

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 May 2013

Public Authority: Independent Police Complaints Commission
Address: 90 High Holborn
London
WC1V 6BH

Decision (including any steps ordered)

1. The complainant requested information from the Independent Police Complaints Commission (IPCC) relating to concerns he said he had raised under the Public Interest Disclosure Act 1998.
2. The Commissioner's decision is that the section 40(5) exemption was relied upon correctly by the IPCC. He requires no action to be taken.

Request and response

3. On 7 November 2012 the complainant wrote to the IPCC and requested information in the following terms:

"Dear Independent Police Complaints Commission,

I raised concerns under the Public Interest Disclosure Act 1998 to the IPCC on the 4 December, 2007. (This related to matters within Her Majesty's Revenue and Customs). This matter has been ongoing for over four years and you have still not conducted any investigation or notified me of the outcome. Under the Freedom of Information can you please tell me:

- 1) If you intend to conduct any investigation.*
- 2) The outcome.*
- 3) If you are closing the matter."*

4. The IPCC responded on 15 November 2012. It said that it considered that the requested information, if held, would be the requester's

personal data. It explained that it would therefore be exempt from disclosure under FOIA by virtue of section 40(1). The IPCC told the complainant that it was not obliged either to confirm or deny holding the requested information. It explained how to make a Subject Access Request under the Data Protection Act.

5. The complainant requested an internal review on 15 November 2012. The IPCC sent him the outcome of its internal review on 13 December 2012. It upheld its original position confirming that, in relation to such information, section 40(5) of FOIA:

"means that the IPCC is not required to comply with the duty to confirm or deny that the information is held, as the duty to confirm or deny does not arise in relation to information which is (or if it were held by the IPCC would be) exempt information by virtue of sub-section(1)".

Scope of the case

6. The complainant contacted the Commissioner on 28 December 2012 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of his investigation to be the IPCC's application of section 40(5).

Reasons for decision

Section 40 personal information

8. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
9. Section 40(1) of FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".
10. The Data Protection Act (DPA) defines personal data as:

"...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

11. The requested information in this case relates to concerns the complainant says he has raised under the *Public Interest Disclosure Act 1998*. That legislation is described as being:

"An Act to protect individuals who make certain disclosures of information in the public interest; to allow such individuals to bring action in respect of victimisation; and for connected purposes¹".

12. In correspondence with the complainant regarding the information at issue, the IPCC said that:

"were the IPCC to hold a case file relating to such a matter it would contain the personal data of the person who made the public interest disclosure and, more likely than not, the personal data of others. The information sought would, if held, relate to you as the person who claims to have made the disclosure: it would be information referenced to you, relating to your interaction with others in a context which is personal to you".

13. Having considered the wording of the request and the nature of the Public Interest Disclosure Act 1998, the Commissioner is satisfied that, if it were held, the complainant would be the subject of the requested information. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
14. In such a case, under section 40(5)(a) a public authority is not required to confirm whether or not it holds the information.
15. The Commissioner has therefore concluded that the section 40(5) exemption was relied upon correctly by the IPCC in this case.

¹ <http://www.legislation.gov.uk/ukpga/1998/23/introduction>

16. In the Commissioner's view, this decision will not disadvantage the applicant. He considers that an applicant wishing to access their own personal data will still be able to pursue this right under the DPA. Furthermore, he considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act. In this respect, he is satisfied that the IPCC explained clearly to the complainant what information it required from him in order to proceed with a subject access request.

Right of appeal

17. 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

18. 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.
19. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF