

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 July 2011

Public Authority: The Intellectual Property Office
Address: Concept House
Cardiff Road
Newport
South Wales
NP10 8 QQ

Summary

The complainant requested, from the Intellectual Property Office (IPO), copies of emails, faxes or letters to or from Dorset Police regarding his efforts to get them to act on his informing them about a matter, together with all internal IPO memos, letters or emails which dealt with him. The IPO refused to disclose the information citing the exemptions in sections 21 (information accessible by other means) and 44 (prohibitions on disclosure). In relation to some of the requested information it said that, if it were held, section 40(1) (personal information) would apply. The Commissioner has investigated and found that the information requested is exempt from disclosure under section 40(1) of the Act. 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.

Background

2. Intellectual property (IP) lets people own the work they create. There are four main types of IP rights which a person can use to protect their inventions or creations: patents, designs, trade marks and copyright.

3. The Commissioner understands that the complainant in this case has been involved in a long-running dispute involving trade marks.
4. Trade marks are signs (like words and logos) that distinguish goods and services in the marketplace.

The Request

5. The complainant wrote to the Intellectual Property Office (IPO) on 18 October 2010 with the following request:

"I require you to supply me with copies of all documents in the form of emails, faxes or letters posted to or from Dorset Police regarding my efforts to get them to act on my informing them of the perjury committed by [name redacted], regardless of their content. Also, all internal memos, letters or emails between various people or departments, within the IPO, which deal with me, especially with regards to them discussing me on a personal basis. Sent at any time since 2000 and today's date."

6. The IPO acknowledged this correspondence in an undated letter. It advised the complainant that his request was being dealt with "substantially under the terms of the Freedom of Information Act". It advised that part of his request was a subject access request which was being dealt with under the Data Protection Act 1998.
7. On 26 October 2010 the complainant made a further request to the IPO in relation to apparent contact between the IPO and the Metropolitan Police Service:

"I do know that the IPO have given the Met Police and this Sgt advice, just as they did to the Dorset Police and I need to see what that advice was and what personal comments they made about me to him or as pointed out in my original request, to Dorset Police."

8. The IPO responded to both the requests on 18 November 2010. The IPO refused to disclose the information requested in the first part of the first request (relating to correspondence with Dorset police), and in his second request, citing the exemptions in section 21 (information accessible to applicant by other means) and 44 of the Act (prohibitions on disclosure). In explanation, it told the complainant that information contained on a trade marks file is open for public inspection. It also told him that some papers are exempt as their release is prohibited by the Trade Marks Act and Rules.

9. The IPO also told the complainant that the second part of his first request, relating to internal IPO correspondence, and his second request, made on 26 October 2010, were being treated as a subject access request under the Data Protection Act (DPA) and that he would receive a separate response about these.
10. The complainant responded on 22 November 2010, requesting an internal review.
11. When it wrote to him on 21 December 2010, the IPO told the complainant that it had conducted a thorough review of its handling of his request and the decision to withhold information under sections 21, 40 and 44 of the Act. The Commissioner notes that this appears to be the first time the IPO had cited the exemption in section 40(1).
12. With respect to "*all information held concerning you, especially with regard to any discussions of you on a personal basis*", it told the complainant that if held, such information would be exempt under section 40(1) of the Act (personal information). It explained that, where information is exempt under the Act because it qualifies as personal data, this does not mean that a requester does not have access to it, it simply means that it is not accessible under the Act.

The Investigation

Scope of the case

13. The complainant contacted the Commissioner on 22 December 2010 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

"Their final letter ... indulges in the same litany of excuses as to why they will not release the information I know they have, because to do so will incriminate them as I will be able to see what chicanery they have got up to with the advice (which is highly selective and incorrect) and personal comments they have made about me

My requests were about matters in which the Police (The Dorset and Met) had asked the IPO for information about perjury and maybe forgery that had taken place...

So I ask you to look at their excuses and see if they are correct or not. I am using common sense and what I have read about the Act and it seems to me to be perverse if one cannot find out what

government departments have been saying about you behind your back...".

14. As the complainant has complained with respect to the information that he considers is being withheld from him, and not about the information which is accessible by other means, namely information on the trade marks file that is open for public inspection, the Commissioner has not considered the information for which the IPO cited section 21.
15. As a result of the further correspondence in this case, as outlined in the *Chronology* section below, the Commissioner has focussed his Decision Notice on the issue of personal information.

Chronology

16. The Commissioner commenced his investigation on 9 February 2011.
17. During the course of the Commissioner's investigation there was further correspondence between the IPO and the complainant. As a result of this correspondence, the complainant told the IPO:

"What I am asking for concern [sic] the IPO's activities that have taken place after the invalidity hearing of 2010. Since then the IPO have been in contact with the Dorset Police/the Met Police and the Parliamentary ombudsman. Letters and emails and telephone calls have passed to the IPO from those bodies and from the IPO back to them. This is what I want to see".

18. On 17 May 2011 the IPO wrote to the complainant. This correspondence confirmed that it was no longer withholding any information under section 44 of the Act.

Analysis

Exemptions

Section 40 Personal information

19. Under section 40(1), information that is requested that constitutes the applicant's 'personal data' as defined by section 1(1) of the Data Protection Act 1998 (the DPA), is exempt information.
20. Section 1 of 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."

21. 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."

22. Section 40(1) of the Act creates an absolute exemption in relation to information of which the applicant is the data subject. The effect of this is to remove all of the individual's personal information entirely from the regime of the Act, leaving them subject instead to the regime of the DPA. Section 7 of the DPA gives individuals the right to request access to personal data held about them by data controllers. This is referred to as the right of subject access.
23. In reaching a decision as to whether the information in this case would constitute personal data, the Commissioner has taken into account the wording of the request and what this suggests about the nature of the information requested.
24. The Commissioner is satisfied that, if it were held, the complainant would be the subject of the information requested as the request specifically asks for information about him and especially with regard to any discussions about him on a personal basis. The complainant himself has stated that the information he seeks relates to documents "*which deal with me*". Therefore any information would be directly linked to him and would relate to issues involving his interaction with the public authority.
25. Accordingly, the Commissioner considers that the complainant is the 'data subject' within the meaning of the section 40(1) exemption and that the information, if held, would therefore be his 'personal data'.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/de-tailed_specialist_guides/personal_information.pdf

26. Section 40(1) provides an exemption for information that constitutes the personal data of the applicant, as defined in section 1 of the Data Protection Act 1998 (the DPA). In relation to such information, the provisions of section 40(5) mean that the public authority is not obliged to comply with its duty under section 1(1)(a) to confirm or deny holding the requested information, 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).

The Decision

27. The Commissioner's decision is that the information requested by the complainant is exempt from disclosure under section 40(1) of the Act.

Steps Required

28. The Commissioner requires no steps to be taken.

Other matters

29. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as a right of subject access.
30. The Commissioner considers that in cases where a request is made for an applicant's own personal data the appropriate access regime is the DPA. He therefore considers that the request in question in this case should have been dealt with as a Subject Access Request under section 7 of the DPA from the outset. He encourages public authorities to consider requests under the correct access-regime in the first instance.
31. The Commissioner is in the process of contacting the complainant and the IPO separately about the processing of the Subject Access Request.

Right of Appeal

32. 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

33. 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.
34. 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

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.”