

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 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 has requested information given by the public authority to a judge to convince him to issue a search warrant of a specified domestic dwelling.
2. The Commissioner's decision is that the Metropolitan Police Service correctly relied on section 40(5) of FOIA not to meet the complainant's request.

Request and response

3. On 15 July 2011 the complainant wrote to the Commissioner of the Metropolitan Police Service ("MPS") and requested information in the following terms:

A copy of all the information laid before [a named judge] to convince him that it was indeed necessary and appropriate to execute a raid [on a particular property] with such force in the first instance.

4. The MPS provided its response on 8 August 2011 in which it refused to either confirm or deny that it held the requested information, relying on the exemptions at section 40(5) and 30(3) of FOIA. The complainant, on 10 September 2011, requested an internal review of the MPS' decision. On 23 December 2011, the MPS wrote to her with the result of the internal review it had carried out. The result was to uphold the original decision.

Scope of the case

5. On 10 January 2012, the complainant contacted the Commissioner to complain about MPS' handling of her request for information.

Reasons for decision

6. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not information is held by the authority, and, if so,
 - the duty to communicate that information to the applicant.

The Act refers to the first duty as "the duty to confirm or deny".

7. If the requested information is the applicant's own personal data, there is an absolute exemption from FOIA access rights under section 40(1). In addition, section 40(5) provides an exemption from the duty to confirm or deny in relation to information which, if held, would constitute the personal data of the applicant
8. Personal data is defined in section 1(1) of the Data Protection Act 1998 (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

9. The Information Commissioner's guidance on his website expands on what constitutes 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."

10. The Commissioner considers that the address of a domestic property is personal data as it is relatively easy to link the property to an individual or

individuals. The complainant occupies the property referred to in her request for information.

11. The Commissioner further accepts that the requested information relates to matters connected to property occupied by the complainant. This is therefore data which relates to an identifiable living individual, the complainant. Since the requested information, if held, would constitute the complainant's personal data the MPS was entitled to rely on the exclusion at section 40(5).
12. As the MPS is not required to confirm whether it holds the requested information the Commissioner did not go on to consider the application of section 30(3).

Other matters

13. The Commissioner takes the view that it is appropriate for public authorities to identify information within a request that is subject to section 40(1) or (5) when it is received. This is because disclosure of information under the FOIA constitutes a disclosure to the world at large and therefore the personal circumstances of the applicant are not relevant. However, where the requested information is the personal data of the applicant, a public authority should consider access to that information under the subject access provisions of the DPA (subject to the applicant providing the applicable fee and any identification that may be required to prove that they are the data subject). Public authorities should then go on to consider any of the outstanding elements of a request under the FOIA. At that stage consideration could be given to any of the other aspects of Part I of the FOIA that may mean it is not obliged to comply with section 1(1).

Right of appeal

14. 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

15. 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.
16. 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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