

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **7 November 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 service history information about a named officer. The Metropolitan Police Service ("MPS") refused to provide this citing section 40(2) of the FOIA (Unfair Disclosure of Personal Data) as its basis for doing so and upheld this at internal review.
2. The Commissioner's decision is that MPS is entitled to rely on section 40(2) in relation to the majority of the withheld information. However, a small part of the withheld information is not exempt under section 40(2) for reasons which are set out in a Confidential Annex to this notice. These relate to the specific circumstances of this case.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - To disclose a small part of the withheld information that is set out in the Confidential Annex to this Notice.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 20 March 2012, the complainant wrote to the MPS and requested information in the following terms:

" Please provide me with a list of units in the Metropolitan Police area that [named police officer] worked for including dates of service. If possible, please provide that section of his personnel file. "
6. On 28 March 2012, the MPS responded. It refused to provide the requested information. It cited section 40(2) (Unfair disclosure of personal data) as its basis for doing so.
7. Following an internal review, the MPS wrote to the complainant on 11 May 2012. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled.
9. The Commissioner and the complainant exchanged correspondence after which the complainant agreed to restrict her complaint to the MPS' response to the first of the two sentences set out above, namely:

" Please provide me with a list of units in the Metropolitan Police area that [named police officer] worked for including dates of service."
10. The Commissioner has therefore considered whether the MPS is entitled to withhold information within the scope of the first sentence on the grounds that it is exempt under section 40(2) of the FOIA (Unfair Disclosure of Personal Data).
11. The Commissioner asked the MPS for a copy of the withheld information and its submissions as to why section 40(2) of the FOIA applied to this information. The MPS duly provided this in a letter of 6 August 2012.

Reasons for decision

Section 40 – Unfair disclosure of personal data

12. The relevant provisions of section 40 of the FOIA are section 40(2) and section 40(3)(a)(i). These are somewhat complex provisions and can be accessed in full via a website which is delivered by the National Archives.¹
13. However, they can readily be summarised as follows: the relevant exemption in section 40 is engaged where disclosure under FOIA of requested information would breach any of the eight data protection principles of the Data Protection Act (DPA).²
14. The data protection principles of the DPA only apply to personal data. Personal data is information which relates to a living and identifiable individual and is biographically significant about them.
15. The MPS has argued that the withheld information is personal data and that disclosure of it would be unfair and thus breach the first data protection principle. The first data protection principle requires personal data to be processed fairly and lawfully and in accordance with at least one of the conditions for processing listed in Schedule 2 of the DPA.
16. This means, in summary, that if disclosure under FOIA would be unfair, unlawful *or* would not be in accordance with any relevant conditions, that disclosure would contravene the first data protection principle. The information in question would, therefore, be exempt under the personal data exemption at section 40(2).
17. In considering the fairness of disclosure the Commissioner has taken into account the following factors:
 - a. The expectations of the individuals.
 - b. The possible consequences of disclosure.
 - c. Whether the legitimate interests of the public are sufficient to justify any negative impact on the rights and freedoms of the data subjects.

¹ <http://www.legislation.gov.uk/ukpga/2000/36/contents>

² <http://www.legislation.gov.uk/ukpga/1998/29/contents>

18. This analysis also takes into account the factors which underpin the most relevant condition in Schedule 2 of the DPA, namely condition 6.
19. When considering 'legitimate interests', in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to take a proportionate approach. This means that it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.
20. The information at issue here is a list of start and end dates of service at the MPS for the named officer as well as the areas within the MPS where the officer served.

Is the information personal data?

21. The Commissioner is satisfied that information showing where a person worked and their dates of service in particular areas is information which relates to them and is biographically significant about them. The Commissioner is satisfied that, in the context of this case, the withheld information relates to the individual in question and is biographically significant about them. As such, it is personal data which is subject to the provisions of the DPA.

Would disclosure of the withheld information be unfair?

22. The Commissioner's guidance on personal information states that it is important to draw a distinction between the information which senior staff should expect to have disclosed about them and what junior staff should expect to be disclosed. The rationale for this is that the more senior a person is the more likely it is that they will be responsible for making influential decisions.³ In this case, the information spans the officer's career at the MPS. It is less clear cut to say that, even at a relatively junior rank, an officer would not make decisions that carry some influence,

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http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/~media/documents/library/Data_Protection/Detailed_specialist_guides/PUBLIC_AUTHORITY_STAFF_INFO_V2.ashx&src=IE-Address

particularly in a criminal investigation. Nevertheless, the Commissioner accepts the MPS' view that the officer in this case was not senior at the time of their retirement insofar as this officer was not in a role of senior management at the MPS.

23. The complainant has argued that information relating to a person's work in public office should be released. In correspondence with the MPS, the complainant argued that she did not agree that releasing information from a personnel file relating to that officer's public duties would be unlawful. She drew attention to the Commissioner's own guidance that:

"Information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."

She asserted that there would clearly be no risk to the individual and that the Commissioner's own guidance warns against using this exemption *"as a means of sparing officials' embarrassment over poor administrative decisions"*.

Reasonable expectations of the individual

24. The MPS provided evidence to show that the individual does not expect this information to be disclosed under the FOIA. The Commissioner has therefore considered whether such an expectation is reasonable.
25. The Commissioner notes the MPS' assertion that the information in question would be held in an officer's personnel file. It explained that movement of and access to these files is governed by strict guidelines within the MPS and provided an extract of the MPS' current guidance on this.
26. With this in mind, the Commissioner is satisfied that that individual's expectation about non-disclosure of the information in question is reasonable.

The possible consequences of disclosure

27. The MPS argued that the information included significant biographical reference to the named officer's private life, for example, the date he joined the MPS and the date he retired.

Such a disclosure would, in its view, constitute unwarranted interference in his private life.

28. It provided further information which is set out in a Confidential Annex to this Notice.

Do the legitimate interests of the public justify any negative impact on the rights and freedoms of the individual?

29. The Commissioner acknowledges that the public has a legitimate interest in knowing which MPS officers are serving at MPS locations, subject to any operational confidentiality that might reasonably be placed on that information. However, this information can and is be made available, where appropriate, when a member of the public has contact with an officer. The Commissioner thinks that there is a difference between giving a member of the public the name of an officer with whom they have had dealings (where this is not confidential for operational reasons) and providing the general public under FOIA with details of that same officer's service history from the date they joined the service to the date they retire. This is information which sets out details of that officer's relationship with their employer to an extent that is not warranted in the public's legitimate interest. Although the information relates to the officer's working life and deployment as a public servant, it also is, to a sufficiently significant extent, about their private life – where they went to work and the precise dates that they worked there.
30. The complainant, referring to the Commissioner's own guidance, has argued that information should be disclosed *unless there is some risk to the individual* concerned. The Commissioner would note that, in this case, the risk is of an unwarranted intrusion into the named officer's privacy. Save for a small piece of information which is addressed in more detail in the Confidential Annex to this Notice, the Commissioner is satisfied that disclosure would give rise to an unwarranted intrusion into the named officer's privacy. The complainant has not advanced any arguments as to why disclosure is necessary in this case other than to assert that this is the sort of information about a public official which should routinely be disclosed. The Commissioner disagrees because of the clear link that can be made between the information and the officer's personal life.

31. The complainant also noted the Commissioner's own view that exemptions should not be used "*as a means of sparing officials' embarrassment over poor administrative decisions*". The Commissioner would reiterate these views here. The complainant did not expand on these points or explain why they might be particularly relevant in this case. Further, the Commissioner has seen nothing in the withheld information which suggests that it conceals a poor administrative decision or an attempt to spare the named officer from embarrassment.

Section 40(2) - Conclusion

32. In light of the above, the Commissioner has concluded that the majority of the withheld information is exempt from disclosure under section 40(2) and that the MPS is entitled to withhold it on that basis.
33. However, for reasons which are set out in the Confidential Annex to this Notice and which relate solely to the specific circumstances of this case, the Commissioner thinks that disclosure of one small part of the requested information would not contravene any of the data protection principles of the DPA. This small part of the requested information is therefore not exempt from disclosure under FOIA.

Right of appeal

34. 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

35. 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.
36. 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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