

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 December 2012

**Public Authority:** National Policing Improvement Agency

**Address:** 1 Fry Building  
2 Marsham Street  
London  
SW1P 4DF

#### **Decision (including any steps ordered)**

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1. The complainant requested information on missing persons from 1990 to the date of the request from the National Policing Improvement Agency ("the NPIA"). The NPIA responded saying that it did not hold the requested information. During the Commissioner's investigation the NPIA located some relevant information which the Commissioner agrees is exempt under section 23(1) of the FOIA.
2. The Information Commissioner's decision is that, bar the information which is exempt under section 23(1), the NPIA does not hold the requested information. The Commissioner requires no steps to be taken.

#### **Background**

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3. The NPIA is currently in the process of being closed with the target closure date of the end of 2012. Parts of the NPIA are being phased out completely with some units being moved to different public authorities. At the time of the request some of the units had already transferred to the Serious Organised Crime Agency ("SOCA"). The Missing Persons Bureau ("MPB") was one of those units, with the MPB staff and data having transferred to SOCA on 1 April 2012.
4. The National DNA Database Delivery Unit ("the NDU") which formed part of the Police Science and Forensics Services whilst at the NPIA was transferred to the Home Office as of 1 October 2012. The Missing Persons DNA Database ("the MPDNAD") was maintained by the NDU at the time of the request.

## **Request and response**

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5. On 27 April 2012 the complainant made the following request for information to the NPIA:  
  
"We require the following to be released to us:-
  1. List of missing persons in the United Kingdom for the years 1990 - present.
  2. Please let us have their name, DOB, date reported missing.
  3. Are they still missing, or subsequently found."
6. On 1 May 2012 the NPIA responded and informed the complainant that it did not hold the requested information as the appropriate unit had moved to SOCA on 1 April 2012. The NPIA suggested that the complainant could contact SOCA directly who may be able to assist with his request in the normal course of business.
7. On 2 May 2012 the complainant revised point one of the request to the NPIA by amending the time period to 1990 - 31 March 2012.
8. On 24 May 2012 the NPIA provided an internal review upholding its original position.

## **Scope of the case**

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9. The complainant wrote to the Commissioner on 19 June 2012 complaining that his request had been refused.
10. The Commissioner contacted the complainant on 29 August 2012 to determine whether the complainant had followed the advice of the NPIA and contacted SOCA. The complainant confirmed that he had not done so as he did not consider that SOCA would provide the information he sought. He was of the opinion that although the MPB had transferred to SOCA on 1 April 2012 the NPIA would still hold the requested information up to that date. He did not provide any reasoning for this assumption.
11. The Commissioner considers that the scope of this case is to determine whether the NPIA held, at the time of the request, any of the requested information to any extent for its own purposes or if it was holding information on behalf of another public authority.

## Reasons for decision

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12. **Section 3(2)(a)** provides the following:

"For the purposes of this Act, information is held by a public authority if-

(a) it is held by the authority, otherwise than on behalf of another person,"

13. The NPIA explained to the Commissioner that at the time of the request (and the revised request) the MPB personnel and the MPB database at the time of the request continued to work via the NPIA network until such time that the MPB was able to use the SOCA network to store and access its information.

14. The Commissioner further investigated this use of the NPIA network to determine whether the NPIA was 'holding' the information on the MPB database on behalf of the MPB or whether, to any extent, the information was held for the NPIA's own purposes.

15. The NPIA explained the 'logons' and passwords used to access the database are held by the MPB personnel, who were SOCA staff by the time of the request. The NPIA staff do not have access to the database.

16. The NPIA also explained that there is a Memorandum of Understanding between the NPIA and SOCA specifically stating that; for the purposes of FOI, and until such time as the data is removed from the NPIA's infrastructure; the data is held by the NPIA on behalf of SOCA and not for its own purposes.

17. The complainant questioned whether the parties to the Memorandum of Understanding were legally able to; "assign responsibility under statutory legislation by virtue of a MOU, a contractual instrument."

18. The Commissioner has followed his own guidance<sup>1</sup> in relation to the NPIA's explanations regarding the status of the database at the time of the request. He has not questioned the legality or otherwise of the Memorandum, although he notes that many government agencies use

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[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freed\\_of\\_Information/Detailed\\_specialist\\_guides/information\\_held\\_by\\_a\\_public\\_authority\\_for\\_purposes\\_of\\_foia.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freed_of_Information/Detailed_specialist_guides/information_held_by_a_public_authority_for_purposes_of_foia.ashx)

such Memorandums to define a relationship between departments or agencies.

19. The Commissioner has concluded that, even without the Memorandum, the NPIA does not hold the information on the MPB database for its own purposes, notwithstanding its location on the NPIA network. Consequently this information is not held by the NPIA for the purposes of the FOIA. However, although the Commissioner agrees with the NPIA's position, he does consider that it would have been helpful had more been provided to the complainant by way of explanation in response to the request.

### **Section 23 – Information supplied by, or relating to, bodies dealing with security matters**

20. Section 23 provides the following:

“(1) - Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(3) (m) the Serious and Organised Crime Agency.”

21. During the Commissioner's investigation the NPIA provided information on its role in respect of the National DNA Database Delivery Unit (“the NDU”), at the time of the request. As referenced above in the ‘Background’ section, the NDU was part of the NPIA at the time of the request although the MPB was already part of SOCA.
22. The Missing Persons DNA Database (“the MPDD”) is maintained by the NDU on behalf of the MPB under a service level agreement. The NDU receives requests from the MPB to update information on the Missing Persons section of the National DNA database. All DNA profile submissions to the MPDD must first be registered with the MPB. The MPB generates a unique reference number which is used to link the records held on the MPDD to those held by the MPB.
23. The NPIA explained that it had access to this subset of information which was within the scope of the request, by way of the NDU. The Commissioner therefore considers that this information, which was estimated at the time of the Commissioner's investigation as totalling 400 profiles, was held by the NPIA at the time of the request because it had responsibility for maintaining this database.
24. Consequently the NPIA held information at the time of the request because all the profiles on the MPDD are registered with the MPB. However, due to the arrangements set out above, such profiles

constitute information relating to SOCA which is a body encompassed by section 23. Therefore the information 'relates to' a section 23 body and thus is exempt under section 23(1).

## Right of appeal

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25. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. 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**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**