Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 August 2011

Public Authority: **Lincolnshire Police**
Address: **Police Headquarters**
PO Box 999
Lincoln
LN5 7PH

Summary

The complainant requested information relating to a job evaluation exercise. The public authority disclosed part of the information and withheld the remainder on the basis of the exemptions at sections 31(1)(a), (b), and (c) (Law Enforcement). The Commissioner found that none of the exemptions were engaged and ordered the public authority to disclose the withheld information.

The Commissioner consequently found the public authority in procedural breach of the Act.

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 18 August 2010 the complainant requested:

   i. All documentation regarding the criteria used to determine the gradings for the role of indexer in MCU Lincolnshire. How the grading process works and detail of the criteria and scales used to

determine the appropriate grades for staff (namely indexer positions).

ii. All documentation regarding the standards the evaluators use to judge what grade is awarded and what is the scale of accountability, knowledge, communication, mental demands, impact and contribution, accountability for people, accountability for resources and working environment that is used to determine what is considered to the appropriate grade/score for the job.

iii. A copy of all original job evaluation documents/reports which details the previous/original score gradings and reasoning for those grades for the indexer role prior to 26/07/2010.

3. The public authority responded on 17 September 2010. All of the information within the scope of the request was withheld on the basis of the exemptions at sections 41(1) and 43(2).

4. The complainant requested a review of the decision on 5 October 2010.

5. On 29 November 2010 the public authority wrote back to the complainant with details of the outcome of internal review. The public authority disclosed some information but withheld the remainder on the basis of the exemptions at sections 31(1)(a), (b), and (c).

The Investigation

Scope of the case

6. On 22 December 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to review the public authority's decision to withhold the information requested.

7. For reasons explained further below, the investigation was restricted to the information within the scope of item (ii) of the request. However, part of that information (the Job Analyst Meeting Notes) was also not included in the investigation because the complainant was subsequently advised by the public authority to re-submit a request for the relevant information under the subject access provisions of the Data Protection Act 1998.

Chronology

8. The Commissioner initially wrote to the public authority on 31 January 2011 to notify the public authority of the complaint and also request copies of the withheld information to facilitate the progress of the investigation once the case was allocated to an appropriate case officer.

9. On 1 March 2011 the public authority provided the Commissioner with copies of the withheld information ('the disputed information') and representations on the application of the exemptions at sections 31(1)(a), (b), and (c).

10. On 22 March 2011, following the allocation of the complaint to a case officer, the Commissioner wrote to the complainant to outline the scope of his investigation and invited her comments if she had any. The complainant did not respond to the letter.

11. On 31 March 2011 the Commissioner wrote to the public authority.

12. On 4 May 2011 the public authority responded. Details of the Commissioner's queries and the public authority's responses are summarised in the analysis section below.

13. On 10 May 2011 the Commissioner wrote to the public authority. He specifically asked the public authority to clarify why it had not considered part of the disputed information under the subject access provisions of the Data Protection Act 1998.

14. On 6 June 2011 the public authority responded. It confirmed that the relevant disputed information (i.e. the Job Analyst Meeting Notes) was caught by the DPA and invited the complainant (in a letter dated 6 June 2011) to submit a request under the subject access provisions of the DPA for the notes.

Analysis

Substantive Procedural Matters

15. The Commissioner asked the public authority to clarify which part of the request the disputed information relates to.

16. The public authority explained that the information previously disclosed satisfied items (i) and (iii) of the request above. The disputed information relates solely to item (ii) of the request.

17. The Commissioner also asked the public authority to clarify whether it had any objections to revealing the title of the document which

constitutes the disputed information because the public authority did not name the document in its responses to the complainant.

18. The public authority confirmed on 1 August 2011 that the Commissioner could name the withheld document in the decision notice.

Disputed Information

19. The disputed information consists of;

- Data Collection Document (DCD).

Exemptions

Sections 31(1)(a), (b), and (c)

20. As already noted, the public authority relied on all of the above exemptions. Information is exempt on the basis of the exemptions above if its disclosure would or would be likely to prejudice;

    a. The prevention or detection of crime,

    b. The apprehension or prosecution of offenders, and

    c. The administration of justice

21. The public authority combined the exemptions under the umbrella of law enforcement and submitted that the exemptions applied to the disputed information for broadly similar reasons.

22. Although the reasons for applying the exemptions necessarily overlap, the Commissioner has to consider each exemption separately so that if one of the exemptions was correctly applied to the disputed information, there would be no need for him to consider the remaining exemptions.

Section 31(1)(a)

23. The Commissioner first considered whether the disputed information above was correctly withheld on the basis of the exemption at section 31(1)(a). As already noted, information is exempt on the basis of section 31(1)(a) if its disclosure 'would, or would be likely to, prejudice the prevention or detection of crime.'

24. In the Commissioner's opinion 'would prejudice' places a much stronger evidential burden on a public authority and must be at least more probable than not. However, 'would be likely to prejudice' also

means that the prejudice should be real and significant, and certainly more than hypothetical or remote.

25. Although requested by the Commissioner, the public authority did not specifically indicate the level of prejudice (i.e. 'would' or 'would be likely') anticipated. The Commissioner is however satisfied from the public authority's submissions that it was not relying on the higher threshold (i.e. 'would prejudice') of prejudice and he has therefore considered the submissions in the context of the lower threshold (i.e. 'would be likely to prejudice')

26. In terms of the application of the prejudice test, the Commissioner considers that it should involve the 3 steps noted by the Information Tribunal in Hogan v the ICO & Oxford City Council. The first step is to identify the applicable interest(s) within the relevant exemption, the second is to consider the nature of prejudice being claimed and the third step is to consider the likelihood of the occurrence of the prejudice claimed.

Data Collection Document (DCD)

27. According to the public authority, the document contains information relating to all elements of the job evaluation scheme and the way in which the assessment is conducted. It sets out the varying levels of the factors which will influence the overall job evaluation score. The document is primarily used by a trained job analyst to collate information provided by individuals requesting a re-grade of their current roles. The format enables the information to be inputted into a computerised job evaluation system resulting in a job evaluation score which correlates with the public authority's pay and grading structure.

28. The public authority argued that the disclosure of the information in the DCD could allow applicants to be extremely specific in key areas which would enhance their chances of achieving a higher job evaluation score and therefore a higher pay grade. It further argued that this could then increase workloads on vital resources including budget demands on individual areas "that would have to be re-aligned to meet the requirement to review all requests for job evaluation to be met". Ultimately, the disclosure could have an adverse impact on the public authority's ability to deliver effective law enforcement (i.e. the prevention/detection of crime) because it would weaken its ability to obtain value for money from its resources. The public authority was keen to stress that in the current climate where there is an overall reduction in annual budgets, it was not in its interest to disclose the information in the DCD.

29. The Commissioner is satisfied that the public authority's argument above is inherent in the exemption at section 31(1)(a), because it has been explicitly linked to a prejudice to the prevention and detection of crime, and that the prejudice claimed is not trivial or insignificant.

30. However, as always, the starting point should be with the withheld information. In order to satisfy step two of the prejudice test the Commissioner must consider how plausible the argued causal link between the disclosure of the information and the prejudice is. Having carefully reviewed the DCD, the Commissioner notes that it primarily contains general descriptions of different duties/activities against which the applicant's current role is evaluated using varying levels of assessment which determine the score for that activity against the applicant's current role. Ultimately, the scores for each assessed activity are calculated to give an overall score for the job evaluation exercise.

31. Most of the activities are akin to competencies which one might find in a job description for an advertised job. They are also mostly evidence based so that the burden is on applicants to demonstrate among other things that the frequency and complexity of the activities they perform does not adequately reflect their current pay grade.

32. Furthermore, the Commissioner also reviewed a completed job evaluation application/re-grade request form for the role of an indexer and he notes that the information on the form is broadly similar to that in the DCD. In his opinion, the information in the DCD is not so materially different to that on the job evaluation form so as to provide a significant advantage to an applicant already in possession of the DCD when completing a job evaluation form. As already noted, it is a highly evidence based process and ultimately, applicants must demonstrate that their current duties merit a higher pay grade. In addition, the completed job evaluation forms are also signed by the applicant's line manager and head of department which therefore also acts as a check against applicants who might fabricate information to aid their application.

33. In view of the above, the Commissioner is not persuaded that the disclosure of the information in the DCD could significantly enhance the chances of applicants achieving a job evaluation score which is higher than what their current role deserves. He therefore considers that the public authority's causal link arguments fail on this point. Even if he had been convinced that job evaluation scores could be manipulated in this way, the Commissioner considers that the public authority has not convincingly demonstrated how the impact of this would be sufficient to prejudice the public authority's ability to prevent and detect crime. In his opinion the likelihood of prejudice has not been shown to be real

and significant and for that reason he finds that the disclosure of the information in the DCD would not have been likely to prejudice the prevention or detection of crime.

34. In summary, the Commissioner finds that the information in the DCD was not correctly withheld on the basis of the exemption at section 31(1)(a). He has therefore not gone on to consider the public interest in disclosure.

Sections 31(1)(b) and (c)

35. For the same reasons above, the Commissioner also finds that the information in the DCD was not correctly withheld on the basis of the exemptions at sections 31(1)(b) and (c).

Procedural requirements

36. Sections 1(1)(b) and 10(1) combine to impose on a public authority the duty to disclose requested information within 20 working days.

37. The Commissioner finds the public authority in breach of sections 1(1)(b) and 10(1) for failing to disclose the disputed information within 20 working days.

The Decision

38. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

- It incorrectly withheld the data collection document on the basis of the exemptions at sections 31(1)(a), (b), and (c).
- It consequently breached sections 1(1)(b) and 10(1) for failing to disclose the data collection document within 20 working days.

Steps Required

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

- Disclose the Data Collection Document.

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

Failure to comply

41. 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

42. 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: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

43. 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.

44. 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 2nd day of August 2011

Signed ……

Lisa Adshead
Group Manager

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

Legal Annex

Law enforcement

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."

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Section 31(1) provides that –

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,

(c) the administration of justice,

(d) the assessment or collection of any tax or duty or of any imposition of a similar nature,

(e) the operation of the immigration controls,

(f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

(h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of

the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or

(i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment."

Section 31(2) provides that –

"The purposes referred to in subsection (1)(g) to (i) are-

(j) the purpose of ascertaining whether any person has failed to comply with the law,

(k) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

(l) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

(m) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,

(n) the purpose of ascertaining the cause of an accident,

(o) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,

(p) the purpose of protecting the property of charities from loss or misapplication,

(q) the purpose of recovering the property of charities,

(r) the purpose of securing the health, safety and welfare of persons at work, and

(s) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work."

Section 31(3) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)."