

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 01 May 2012

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant requested information concerning an allegation he had made of criminal damage. The Metropolitan Police Service (the MPS) refused to confirm or deny whether it held information relevant to the request in reliance on the exemption at sections 30(3) and 40(5) of the Act. The Commissioner's decision is that the MPS was entitled to rely on the exemption at section 40(5) in relation to the entirety of the request. Therefore the MPS is not required to take any further action.

Request and response

2. On 13 September 2010 the complainant made the following request to the MPS:

"As you have failed to release the CCTV evidence to enable me to identify the person who vandalised my vehicle.

I am making a formal request under the Freedom of Information Act to requesting that you provide me with the following:

- 1) *the CCTV evidence;*
 - 2) *Details of all enquiries followed, including all lines of enquiry and operational decision not to release the CCTV evidence."*
3. On 23 September 2010 the MPS advised the complainant that it was refusing to confirm or deny whether it held information relevant to the

request. The MPS cited section 30(3) (investigations) and section 40(5) (personal information). The MPS also advised the complainant of his right to apply for access to his own personal information under the Data Protection Act 1998 (the DPA).

4. Following an internal review the MPS wrote to the complainant on 13 December 2010 and advised the complainant that it upheld its original decision.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant did not specifically address the MPS's refusal to confirm or deny whether it held relevant information. The complainant explained to the Commissioner that he had made the request because he thought the CCTV evidence would enable him to identify the perpetrator of the alleged criminal damage.
6. On receipt of the complaint, the Commissioner reminded the complainant of his right to request personal information under the DPA. However the complainant asked the Commissioner to make a decision under the FOIA in relation to his request.
7. In light of the information provided by the complainant the Commissioner has interpreted his request as being for information relating to the CCTV evidence and the MPS's decision "not to release it" to him.

Reasons for decision

Exemptions claimed

8. Under section 1(1)(a) of the Act, a public authority is obliged to advise the applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny in reliance on certain exemptions under the Act.

Section 40(5)(a): personal information

9. The MPS cited section 40(5)(a) to refuse to confirm or deny whether it held information relevant to the complainant's request. This provides that the duty to confirm or deny does not arise in relation to information that does, or would if it were held, fall within the scope of section 40(1)

of the Act. Section 40(1) provides that information which is the personal data of the applicant is exempt. Therefore the Commissioner must consider whether, if any relevant information was held by the public authority, this information would constitute the personal data of the complainant.

10. The MPS advised the Commissioner that the complainant had made an allegation of criminal damage; consequently information relating to any investigation of this allegation (if it were held) would necessarily relate to the complainant. Therefore the MPS considered that any such information would constitute the personal data of the complainant. The Commissioner notes that the MPS has advised the complainant of his right to request his own personal data under section 7 of the DPA.
11. Having considered the wording of the request, the Commissioner is satisfied that the complainant is, or would be, the subject of all of the information requested. This is because the CCTV evidence requested related to an incident which involved his property, and the MPS's decision "not to release this evidence" to him. Therefore the requested information, if it was held, would identify the complainant, would relate to issues involving his interaction with the MPS and would have been used to inform decisions significantly affecting him. Therefore the Commissioner considers that the requested information would be the complainant's personal data.
12. In light of the above the Commissioner is satisfied that the MPS is not required to confirm or deny under the FOIA whether it holds the requested information by virtue of the exemption at section 40(5)(a).

Section 30(3): investigations and proceedings

13. As the Commissioner is satisfied that the exemption at section 40(5) applies to the entirety of the request he has not considered the MPS's reliance on section 30(3).

Other matters

14. The Commissioner notes that, in its initial refusal notice, the MPS advised the complainant of his right to request his 'personal data' under the terms of the DPA. The Commissioner has advised the complainant that he should follow the appropriate procedure under the DPA if he wishes to obtain his personal information.

Right of appeal

15. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

16. 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.
17. 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

Jo Pedder
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