to him (see Findings of Fact). He believes that where any doubt can be cast on what was purchased and claimed for on expenses by one of the public authority's officers, this supports his contention regarding the high specification mobile phones.
92. The public authority acknowledges that the information set out in Form 9 is not wholly clear but, having consulted its own technology department, it asserts that six basic mobile telephones with SIM cards could be purchased for Euro 119.70 and that the expense claim set out in the Form 9 which was disclosed in transcribed form to the complainant therefore relates to the purchase of six such mobile phones.
93. The Commissioner believes it is highly likely that the public authority would choose the cheapest viable option when deciding what arrangements it should make for mobile phone equipment. He has checked whether the purchase of six Pay-As-You-Go mobile phones with SIM cards would have been feasible at a cost of Euro 119.70 in Germany in 2006. Where it would have been feasible, the Commissioner believes it is highly likely, on a balance of probabilities, that this was the course of action that the public authority actually took.

94. The Commissioner first visited the websites of two major service providers in Germany. He learned that it was feasible to make such a purchase in 2010.
95. The Commissioner also visited an online forum for English-speaking residents in Germany where the topic of "Pay-As-You-Go" mobile phones (called "handys" in Germany) was discussed in June 2009. The contributors referred to prices charged by retailers of electronic goods for basic mobile phones with SIM cards. These offers appeared to be similar to prices charged by the service providers referred to above. While the comments of contributors to this forum are anecdotal, the Commissioner believes they were submitted in good faith in order to share helpful advice to new English-speaking arrivals in Germany.
96. The Commissioner notes that the comments post-date the FIFA 2006 World Cup. However, the Commissioner believes that the retail price of low specification phones with a standard "Pay-As-You-Go" package has been fairly static in the past five years. He is therefore satisfied that six low specification mobile phones with SIM cards could feasibly have been purchased for Euro 119.70 in Germany in June 2006.
97. The Commissioner accepts that the detail of the purchase set out in the Form 9 in question is ambiguous. Does it mean that six German network SIM cards were purchased for mobile phones already in use or does it mean that six mobile phones and German SIM cards were purchased? The extract from the public authority's accounts which correlate to this expense claim seem to suggest that the claim for Euro 119.70 was for a single SIM card. The Commissioner would observe that this only adds to the ambiguity.
98. However, the Commissioner believes it is highly improbable that the officer purchased a single SIM card for Euro 119.70 as the public authority's accounts records suggest. That said, the Commissioner believes it is possible to conclude from this evidence that the officer who completed the form only purchased SIM cards (plural) for Euro 119.70. This conclusion would support the complainant's theory that the officers deployed to Germany used dual SIM holders which may or may not have been installed in high specification mobile phones. The complainant would also argue that the absence of a receipt (which would clarify the issue) adds weight to his suspicions.
99. While it is possible to conclude from the available evidence that the officer only purchased SIM cards on this occasion, the Commissioner is not persuaded that this is what happened. He notes that this would mean each SIM card cost almost 20 Euros. This would be an extremely

expensive and unlikely purchase given the ready availability of SIM-only deals at a much cheaper rate.

100. The Commissioner believes this evidence, while suggestive, is not sufficiently convincing to contradict the public authority's assertion that the expense claim set out on Form 9 was for six low-specification mobile phones with SIM cards and that it was these mobile phones which were retained for private use by the officers in question following a management decision. In consequence, the Commissioner is satisfied with the public authority's assertion that it did not purchase high specification mobile phones for officers to use on deployment in Germany which were then released for private use to those same officers. He is therefore satisfied that, on the balance of probabilities, the public authority holds no record of purchasing such phones.

Record of management decision to allow retention of mobile phones for private use

101. The public authority has asserted that no record was kept of the management decision to allow officers to retain the mobile phones for private use. It has provided the Commissioner with extracts from its Contract Standing Orders which deals with the sale to staff or other persons of its assets. The focus of the procedures described in the document is on items where the estimated sale price exceeds £1,000 which is not applicable in this case.
102. The public authority has also commented on its Gifts and Gratuities Policy in place at the time of the management decision in question. This would be another Policy which may have been applicable if the Contract Standing Order was not considered relevant. Where the value of the mobile phones was considered to be less than £1000, the Gifts and Gratuities Policy would appear to be relevant. According to the public authority, the Gifts and Gratuities Policy does not specifically require an entry on the Gifts and Gratuities Register where officers are allowed to retain mobile phones for private use. The public authority admitted that it may have been "*prudent*" to make such a record but added that it was "*not mandatory*" to make such a record.
103. In light of the above, the Commissioner has concluded that, on the balance of probabilities, no record was made of the management decision to allow officers to retain mobile phones for private use. He is therefore satisfied that no information is held on this matter.

Records of flights and hotels for visiting family and friends of the officers deployed to Germany

104. The complainant has asserted that certain family members and friends of the officers visited officers deployed to Germany and that it is his understanding that these visits were at public expense. He has offered no evidence to support this beyond his own suspicions.
105. The public authority has asserted that no such journeys or other expenses were paid for from its funds and that it, therefore, holds no records of such journeys.
106. In the absence of any evidence to the contrary, the Commissioner is satisfied that the public authority holds no records of flights and hotels for family and friends visiting its officers in Germany that it paid for from its funds.

The Decision

107. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- It was correct when it asserted that it did not hold:
 - a) a copy of the receipt attached to the original Form 9;
 - b) a record of purchase of high specification mobile phones and dual SIM holders;
 - c) a record of management decision to allow retention of mobile phones for private use; and
 - d) a record of flights and hotels for visiting family and friends of the officers deployed to Germany.
 - It was entitled to withhold the name of a particular officer involved in the management of covert resources who is mentioned in parts of the requested information under section 40(2) of the Act.
108. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- It failed to provide certain extracts from Report 2 by the appropriate time for compliance. In failing to do so, it contravened the requirements of section 1(1)(b) and section 10 of the Act.

Steps Required

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

- It must disclose the three extracts set out in a Confidential Annex to this Notice but is entitled to withhold the name of a particular officer of the authority identified in the Annex.

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

Failure to comply

111. 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

112. 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.

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 sent.

Dated the 22nd day of November 2010

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

Section 1 General right of access to information held by public authorities.

(1) 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 Time for compliance with request.

(1) 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 21 Information accessible to applicant by other means.

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Section 40 Personal information.

(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) 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 ...

Data Protection Act 1998

Section 1 Basic interpretative provisions.

(1) In this Act, unless the context otherwise requires—

“data” means information which—

(a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b) is recorded with the intention that it should be processed by means of such equipment,

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68,

(e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d),

...

Schedule 1 Part I – The Data Protection Principles

- 1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
- 2 Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.
- 3 Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- 4 Personal data shall be accurate and, where necessary, kept up to date.
- 5 Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
- 6 Personal data shall be processed in accordance with the rights of data subjects under this Act.
- 7 Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 8 Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.