

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 March 2011

Public Authority: Chief Constable of Cheshire Constabulary
Address: Clemonds Hey
Oakmere Road
Winsford
Cheshire
CW7 2UA

Summary

The complainant asked the public authority to provide information relating to an alleged rape case and any associated court case details. Although Cheshire Constabulary initially confirmed it did not hold the requested information, the subject matter of the case prompted the Commissioner to consider whether the public authority should instead have given a 'neither confirm nor deny' response. The Commissioner finds that confirmation or denial would disclose personal data and that the disclosure of this personal data would be in breach of the first data protection principle. The exemption provided by section 40(5)(b)(i) should therefore have been applied. The public authority is not required to take any steps.

The Commissioner's role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The request

2. On 6 August 2010 the complainant made the following information request:

"I've been advised by the CPS to make a formal request under the Freedom of Information Act for the details of a court case that was investigated some ten years ago.

The report sent to the IPCC confirms the rape case exists, the victim was a [name redacted] and the perpetrator was a [name redacted] both of [location redacted].

I would like the details of the case, date of trial, case number and the name of the court it was held at along with the outcome as permitted under the FOI Act.

I will forward them onto my solicitor upon receipt."

3. The public authority responded on 3 September 2010 confirming it did not hold any of the requested information.
4. On 8 September 2010 the complainant wrote again to Cheshire Constabulary reiterating his request of 6 August 2010.
5. Cheshire Constabulary responded on 27 September 2010 explaining that as the request was identical to the previous one to which it had responded on 3 September 2010, it was applying section 14(2), which meant it did not have to comply with this request on the basis that it was a repeat request.
6. On 27 September 2010 the complainant requested an internal review. The public authority provided its review decision on 1 December 2010. It upheld the original decision in stating that no information was held.

The investigation

Scope of the case

7. The complainant initially contacted the Commissioner on 5 September 2010 to complain about the way his request for information had been handled. At this stage, the case was closed pending the complainant requesting an internal review of the public authority's decision. Having received the result of the internal review, the complainant subsequently complained to the Commissioner on 16 December 2010.
8. 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

9. Upon receiving notification from the Commissioner that he had received a complaint from the complainant, Cheshire Constabulary contacted the Commissioner and confirmed that it was maintaining its stance that it did not hold the information. It advised that its view was that the information was not in the public domain.
10. The Commissioner undertook his own searches of the internet which did not reveal that any of the requested information was in the public domain.
11. On 22 February 2011 the Commissioner contacted the public authority to advise it of how he intended to proceed with the case.

Analysis

Exemption

Section 40(5)(b)(i)

12. The full text of the relevant provisions of the Act referred to in this section is contained within the Legal Annex.
13. Section 40(5)(b)(i) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act (DPA).
14. The Commissioner's analysis of whether the above criteria would be satisfied follows.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

15. The DPA defines personal information as:

"...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the

data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual."

16. In his guidance on the section 40 exemption¹, the Commissioner expanded on what constituted personal data:

"The two main elements of personal data are that information must 'relate to' a living person, and that person must be identifiable. Information will 'relate to' a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way."

17. The Commissioner considers that the way in which the request is worded clearly indicates that the complainant is seeking information which can be linked with named individuals. He considers that to comply with section 1(1)(a) of the Act (i.e. to either confirm or deny holding the information) would inevitably put into the public domain information about the existence or otherwise of a case or police investigation involving the named parties, which would constitute the disclosure of information that would relate to those individuals.

18. Therefore, the Commissioner considers that to confirm or deny whether the requested information is held would in itself constitute a disclosure of personal data.

Would disclosure of this personal data breach a data protection principle?

19. The first data protection principle requires that personal data is processed fairly and lawfully and that:

- at least one of the conditions in Schedule 2 is met, and
- in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

20. The Commissioner's considerations here focus on the general issue of whether disclosure would be fair to the relevant individuals.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf

Fairness

21. In establishing whether disclosure is fair, the Commissioner will look to balance the consequences of any release of personal data and the reasonable expectation of the data subjects, with general principles of accountability and transparency.
22. The personal data that would potentially be disclosed here would relate to the individuals in a private capacity. This is significant in that previous decisions issued by the Commissioner have been guided by the principle that information about an individual's private life will deserve more protection than information about someone acting in an official or work capacity.
23. The Commissioner would therefore consider that in the circumstances of this case, the individuals would have a legitimate expectation that information which may or may not confirm whether they had been the subject of an investigation and/or court proceedings would not be released. To disclose this information would be an unwarranted intrusion into the rights and freedoms of the data subjects, given the distress that the release of the information could potentially cause.
24. In considering whether the exemption contained within section 40(5)(b)(i) should have been applied to the request the Commissioner has taken into account that the Act is designed to be applicant blind and that disclosure should be considered in its widest sense – which is to the public at large. If information were to be disclosed it would, in principle, be available to any member of the public. A confirmation or denial in the circumstances of this case would reveal to the public information which is not already in the public domain and is not reasonably accessible to the general public, about the existence or otherwise of a case or police investigation involving those named parties.
25. The Commissioner will not proactively seek to consider exemptions in all cases before him, but in cases where personal data is involved the Commissioner believes he has a duty to consider the rights of data subjects. These rights, set out in the DPA, are closely linked to article 8 of the Human Rights Act and the Commissioner would be in breach of his obligations under the Human Rights Act if he ordered disclosure of information or confirmation/denial without having considered these rights, even where the exemption has not been cited.

Conclusion

26. Leading on from these considerations, the Commissioner has determined that to confirm or deny whether the requested information is held would be unfair to the data subjects. As disclosure would therefore breach the first data protection principle, section 40(5)(b)(i) is engaged and the correct approach would have been for the public authority to have neither confirmed nor denied holding the requested information.

The Decision

27. The Commissioner's decision is that Cheshire Police did not have a duty to comply with section 1(1)(a) of the Act on the basis of the exemption contained within section 40(5)(b)(i).

Steps Required

28. The Commissioner requires no steps to be taken.

Right of Appeal

29. 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 14th day of March 2011

Signed

**Lisa Adshead
Group Manager**

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

Legal Annex

Freedom of Information Act 2000

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 40

Section 40(5) provides that –

"The duty to confirm or deny-

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

(i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Data Protection Act 1998

Section 1(1) provides that –

"'personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the

intentions of the data controller or any other person in respect of the individual."

The first data protection principle provides that –
"Personal data shall be processed fairly and lawfully..."