

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 November 2011

**Public Authority:** Chief Constable of Essex Police

**Address:** PO Box 2  
Springfield Chelmsford  
Essex  
CM2 6DA

#### Decision (including any steps ordered)

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1. The complainant requested a copy of a laboratory forensic report in connection with the investigation of a criminal allegation he made against a number of individuals.
2. The Commissioner's decision is that public authority complied with Freedom of Information Act 2000 (the Act) by withholding the Forensic Report from disclosure on the basis of the exemption at section 40(2) – third party personal data.
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 30 June 2010 the complainant wrote to public authority and phrased his request as follows:

*'Given what we have been informed I would be grateful if you could arrange to have me sent a copy of the police laboratory forensic report detailing the match between the projectile I recovered and provided the police with and the rifle in my photographs which the police seized and also a copy of the statement/form I signed on the 13<sup>th</sup> October 2009.'*

5. Following the Commissioner's intervention, the public authority issued a refusal notice to the complainant on 1 March 2011. It refused to confirm or deny it held information relevant to the request on the basis of the exemptions at sections 40(5) and 30(3) of the Act. Part of the request was however subsequently dealt with by the public authority as a subject access request under the Data Protection Act 1998 (the DPA).

6. On 1 March 2011 the complainant requested a review of the public authority's decision to withhold the forensic report.
7. Following an internal review, the public authority wrote to the complainant on 13 April 2011. It confirmed it held the forensic report requested by the complainant but withheld the report on the basis of the exemptions at sections 40(2), 30(1) (a), (b), and (c).

### **Scope of the case**

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8. The complaint in respect of the decision to withhold the forensic report under the Act was made to the Commissioner on 9 May 2011.
9. The scope of the investigation was therefore restricted to the decision to withhold the forensic report under the Act and the Commissioner explained this to the complainant in a letter dated 11 July 2011.

### **Reasons for decision**

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#### Section 40(2)

10. The public authority claimed that the forensic report is personal data because it relates to identifiable individuals. According to the public authority, the report is also sensitive personal data because it clearly identifies the individuals and concerns the alleged commission of offences. It submitted that redacting the names of the individuals to whom the report relates to would not be a sufficient measure in this instance in view of the fact that the individuals in question are known to the complainant.
11. Information is exempt from disclosure under the Act on the basis of the exemption at section 40(2) if the information constitutes personal data and either the first or second condition in section 40(3) is satisfied.

#### Is the Forensic Report Personal Data and Sensitive Personal Data?

12. Personal data is defined in section 1(1) of the DPA as:

*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or 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 person in respect of the individual.'*

13. By virtue of section 2(f) of the DPA, sensitive personal data includes:

*'personal data consisting of information as to the commission or alleged commission by him [i.e. the data subject] of any offence.'*

14. The forensic report in question was produced as part of the public authority's investigation of an allegation by the complainant that a number of individuals he could identify had smashed his window by shooting pellets from an air rifle at his house. The forensic analysis subsequently undertaken was to determine whether the pellets recovered at the scene had come from the air rifle confiscated by the public authority from the individuals in question.
15. Part of the forensic report clearly identifies the individuals in question. The Commissioner however also finds that the whole report relates to the investigation of the alleged offences committed by them and given that the individuals can be identified by the complainant, the report constitutes their personal data. Viewed in isolation without the benefit of the knowledge that it relates to the investigation of the individuals in question, it is unlikely that parts of the report could be directly linked to them. However, the context in which the report was produced combined with the knowledge the complainant already possesses in relation to the allegation against the individuals cannot be ignored. It is primarily for that reason that the Commissioner agrees with the public authority that the whole of the report constitutes the personal data of the individuals in question.
16. The Commissioner also agrees that the report constitutes sensitive personal data as defined under section 2(f) of the DPA. The forensic report was produced as part of an investigation of an alleged offence committed by the individuals in question.

Would the disclosure of the Forensic Report contravene any of the Data Protection Principles?

17. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that the disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

18. The first data protection principle states:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-*

- (a) *at least one of the conditions in Schedule 2 is met, and*
- (b) *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

19. The Commissioner first considered whether the disclosure of the forensic report would have been fair to the individuals in question.
20. The public authority explained that the individuals (who were juveniles at the time) were not prosecuted and found responsible for the commission of the alleged offence. It argued that the individuals would have no expectation that their sensitive personal data would be made publicly available, particularly given the fact that they were not convicted or found responsible for the alleged offence.
21. The Commissioner agrees with the public authority and finds that the disclosure of the forensic report would have been unfair to the individuals in question. He specifically agrees that the individuals would have a very reasonable expectation that the information relating to an investigation against them which did not result in a conviction will not be made publicly available.
22. The Commissioner therefore finds that disclosing the forensic report would have contravened the first data protection principle.
23. The Commissioner consequently also finds that the forensic report was correctly withheld on the basis of the exemption at section 40(2) of the Act.
24. In view of the decision above, the Commissioner did not consider the applicability of the exemptions at sections 31(1) (a), (b) and (c).

## Right of appeal

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25. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed .....**

**Alexander Ganotis  
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Information Commissioner’s Office  
Wycliffe House  
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