Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 May 2012

Public Authority: The Chief Constable of Cumbria Constabulary
Address: Carleton Hall
Penrith
Cumbria
CA10 2AU

Decision (including any steps)

1. The complainant has requested information about how the public authority dealt with one of his information requests. The public authority neither confirmed nor denied, by virtue of section 40(5), processing what would be his personal data. The Information Commissioner's decision is that the public authority correctly cited this exemption and he does not require it to take any steps.

Background

2. The complainant has made several related requests to various police forces. The Information Commissioner is considering four complaints in relation to these requests; the other case reference numbers are FS50441123, FS50426106 and FS50440482.

Request and response

3. On 6 May 2011, the complainant wrote to the public authority and requested information in the following terms:

> *"Please supply the following for each forensic service provider ("FSP") used by you to conduct PACE DNA testing:*
>
> - *The date you commenced using each FSP for this purpose;*

- *Details of all of the individual machines used by each FSP as it handles and complies with requests to process your PACR DNA sample. Including the manufacture and model numbers in question; and,*
- *The external procedures used by each FSP to comply with your request for an Exceptional cases ("EC") deletion. For the avoidance of doubt this is not a request for a copy of the ECP form but the internal procedures used within the relevant organisation".*

4. The public authority responded on 6 June 2011. It advised the complainant that it used the Forensic Science Services (the "FSS") but that it held no further information. It suggested to the complainant that he make a request directly to the FSS for the information.

5. On 2 July 2011 the complainant made a further information request as follows:

> *"… please … provide to me any documentation in relation to communication with any third party in respect of the questions contained in my original FOIA request".*

6. On 29 July 2011 the public authority advised that it held no information. It also advised the complainant that it might treat further related requests as 'vexatious'.

7. On 3 August 2011 the complainant asked for an internal review of this request. This was provided on 7 September 2011 and found that the information was exempt by virtue of section 40(5)(a) of FOIA.

Scope of the case

8. On 17 November 2011 the complainant initially contacted the Information Commissioner to complain about various issues surrounding a number of information requests and the handling of his personal data. Following further clarification, several cases were set up.

9. The complainant has raised various issues which the Information Commissioner is not able to consider by way of a decision notice, many concerning the processing of his personal data and the way he believes the public authority has handled his requests under FOIA. The Information Commissioner has further elaborated on some of these issues in *"Other matters"* at the end of this notice.

10. As the citing of the exemption at section 40(5)(a) is the final response provided by the public authority following its internal review, this is the position that the Information Commissioner has considered.

Reasons for decision

Section 40 – personal information

11. Under section 40(1) information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to confirm or deny whether they hold the requested information, by virtue of section 40(5) – in this case the public authority has cited 40(5)(a).

12. The Information Commissioner asked the public authority to provide some further information about the application of this exemption and he was advised as follows:

> *"The internal review determined that the information sought by* [the complainant] *was exempt because, if held, it would constitute his personal data. This decision was based on the manner in which freedom of information requests are processed within the Constabulary, and in particular, if held, the information in question would be contained within files which are stored by reference to the applicant's name and also because the information would have been created following receipt of his previous requests for information to the Constabulary.*
>
> *On this basis it was determined that the duty to confirm or deny whether information was held by the Constabulary did not arise in this case as the information, if held, would be exempt by virtue of Section 40(1) of the Freedom of Information Act.*
>
> *The internal review concluded therefore that the initial response provided to* [the complainant] *was incorrect and that the Constabulary could neither confirm nor deny that the information requested was held, in accordance with Section 40(5)(a) of the Act.* [The complainant] *was issued with a formal refusal notice to that effect.*
> *Ironically, on the same day that the internal review was concluded a fax was received from* [the complainant] *in which he expressed his intention to make a subject access request under the Data Protection Act 1998. Even without this fax being*

> *received, a reference to his rights under the Data Protection Act would have been included in the letter informing* [the complainant] *of the outcome of the internal review. Instead, the opportunity was taken to make him aware of additional information which was required by the Constabulary, before his subject access request could be processed .*
>
> *That additional information was subsequently received and a response to his application for access to his personal data under the Data Protection Act was provided to him on 31st October 2011".*

13. After careful consideration of the wording of the request, the Information Commissioner is satisfied that the complainant is, or would be, the subject of all of the information requested. The information would identify him, be linked to him and would relate to issues involving his interaction with the public authority and any other bodies. The Information Commissioner considers that he is a 'data subject' within the meaning of the section 40(1) exemption and therefore any information would be his 'personal data'. Further, as section 40(1) would apply the public authority was not required to comply with the obligation to confirm or deny whether it holds the information, since this would itself involve the disclosure of personal data about the complainant.

Other matters

14. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.

The handling of the request / internal review

15. The complainant has expressed dissatisfaction at the way he believes the public authority has handled his request at both refusal stage and internal review stage, stating: "… *as independent organisations the forces should be handling their own request, responses and internal reviews".* However, how a public authority chooses to deal with its responsibilities under FOIA is not something which the Information Commissioner can consider in a decision notice under section 50.

16. Additionally, the Information Commissioner notes the complainant's concerns about the handling of his personal data. However, such concerns fall within the Information Commissioner's role as regulator of the DPA and, where raised, he will write to the complainant about these separately.

Internal review

17. The complainant raised issues relating to the public authority's position when it issued its original refusal notice, stating:

> *"The letter from Cumbria dated 29 July states it holds none of the information about exchanges between other bodies concerning me that I had requested (It is of note that they did not make clear it was personal information and hence if required a SAR would be appropriate) but that was untrue. Their subsequent compliance with my SAR shows that they did hold the information".*

18. However, the Information Commissioner notes that the public authority did not maintain this position following its internal review. When undertaking an internal review the Information Commissioner expects a public authority to reconsider its position from afresh and amend this if it feels this is appropriate. This is clearly what has happened on this occasion and the Information Commissioner considers that it reflects good practice.

Right of appeal

19. 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

20. 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.

21. 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 ……

Jon Manners
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