

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2012

Public Authority: Chief Constable of West Mercia Police
Address: West Mercia Police Headquarters
Hindlip Hall
Hindlip
PO Box 55
Worcester
WR3 8SP

Decision (including any steps ordered)

1. The complainant requested information from West Mercia Police relating to a raid on the home of two named individuals. West Mercia Police refused to confirm or deny holding relevant information, citing sections 30 (investigations and proceedings) and 40 (personal information). The Information Commissioner's decision is that West Mercia Police was entitled neither to confirm nor deny holding relevant information. The Information Commissioner does not require the public authority to take any steps.

Request and response

2. The complainant wrote to West Mercia Police on 14 July 2011 and requested information relating to 3 June 2010:

"I am writing to you regarding a Freedom of Information request relating to a raid on the home of [names of two individuals redacted] which took place on June 3^d 2010, as is my right under the Freedom of Information Act January 2005.

I believe you are well acquainted with the details of the case so I will proceed with my questions:"

3. The ensuing request contained fifteen points, some of which comprised multiple questions or parts. Full details of the request can be found in

the annex to this decision notice. In summary, the wide-ranging request was for information relating to the raid, including background information and information about subsequent events.

4. West Mercia Police responded on 15 July 2011, neither confirming nor denying that it held information within the scope of the request. It cited sections 40(5) (personal information) and 30(3) (investigations and proceedings) of the FOIA.
5. Following an internal review West Mercia Police wrote to the complainant on 29 September 2011, upholding that decision.

Scope of the case

6. The complainant initially contacted the Information Commissioner to complain about the speed with which West Mercia Police had responded to his request. The complainant told the Information Commissioner:

"To my great dismay, within less than 24 hours I had already received a refusal notice from them. Considering the reasons they are giving for the refusal, I truly feel it is outrageous to be treated with such disdain";

and

"While there may sometimes be valid reasons not to release information, in this case I fail to see why questions cannot be answered. There is no reason for anyone's life to be at risk, and the release of information, would not prejudice national security or commercial interests".

7. Having requested an internal review, and received the public authority's response, the complainant contacted the Information Commissioner again as he was unhappy with that response.
8. The Information Commissioner considers the scope of his investigation to be with respect to West Mercia Police neither confirming nor denying whether it held information within the scope of the request.
9. In bringing his complaint to the Information Commissioner's attention, the complainant told him that he considered that another complaint, that he understood was being investigated, was relevant in this case.
10. Whilst acknowledging the existence of that case having been investigated, the Commissioner's duty is to decide, on a case-by-case basis, whether a request for information has been dealt with in

accordance with FOIA. He considers the nature and context of the request in this case to be considerably different to the nature and context of the request in that other case. He therefore considers that the outcome of that case should not influence the decision he reaches in this case.

Reasons for decision

11. West Mercia Police is relying on sections 30(3) and 40(5) to neither confirm nor deny holding information relevant to the request in this case. The Information Commissioner has first considered West Mercia Police's reliance on section 40(5).

Section 40 Personal information

12. Generally, the provisions of section 40(1) to (4) exempt 'personal data' from disclosure under FOIA if to do so would breach the data protection principles. Section 40(5) further excludes a public authority from complying with the duty imposed by section 1(1)(a) (that is, to either confirm or deny holding the information), if complying with that duty would:
- constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act (DPA).

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

13. 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 intention of the data controller or any other person in respect of the individual."

14. The Information Commissioner considers that the way in which the request in this case is worded, including the provision of names, clearly indicates that the complainant is seeking information which can be linked with named individuals. For the purposes of this decision notice,

the Commissioner will refer to those individuals as Person A and Person B.

15. In the case of both Person A and Person B, the Information Commissioner is satisfied that the information, if held, falls within the definition of 'personal data' as set out in section 1(1) of the DPA. He has reached this conclusion on the basis that the information was requested by reference to the individuals' names and therefore confirmation or denial in this case would inevitably link them with the information.
16. In the Information Commissioner's view, confirming or denying that the requested information is held would constitute a disclosure of personal data as it is clear that it would disclose information which is linked to identifiable individuals.

Is the information sensitive personal data?

17. Sensitive personal data is defined in section 2 of the DPA. It is personal data which falls into one of the categories set out in section 2 of the DPA, ie personal data consisting of information as to:
 - (a) racial or ethnic origin;
 - (b) political opinions;
 - (c) religious or similar beliefs;
 - (d) Trade Union membership;
 - (e) physical or mental health;
 - (f) sexual life;
 - (g) commission or alleged commission of offences;
 - (h) proceedings for any offence, disposal of or sentence of the court in such proceedings.
18. For reasons explained in a confidential annex to this decision notice, the Information Commissioner is satisfied that some of the information requested, if held, would be sensitive personal data.
19. Having accepted that the information requested would constitute the personal data, and in some cases the sensitive personal data, of a living individual other than the applicant, the Information Commissioner must next consider whether disclosure would breach one of the data protection principles.

20. He considers the most relevant principle in this case is the first principle which states that:

"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".

Fairness - Person B

21. The Information Commissioner has first considered the issue of fairness with respect to Person B.
22. When considering if disclosure would be unfair and therefore breach the first data protection principle the Information Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced these against the general principles of accountability, transparency and legitimate public interest.

Expectations

23. A data subject's general expectations are likely, in part, to be influenced by generally accepted principles of interaction and social norms, such as the right to privacy, as enshrined in Article 8 of the European Convention on Human Rights (ECHR). However, transparency and openness in relation to disclosure of information is also an inherent part of today's society and culture. Therefore, an individual's expectation of privacy must be balanced against that culture of openness and transparency.
24. The Information Commissioner acknowledges, as West Mercia Police pointed out during the course of his investigation, that:
- "There are many websites and blogs in existence dedicated to [redacted] and intricate details of their lives".*
25. It is not the Information Commissioner's role to comment on the information which has been publicised about the individuals concerned. However, he notes the personal and sensitive nature of some of that information.
26. In answering the question of fairness, the Information Commissioner recognises the importance of considering whether the data subject has

consented to the disclosure and/or whether the data subject has actively put some or all of the requested information into the public domain.

27. With respect to the matter of consent in relation to Person B, the Information Commissioner is not aware that that individual has actively put such information into the public domain nor consented to the references that can be found on the internet about them. Nor is he aware of anything to suggest that their consent – freely given and informed – has been sought or obtained in relation to the requested information in this case.

Consequences of disclosure

28. In looking at the consequences of disclosure for the data subject, the Information Commissioner considers what those consequences might be. In doing so in this case, he has considered the context and nature of the requested information itself, including the very specific nature of some parts of the request.
29. In this case, the Information Commissioner is satisfied that the personal data, if held, would relate to Person B in a private capacity. Furthermore, the Commissioner considers that to confirm or deny in this case would reveal sensitive personal data.
30. In the Information Commissioner's view, the underlying principle is that the disclosure of such information will likely be unfair as it comprises information that individuals will regard as the most private. This means that in the majority of cases it will be the reasonable expectation of the individual that the existence of such information will not be disclosed.

Legitimate interests of the public

31. Notwithstanding the expectation of Person B regarding disclosure, the Information Commissioner must look at whether there is a legitimate interest in the public knowing whether relevant information is held.
32. In correspondence with the Information Commissioner, the complainant told the Commissioner that he considered the matter to be "*of very significant public interest*". He also argued that "*the whole point of the Act is to make public bodies more open and accountable*".
33. In considering the complainant's arguments, the Information Commissioner acknowledges the large number of references on the internet to the individuals concerned. However, he considers that to justify disclosure of personal information on the grounds of public interest, it is not sufficient that the information is simply interesting to the public. In the Information Commissioner's view, the 'public interest' is that which serves the interests of the public. Furthermore, he must

balance the legitimate interests of the public against the impact that disclosure would have on the data subject and determine whether it would cause an unwarranted intrusion into their life.

34. In considering the request in this case, the Information Commissioner has taken into account the fact that disclosure under FOIA is effectively to the public at large, without conditions, and not to the individual applicant. In other words, if information were to be disclosed, it would, in principle, be available to any member of the public.
35. The Information Commissioner considers that, although there is always some public interest in the broad general principles of accountability and transparency, the legitimate public interest in knowing whether information within the scope of the request in this case is held is outweighed by the legitimate interests of the individual concerned.
36. In reaching a decision in this case, the Information Commissioner has first concluded that confirming or denying that the requested information is held would constitute a disclosure of personal data as it is clear that it would disclose information which is linked to identifiable individuals, one of which is Person B. Secondly, the Commissioner concludes that the disclosure of this personal data would be unfair and would therefore be in breach of the first data protection. The Commissioner has taken into account the nature of the requested information, the fact that disclosure would reveal information relating to an individual's personal and private circumstances about which they would have an expectation of non-disclosure and that there is no overriding reason justifying disclosure.
37. As he has concluded that disclosure, with respect to Person B, would not be fair, the Information Commissioner has not gone on to consider whether it is lawful or whether one of the Schedule 2 DPA conditions is met. However, his initial view is that no Schedule 2 condition would be met.

Fairness - Person A

38. The request in this case is for information "*relating to a raid on the home of*" Person A and Person B.
39. In the Information Commissioner's view, the requested information, if held, inextricably links Person A with Person B in that it relates to their home – in other words, to them living at the same address.
40. As the Information Commissioner has concluded that it would not be fair to confirm or deny with respect to Person B, and as he considers that, in the context of this case, information about Person B and Person A is inextricably linked, it follows that he concludes that it would not be fair

to confirm or deny whether relevant information is held in respect of Person A.

Conclusion

41. The Information Commissioner's decision, therefore, is that the public authority dealt with the request for information in accordance with the Act in that the exemption from the duty to confirm or deny provided by section 40(5)(b)(i) is engaged.

Section 30 Investigations and proceedings

42. As the Information Commissioner has found that it would be unfair to confirm or deny he has not gone on to consider the other exemption cited by West Mercia Police in this case.

Right of appeal

43. 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

44. 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.
45. 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

Steve Wood
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