

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 6 October 2010

Public Authority: Wiltshire Police
Address: Police Headquarters
London Road
Devizes
SN10 2DN

Summary

The complainant asked Wiltshire Police (the “public authority”) to provide information relating to an incident which occurred at a railway bridge. The public authority provided a partial response and refused to disclose the remaining information citing the exemptions under sections 40(1) and (5) (personal information) of the Freedom of Information Act 2000 (the “Act”). During the course of the Commissioner’s investigation the public authority disclosed all of the requested information. As the information has now been provided the Commissioner has not considered whether or not the exemptions cited were properly engaged. However, the public authority’s handling of the request resulted in a procedural breach of section 17(1) of the Act as identified in this Notice.

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 request concerns an incident which occurred at Broken Cross Railway Bridge in September 2009. Details of the incident can be found in the Rail Accident Investigation Branch Bulletin 03/2010¹.

3. The Bulletin provides the following description of the incident:

- "1. Before dawn on 22 September 2009, a passenger train collided with a car which had left the highway at Broken Cross bridge near Salisbury, and rolled onto the railway line a few seconds before. The car, which had been travelling south on the A338, landed on its passenger door side and facing towards an oncoming train.*
- 2. The car driver, the only occupant of the vehicle, was able to see the lights of the approaching train and climbed out of the vehicle before the collision occurred. He attempted to make an emergency call using his mobile phone, but was unable to prevent the collision. The train driver applied the emergency brake, and the train came to a halt after propelling the car along the track for a distance of 460 metres (see figure 1).*
- 3. The train, comprising a two car class 158 diesel multiple unit (leading) and a three car class 159 diesel multiple unit, was damaged by the collision and the effects of flying ballast which struck four of the five under-floor diesel engines. There were no injuries to the three crew and nine passengers on the train. Evidence from the train's data recorder showed that the train was travelling at 65 mph (105 km/h) at the time of the collision, on a section of track with a line speed of 80 mph (129 km/h). The train's forward facing CCTV indicates that the driver had approximately two seconds warning of the collision when the train's headlights reflected off the car's number plate".*

4. The Commissioner also found the following media articles which covered the incident:

<http://news.bbc.co.uk/1/hi/england/wiltshire/8268353.stm>

<http://www.dailymail.co.uk/news/article-1215217/Driver-cheats-death-leaping-car-seconds-careers-path-speeding-train.html>

¹

[http://www.raib.gov.uk/cms_resources.cfm?file=/Bulletin%20\(Broken%20Cross\)%2003-2010.pdf](http://www.raib.gov.uk/cms_resources.cfm?file=/Bulletin%20(Broken%20Cross)%2003-2010.pdf)

http://www.andoveradvertiser.co.uk/news/4642694.Motorist_s_lucky_escape_from_rail_track/

The request

5. On 21 January 2010 the complainant made the following information request, along with a link to the Bulletin described above:

"I'm writing with respect to an incident that occurred on the 22nd of September 2009 at Broken Cross railway bridge near Salisbury, reported by the Rail Accident Investigation Branch in their Bulletin 03/2010.

Please tell me:

- * Was this matter reported by anyone to the Wiltshire Constabulary?*
- * What action did you take?*
- * In particular, did you identify the driver?*
- * Did you prosecute the driver?*
- * If you prosecuted [sic] the driver, for which offences and what was the outcome of the prosecution?*
- * If you did not prosecute the driver, could you please tell me what information you have about the process by which the decision not to prosecute was reached?"*

6. Further to an acknowledgement, on 25 January the complainant again wrote to the public authority clarifying that by 'driver' he meant the driver of the vehicle, not the train.
7. On 27 January 2010 the public authority sent its response. It neither confirmed nor denied holding information by virtue of section 40(5) (personal information) of the Act. It also stated that, if information was held and he was the party concerned, the information was exempt under section 40(1) of the Act and he would need to request it via an application under the Data Protection Act (the "DPA").
8. On 12 February 2010 the complainant requested an internal review.
9. In its internal review the public authority confirmed that it held relevant information and provided a response to the first two parts of the request. It stated that it was relying on its earlier refusal in respect of the remaining parts of the request.

The investigation

Scope of the case

10. On 23 February 2010 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:

"I wanted to know whether a prosecution had taken place following a particular incident. I was told that this information was exempt by virtue of the Data Protection Act. Surely it cannot be the case that whether someone was prosecuted, and what for, is confidential".

Chronology

11. On 27 July 2010 the Commissioner commenced his investigation and wrote to the complainant. The complainant confirmed that he was happy with the response in respect of the first two parts of his request. He also confirmed that he had no personal connection with the incident.
12. On the same date the Commissioner commenced his enquiries with the public authority. He sought clarification regarding the citing of section 40 at internal review stage as he believed it was unclear whether section 40(2) or 40(5) was being applied to the remaining parts of the request.
13. The Commissioner discussed the case with the public authority with a view to seeking an informal resolution. On 19 August 2010 the public authority wrote to the complainant and provided a full response to the remaining parts of his request. It also explained to him:

"For clarity around your questions 4, 5, & 6 I must state that the police do not prosecute people; the Crown Prosecution Service (CPS) is responsible for the prosecution of people in England and Wales. The police's function is to gather evidence to enable the CPS to make a decision whether a person is charged and subsequently prosecuted. However, I can confirm that we do hold information relating to your questions".

14. The Commissioner contacted the complainant to ask whether he would withdraw his complaint as he had now received the requested information. The complainant declined to withdraw.

Analysis

Substantive procedural matters

15. As the requested information has been provided to the complainant the Commissioner finds that there were no substantive procedural issues. However, he would here note that, since police forces do not themselves undertake prosecutions, had the public authority stated that it did not hold the information in respect of parts 4, 5 and 6 of the request it is likely that he would have decided that that was an acceptable response.

Exemptions

16. As the information in this case has been disclosed the Commissioner has not considered whether or not the public authority was correct in citing the exemptions upon which it previously relied.

Procedural requirements

Section 17 – refusal of request

17. Section 17(1) provides that a public authority which is seeking to rely on any exemption contained in the Act must give the applicant a notice that: (a) states the fact; (b) specifies the exemption in question; and (c) states why the exemption applies.
18. In its internal review decision the public authority failed to state explicitly that it was applying subsection (5) of section 40, the subsection relating to the “neither confirm nor deny” response. In failing to do so it breached section 17(1)(b).

The Decision

19. The Commissioner’s decision is that the following elements of the request were not dealt with in accordance with the Act:
 - the public authority failed to specify upon which subsection of section 40 it was relying.

Steps required

20. The Commissioner requires no steps to be taken.

Right of Appeal

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 6th day of October 2010

Signed

**Jon Manners
Group Manager**

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

Legal annex

Section 17 - refusal of request

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
- (a) states the fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.