

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 July 2011

Public Authority: Metropolitan Police Service
Address: New Scotland Yard
Broadway
London SW1H 0BG

Summary

The complainant requested information from the Metropolitan Police Service (MPS) regarding communications between the MPS, the Intellectual Property Office (IPO) and Dorset Police that dealt with the subjects of perjury and forgery and comments made about him. The MPS relied on section 40(5) of the Act (personal information) to neither confirm nor deny holding the requested information.

The Commissioner has investigated and found that the MPS was correct to neither confirm nor deny holding information within the scope of the request. He requires no steps to be taken.

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. The complainant wrote to the Metropolitan Police Service (MPS) on 6 December 2010 with the following request for information:

"I asked the Met firstly through Dorset Police to investigate a series of acts of perjury and forgery at various Intellectual Property Office

hearings. A Sgt [redacted] at Camden station dealt with it in the first instance. He had contacted the IPO. He refused to deal with it.

I then complained and a Sgt [redacted] also at Camden then dealt with it. He also was in contact with the IPO.

What I require are copies of all emails, letters, faxes, notes of any sort that were created by both individuals and sent to the IPO or Dorset Police and any replies from the IPO they got. Obviously all these would have dealt with the subjects of perjury & forgery and comments made by all parties about myself of & on a personal level. I do have some copies already so I know that what I ask for have indeed been created. Excuses that these are part of a criminal investigation will not wear as they are patently not, as no investigation of criminal acts was ever started. What I ask for are merely requests by the Met to the IPO about me, my past history with regard to my request for investigations etc and asking the IPO for advice on whether perjury had been committed".

3. The MPS responded on 7 December 2010. It refused either to confirm or deny holding the requested information, citing section 40(5) (personal information) of the Act. It explained that to confirm or deny whether personal information existed in response to the request could breach the right to privacy afforded to persons under the Data Protection Act 1998 (DPA). It also advised the requester how to make a Subject Access Request under the DPA.
4. The complainant requested an internal review on 7 December 2010.
5. The MPS upheld its decision in its internal review correspondence which it sent to the complainant on 16 December 2010.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner on 19 December 2010 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to:

"look into this refusal of the Met to divulge matters which are personal to me".
7. The Commissioner contacted the complainant on 3 February 2011, apologising for the delay in responding. In light of the wording of his

request, the complainant was also advised of his right of subject access under the Data Protection Act.

8. The complainant contacted the Commissioner again on 13 February 2011, acknowledging the Commissioner's correspondence but confirming that he wished to pursue his complaint under the Act.
9. The Commissioner has therefore considered whether the MPS was entitled to neither confirm nor deny holding any information within the scope of the request.

Chronology

10. The Commissioner wrote to the MPS on 8 March 2011 asking it for further explanation of its reasons for citing section 40(5) in relation to the request.
11. The MPS responded on 17 March 2011.

Analysis

Exemptions

Section 40 Personal information

12. When making his complaint to the Commissioner, the complainant said:

"I know that the matters I wish to see are about me and no one else. So I believe that I have a right to see those remarks".

13. With respect to that part of his request that relates to what the MPS asked the IPO about perjury and forgery and what answers it was given, he told the Commissioner that he considered the questions and answers would be of a general nature.

14. The MPS told the Commissioner on 17 March 2010:

"In response, it is the view of the MPS that on the objective reading of the request above, all the requested information, if held, would be [the complainant's] personal information".

15. It explained that it based this reasoning on the fact that it considers the requested information specifically relates to the complainant and his complaint. On that basis, the specified correspondence, if held:

"would only have been created as the direct result of [the complainant]'s complaint and in reference to that complaint".

16. It went on to say that it considered that the requested information "*in its entirety*" would, if held, constitute the personal information of the complainant.

17. In this respect, the Commissioner notes that, when the complainant contacted him to make his complaint, he headed his correspondence:

"Complaint about the refusal by the Met Police to release information they have on myself of a personal nature".

18. Section 40(1) states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".

19. For this exemption to apply, the data referred to must, if held, constitute personal data under the Data Protection Act (DPA). The DPA defines personal data 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 intention of the data controller or any other person in respect to the individual".

20. The Commissioner has considered the terms of the complainant's request for information and is satisfied that the information which the complainant seeks, would, if held, amount to his 'personal data'. The information sought would relate to the complainant: it is information referenced to himself, relating to his interaction with third parties in a context which is personal to the complainant.

21. Accordingly, the Commissioner is satisfied that, if it were held, the complainant would be the subject of the information requested. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.

22. In relation to such information, the provisions of section 40(5) mean that the public authority is not required to comply with the duty to confirm or deny that the information is held, as the duty to confirm or deny 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).

23. The Commissioner has therefore concluded that the exemption was relied upon correctly by the MPS.

The Decision

24. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.
25. In the Commissioner's view, this decision will not disadvantage the applicant. He considers that an applicant wishing to access their own personal data will still be able to pursue this right under the DPA. Furthermore, he considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed, should be made in accordance with the scheme of that Act.

Steps Required

26. The Commissioner requires no steps to be taken.

Right of Appeal

27. 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

28. 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.
29. 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 12th day of July 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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."

Personal information.

Section 40(1) provides that –

"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."

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) the 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 the 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)."