

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 February 2013

Public Authority: The Chief Constable of Kent Police
Address: Police Headquarters
Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant requested information relating to the Kent Police's (the Police's) investigation of an allegation of the theft of a vehicle that he had reported. The Police withheld the requested information on the basis of section 30(1)(b) of FOIA. The Commissioner concluded that some of the requested information was in fact the complainant's personal data and thus was exempt from disclosure under section 40(1) of FOIA. With regard to the parts of the requested information which do not constitute the complainant's own personal data, the Commissioner has concluded that it is not exempt from disclosure under section 30(1)(b) but is exempt from disclosure under section 30(1)(a)(i) of FOIA.

Request and response

2. On 13 July 2012 the complainant wrote to the Police and asked for information in the following terms:

'The theft of the above vehicle [the registration number of the vehicle was noted in an earlier part of the letter] was investigated by [named officer], from the Margate station, in April and May of 2011. I have been told by the Legal Services Dept. that they consider this theft to be a civil matter.

In this connection, I would like to request sight of [named

officer's] report, under the Freedom of Information Act, and indeed any other relevant information to the enquiry'.

3. The Police responded on 24 July 2012 and explained that it considered the withheld information to be exempt from disclosure on the basis of section 30(1)(b) of FOIA.
4. The complainant contacted the Police on 5 August 2012 and expressed his dissatisfaction with this decision. The complainant explained that it was his understanding that the Police had refused his request on the basis that the investigation may lead to the Police instigating criminal proceedings. However, he explained that it was his understanding that the Police considered the matter to be a civil one and thus there would not actually be any criminal proceedings.
5. The Police responded on 7 August 2012 and explained that the request had not been refused on the basis that the investigation may yet lead to criminal proceedings but because the information requested was once held as part of an investigation to determine whether a criminal offence had occurred. The Police confirmed that there had been no change in its position, i.e. it still regarded the matter of the vehicle's ownership to be one for determination by the courts since there was insufficient evidence for a prosecution. The Police's response also indicated that it remained of the view that section 30(1)(b) provided a basis upon which to withhold the requested information.

Scope of the case

6. The complainant contacted the Commissioner on 15 August 2012 to complain about the way his request for information had been handled. The complainant disputed the Police's decision to withhold the information he had requested on the basis of section 30(1)(b) of FOIA. The complainant's submissions to support this position are not set out here but are discussed below.
7. During the course of the Commissioner's investigation the Police provided him with a copy of the information that had been requested. Having reviewed this information the Commissioner concluded that some, but not, all of this information was in fact the complainant's 'personal data' as defined by the Data Protection Act (DPA).
8. An individual's right of access to their own personal data is provided by the DPA and not FOIA. Therefore this notice only considers whether the parts of the withheld information which do not constitute the complainant's personal data are exempt from disclosure under section 30(1)(b) of FOIA.

9. With regards to the parts of the withheld information which are the complainant's personal data, the Commissioner has explained below why he considers this information to be exempt from disclosure under a different exemption within FOIA, namely section 40(1), which provides that the personal data of a requestor is exempt from disclosure under FOIA.
10. With regards to the complainant's right of access under the DPA to the parts of the requested information that are his own personal data, the Commissioner has carried out a separate assessment under section 42 of the DPA in respect of this information and the complainant has been informed of the outcome of that assessment in separate correspondence.

Reasons for decision

Section 40 – personal data

11. Section 40(1) of FOIA states that:

'Any information to which a request for information relates is exempt information if it constitutes the personal data of which the applicant is the data subject'.

12. The Commissioner has issued detailed guidance on determining what information constitutes personal data.¹ This guidance sets out several steps in establishing whether information is personal data, with the first step being whether an individual can be identified from the information and the second step being whether the information relates to the individual in some way, e.g. is it information which is obviously about a particular individual, is the information linked to an individual or is it information used to inform or influence actions or decisions affecting an identifiable individual.
13. In applying these criteria to the information that has been requested in this case, the Commissioner is satisfied that the complainant is identifiable from all of the withheld information. Furthermore the Commissioner is satisfied that a significant proportion relates directly to

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/determining_what_is_personal_data_quick_reference_guide.ashx

the complainant because it refers directly to comments made or actions taken by him, and it is this information which the Commissioner considers to be the complainant's personal data as defined by the DPA. With regard to the remaining parts of the requested information, in the Commissioner's view this information is more general in nature and could not be said to relate to the complainant in any significant way and therefore is not his personal data.

14. The Commissioner has provided the Police with a confidential annex to this notice in which he has clearly identified which parts of the withheld information he considers to be the complainant's personal data.

Section 30 - investigations

15. Sections 30(1)(a) and (b) of FOIA state that:

'(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

(i) Whether a person should be charged with an offence, or

(ii) Whether a person charged with an offence is guilty of it,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct'

16. Section 30(1) is a class based one; that is to say if information falls within the scope of any of the exemptions contained within section 30(1) then it is exempt from disclosure – there is no need for a public authority to demonstrate some level of prejudice in order for the exemption to be engaged.
17. The Police have explained that it investigated the complainant's allegation of theft. If the outcome of that investigation had been different, criminal proceedings would have been instigated. Therefore, since the requested information was once held for the purposes of that investigation the Police argued that the requested information is exempt from disclosure on the basis of section 30(1)(b) of FOIA given the wording of the exemption.
18. The Commissioner can understand the logic of the Police's argument. However, for section 30(1)(b) to be engaged the public authority in question has to not only have conducted the investigation and decided to instigate criminal proceedings but must have the power to conduct

these criminal proceedings. The Commissioner does not believe that the Police have the power to conduct such proceedings; rather such proceedings would be conducted by the Crown Prosecution Service. Therefore the Commissioner does not accept that the information in question is exempt from disclosure on the basis of section 30(1)(b).

19. However, the Commissioner is satisfied that information is clearly exempt from disclosure on the basis of section 30(1)(a)(i) of FOIA given that it is information held by the Police for the purposes of an investigation which it conducted with the purposes of ascertaining whether anybody should be charged with an offence.
20. However, section 30 is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining the exemption contained at section 30(1)(a)(i) outweighs the public interest in disclosing the information.

Public interest in disclosing the information

21. The Police acknowledged that disclosure of the withheld information could potentially promote openness, transparency and accountability.
22. The complainant argued that in his opinion the Police performed a limited investigation into his allegations of theft. Furthermore the complainant argued that it was his understanding that the Police never disputed his ownership of the vehicle. The complainant explained that he had requested sight of the investigating officer's report to establish if an opinion as to the validity of his claim had been passed. Furthermore the complainant argued that the Police had no intention of reviving this case, as they had been adamant it was a civil matter, and as such would not be prosecuting anyone. Therefore, in the complainant's opinion disclosure of the information would not prejudice any further action as the Police had no intention of taking any.

Public interest in maintaining the exemption

23. The Police advanced four broad arguments for maintaining the exemption:
24. Firstly, the Police explained that the requested information contained references to various individuals (aside from the complainant) who had been contacted by the Police in relation to this investigation. The Police argued that these individuals would have had an expectation that any information they provided would have been treated in confidence. Disclosure of this information would be likely to restrict the level of assistance afforded to the police service where witnesses fear disclosure beyond that provided for in the course of criminal or other legal proceedings.

25. Secondly, the Police argued that there is a public interest in the police investigative processes being independent and allowed to run their course. Furthermore, just as the court should be the sole forum for determining guilt, so the police should have sole responsibility for determining whether a matter is recorded as a criminal one, and if so, investigated in accordance with the police's operational independence.
26. Thirdly, the Police explained that dealing with the complainant's allegation and subsequent correspondence consumed a disproportionate level of diminishing resources available to the public authority. The Police argued that it was not in the public interest that investigative material is disclosed to dissatisfied complainants who are likely to be asking for the material in order to challenge the investigations outcomes. Rather, there are clear procedures for complaining about police conduct or failings to ensure accountability. It is not in the public interest for complainants to not follow these established procedures, and the remedies they offer, in preference to exercising statutory rights to information in pursuance of an unreasonable objective. The Police added that disclosure of this information could set a precedent for dissatisfied complainants demanding information relating to investigations in an attempt to go behind decisions made by competent bodies resulting in intolerable burdens placed on public authorities.
27. Fourthly, the Police argued that the requested information is likely to be significant in any subsequent civil case. The complainant could expect to have disclosure of the information if he followed the advice to pursue his claim via the civil courts and he should not request evidential material in anticipation of claim, particularly if his intention is to gauge the strength of any such claim in order to determine whether to pursue a claim at all.

Balance of the public interest

28. When considering the application of any of the exemptions contained in s30(1), the Commissioner believes that consideration should only be given to protecting what is inherent in those exemptions – the effective investigation and prosecution of crime - which requires the following:
 - the protection of witnesses and informers to ensure people are not deterred from making statements or reports by fear it might be publicised;
 - the maintenance of independence of the judicial and prosecution processes;
 - preservation of the criminal court as the sole forum for determining guilt;
 - allowing the investigating body space to determine the course of an investigation; and
 - information that deals with specialist techniques.

29. With the above underpinning the consideration of 30(1), when weighing up the public interest in relation to the exemption the following factors (amongst others) should be considered:
- the stage or stages reached in any particular investigation or criminal proceedings;
 - whether and to what extent the information has already been released into the public domain;
 - the significance or sensitivity of the information; and
 - the age of the information.
30. In the Commissioner's opinion the third and fourth arguments advanced by the Police are not relevant to the public interest test under section 30(1) including section 30(1)(b) and section 30(1)(a)(i). In relation to the third argument, the Commissioner understands that the 'harm' which this argument envisages is some infringement or undermining of any potential civil court case. However, as the purpose of section 30(1) is to protect the effective investigation and prosecution of crime the Commissioner does not believe that any impact upon the civil case, and any detriment to the public interest because of it, can be taken into account when considering the balance of the public interest in relation to this exemption.
31. With regard to the fourth argument, whilst the Commissioner does not dispute the rationale of the Police's line of argument, he believes that any infringement upon the Police's ability to effectively conduct its future investigations envisaged by this scenario is one that is generic in nature. In essence this scenario envisages that the Police will be overwhelmed by dealing with requests of this nature (and the consequences of disclosing such information) and that its limited resources will have to be diverted away from actually dealing within the investigation of crimes. In the Commissioner's view such a potential consequence is simply too far removed from the specific criteria set out above which have been considered necessary for the effective investigation and prosecution of crime and thus inherent in the exemption. In other words, section 30 is designed to protect some tangible threats to the manner in which investigations are actually conducted, rather than a broader, overarching impact upon Police resources in general.
32. Turning to the first two arguments advanced by the Police, it is clear that these are directly relevant to the consideration of the exemption contained at section 30(1)(a)(i). With regard to attributing weight to the first argument, the Commissioner accepts the basic premise of the argument that some potential sources of information are more likely to be discouraged from coming forward if the police were to release the information identifying witnesses and details they have provided in their

case. The Commissioner also recognises that if the flow of information to the police were impeded, it would harm their ability to investigate future cases. The fact that the withheld information in this case identifies a number of different individuals adds weight to this factor. (The Commissioner accepts that it would be difficult to disclose the information in a way in which the identities of the individuals was obscured). Furthermore although the case in question has been closed, the Commissioner recognises that it was only just over a year old and thus the individuals in question would still have a reasonable expectation that information they provided to the Police would not be disclosed. In the Commissioner's opinion the Police's first argument therefore attracts significant weight.

33. With regard to the second argument, in light of the fact that the investigation in question had been completed at the point the request was submitted to the Police, in the Commissioner's opinion there is clearly little need, if any, to protect the Police's ability to determine the future course of this particular investigation. (The Commissioner acknowledges that it is possible that the Police could re-open this investigation, as with any other closed cases, if further evidence came to light, but he notes that it did not advance this argument itself). Nevertheless, the Commissioner accepts that if evidential material, such as the material requested here, were to be disclosed as a matter of course, even in relation to closed cases, then over a period of time it is reasonable to suggest that the Police's ability to have a private space in which to determine the direction of ongoing investigations may well be encroached upon given that such material is likely to reveal the nature and manner in which the Police had conducted previous investigations.
34. With regards to the arguments in favour of disclosing the information, the Commissioner accepts that disclosure of the information that is not exempt from disclosure on the basis of section 40(1) would provide the public with some insight, albeit limited, into Police's actions in relation to this particular allegation of theft. However, in the Commissioner's opinion it is difficult to argue that the wider public, beyond the complainant, would have a genuine interest in such information and thus the extent to which disclosure would actually serve the legitimate public interests of accountability, openness and transparency is limited. Moreover, whilst the Commissioner acknowledges the complainant's desire to understand whether the Police had made any comments regarding the concerns that he had raised, in the Commissioner's opinion any such information, if held, would be likely to be the complainant's own personal data. Therefore, such information, if held, would be exempt under FOIA by virtue of section 40(1) and not relevant to the Commissioner's consideration of the public interest test under section 30(1). In conclusion, the Commissioner has decided that the public interest in maintaining the exemption clearly outweighs the public

interest in disclosure. He has reached this conclusion for two key reasons: Firstly, because of the danger of restricting the flow of information to the police service in general in respect of future investigations if information provided by individuals in confidence was disclosed; and secondly, in his opinion the degree to which the public interest, beyond the complainant's own private interest in seeing the information, is limited.

35. The Commissioner wishes to emphasise that he has not ignored the complainant's line of the argument that disclosure of this information could not prejudice any future investigation by the Police regarding his allegation of theft as no such investigation will be conducted. Rather, the Commissioner believes that disclosure of this information represents a threat to the effectiveness of future, unrelated investigations for the reasons discussed above.

Right of appeal

36. 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

37. 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.
38. 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

Gerrard Tracey
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