

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 October 2013

Public Authority: Chief Constable of Cumbria Constabulary
Address: Police Headquarters
Carleton Hall
Penrith
Cumbria
CA10 2AU

Decision (including any steps ordered)

1. The complainant requested information about the owners of three specified vehicles, and the identity of the drivers of those vehicles at specified times and dates. Cumbria Constabulary (the Constabulary) initially cited the exemption provided by section 40(2) (personal information) of the FOIA and in so doing effectively confirmed that all of the requested information was held.
2. During the Commissioner's investigation the Constabulary changed its stance and stated that it did not hold information relating to two of the vehicles, or the identity of the driver of the third. It maintained that section 40(2) applied in relation to the identity of the owner of one of the vehicles, which was information that it did hold.
3. The Commissioner's decision is that the Constabulary breached the FOIA in responding to the request late and in initially indicating incorrectly that it held all of the requested information. However, the Commissioner also finds that the Constabulary has now stated correctly and in accordance with section 1(1)(a) of the FOIA that it does not hold the majority of the requested information.

Request and response

4. On 7 December 2012, the complainant wrote to the Constabulary and requested information in the following terms:

"[The identity of] the owners and drivers of three vehicles:

Audi A6 or A4, colour beige, reg no [redacted] [at between 16.21 and 17.21 14 November 2011]

Hyundai, colour black, reg no [redacted] [at between 16.21 and 17.21 14 November 2011]

Rover 25, colour grey, reg no [redacted] [at approximately 13.15 21 September 2012]".

5. The FOIA request formalised questions that the complainant had asked the Constabulary in earlier correspondence. In that earlier correspondence the complainant had explained his belief that the vehicles specified in the request had been involved in surveillance of members of his family in Carlisle on the dates specified. The Constabulary confirmed at that stage that the vehicles specified in the request were not owned by it.
6. The Constabulary responded on 25 February 2013, more than 20 working days after receipt of the request. The request was refused, with the exemption provided by section 40(2) of the FOIA cited.
7. The complainant responded on 26 March 2013 and requested an internal review. The Constabulary responded with the outcome of the internal review on 29 April 2013. The conclusion of the review was that the citing of section 40(2) was upheld.

Scope of the case

8. The complainant contacted the Commissioner on 30 April 2013 to complain about the refusal of his information request. The complainant indicated at this stage that he was dissatisfied with the reasoning given for the refusal of his request. He also raised specifically the issue of the Constabulary having responded to the request late.
9. During the ICO investigation the Constabulary changed its position. Whereas previously it had only cited section 40(2) in response to the request, and in so doing indicated that all of the information requested was held, it now stated that some of the requested information was not held. Specifically, it stated that it held no information relating to the second and third vehicles specified in the request. In relation to the first vehicle, the Constabulary stated that it did hold details of the owner of the vehicle with this registration number, but that it did not hold any record of the driver of this vehicle on the date specified by the complainant.

10. The Constabulary sent a fresh response to the complainant advising him of this change in its position, following which the complainant contacted the ICO and confirmed that he wished it to consider whether the Constabulary was correct in stating that most of the requested information was not held.
11. The analysis below covers the citing of section 40(2) in relation to the identity of the owner of the vehicle specified first in the request. In relation to the driver of that vehicle, and the owners and drivers of the other vehicles specified in the request, the Commissioner has considered whether the Constabulary was correct and in accordance with section 1(1)(a) of the FOIA in denying that information was held.

Reasons for decision

Sections 10 and 17

12. As noted above at paragraph 6, the Constabulary did not respond to this request until 25 February 2013, well over 20 working days from receipt of the request. In not responding with its refusal notice within 20 working days of receipt of the request, the Constabulary failed to comply with the requirement of sections 10(1) and 17(1) of the FOIA. The Constabulary has confirmed to the ICO that it has taken steps in an attempt to avoid any repetition of this breach in future.

Section 1

13. Section 1(1)(a) of the FOIA provides that, upon receipt of an information request, a public authority must respond confirming or denying whether it holds information falling within the scope of the request. This means that a public authority should take steps to identify all relevant information that is held upon receipt of a request.
14. The task for the Commissioner here is to determine whether the Constabulary is correct in stating that it does not hold some of the requested information. In line with the practice of the First-tier Tribunal (Information Rights), the test applied by the Commissioner is whether on the balance of probabilities the Constabulary holds further information.
15. The approach of the Commissioner where there is a dispute between public authority and requester on the extent to which information is held is to take into account a description of the searches carried out by the public authority, and / or any explanation provided by the public authority as to why it should not be expected to hold further information.

16. There are two issues here: first, that the Constabulary states that it does not hold any information relating to the second and third vehicles specified in the request, and secondly, that it states that it does not hold any record of the identity of the driver at the time and date specified by the complainant of the vehicle for which it does hold details of the owner.
17. Covering first the issue of the two vehicles, the Constabulary has described the search that it carried out for this information. The Commissioner has taken this into account, as well as the reasoning of the complainant as to why he believes that the Constabulary would hold this information.
18. The Constabulary has stated that information about vehicle ownership would be held by it by virtue of being able to access the Driver and Vehicle Licensing Agency (DVLA) database via the Police National Computer (PNC). It has stated that a search of this database was carried out for vehicles with the registration specified by the complainant, but that this did not return any result. This suggests that these two registration numbers do not exist.
19. The Constabulary also confirmed that a search was carried out of its local database, known as 'Sleuth', in order to eliminate the possibility that relevant information may have been held in that location. This search also returned no result.
20. The complainant's reasoning as to why this information would be held by the Constabulary is based on his belief that these vehicles were engaged in surveillance of members of his family on the dates specified in the request. His position is that either the Constabulary was involved in this surveillance and hence would hold records of it, or if this surveillance was carried out by a third party agency, the Constabulary would nonetheless hold records of it.
21. The Commissioner has formed no view on whether the complainant's allegations are accurate. He is, however, constrained by the lack of evidence available to him in support of these allegations. The duty of the Commissioner is to reach a decision based on the evidence; in the absence of evidence in support of the complainant's claims, he cannot take these into account here.
22. This leaves the descriptions given by the Constabulary of the searches carried out. The most significant of these is the search of the DVLA records, accessible to the Constabulary via the PNC. The DVLA records would be the most obvious location for information of the type specified by the complainant and the view of the Commissioner is that searching those records was the main step required to establish whether the

requested information was held; clearly if the registration numbers specified in the request do not exist, all parts of the request fall away. The search carried out of the Constabulary's local database provides an additional assurance.

23. On the basis of the descriptions of the searches it carried out, primarily that the DVLA records returned a nil result, the Commissioner accepts that the Constabulary does not hold information about two of the vehicles specified in the request. Whilst the complainant may not accept that this information is not held, as covered above, in the absence of evidence in support of the points he has raised, the Commissioner cannot give these any weight.
24. Turning to the identity of the driver of the one vehicle for which the Constabulary confirmed it does hold information, including the owner of that vehicle, in relation to this information the Constabulary relied primarily on an explanation as to why it could not be expected to hold this information. The Commissioner considered that explanation, as well as the reasoning of the complainant as to why he believed that this information would be held by the Constabulary.
25. The Commissioner would first note here that the Constabulary has stated that, whilst the registration number specified in the request does return a result from the PNC/DVLA database, that vehicle differs from the description given by the complainant in the request. The Commissioner has taken the approach that the vehicle with that registration number is the vehicle specified by the complainant in the request.
26. The explanation given by the Constabulary as to why it should not be expected to hold this information was that, even if it held details of the owners of all three of the vehicles in question, it is not the case that the owners would necessarily have been driving the vehicles at the times and dates specified. In order for the Constabulary to hold this information, it would be necessary for it to have recorded who was driving this vehicle at the time specified by the complainant.
27. Whilst the Commissioner accepts that it clearly is the case that the driver at the time specified may not have been the owner of this vehicle, he identified two possibilities where it may have been the case that the Constabulary would have held a record of the driver of this vehicle.
 - If this vehicle were owned by the Constabulary, in which case there may have been a log maintained of who was driving this vehicle on the date specified.

- If this car had been stopped by a member of the Constabulary, for exceeding the speed limit for example, at the time and date specified by the complainant, the identity of the driver of the vehicle may have been recorded.
28. The Constabulary had previously stated to the complainant that the vehicle in question was not the property of the Constabulary. There are no grounds for the Commissioner to dispute that statement.
 29. In relation to the second possibility listed above, the Commissioner raised that point with the Constabulary. In response to this it carried out an additional search for that information, within 'incident logs' for the dates specified by the complainant. That search did not locate any relevant information.
 30. The belief of the complainant is that the identity of the driver of this car would be held in line with the surveillance referred to above. Again, however, in the absence of evidence in support of the complainant's arguments, the Commissioner cannot give these any weight here.
 31. On the basis of the explanation provided by the Constabulary as to why it would be unlikely to hold this information, and of the search that it carried out, combined with the lack of any evidence suggesting that this information would be held by the Constabulary, the Commissioner accepts that, on the balance of probabilities, information identifying the driver of that vehicle at the specified time and date is not held by the Constabulary.
 32. Clearly it is the case that the Constabulary should have answered accurately about what information was held when it responded to the request. As part of that, it should have verified what information relevant to the request was held, rather than making an assumption about this. In failing to verify what information was held, the Constabulary committed a breach of section 1(1)(a) of the FOIA at that time. However, for the reasons given above, the view of the Commissioner is that the Constabulary has now correctly identified the information it holds and so there is no outstanding breach of section 1(1)(a).

Section 40

33. The Constabulary has cited section 40(2) of the FOIA in relation to the identity of the owner of the first vehicle specified in the request. Section 40(2) provides an exemption for information that is the personal data of a third party and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process; first, the information must be the

personal data of a third party. Secondly, disclosure of this information must be in breach of at least one of the data protection principles.

34. Covering first whether the information in question is the personal data of an individual aside from the requester, the information in question here is the name of an individual. Clearly that information is the personal data of that individual.
35. Turning to whether disclosure of that personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which requires that personal data is processed fairly and lawfully and whether disclosure would be, in general, fair to the data subject. In forming a conclusion on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, any consequences of disclosure upon that individual and whether there is any legitimate public interest in the disclosure of this information.
36. On the issue of what the expectations of the data subject would be, the Commissioner is of the view that they would hold a strong expectation of privacy in relation to this information. An individual would expect that information relating to them that is held on the PNC would only be used for specific legitimate purposes. That expectation would extend to situations in which their personal data is disclosed; an individual would clearly expect that the police would disclose their personal data to a third party only in specific, clearly justified situations. This could be in connection with legal proceedings for example. In this case, the view of the Commissioner is that the data subject would hold a legitimate expectation that the Constabulary would not disclose their personal data to the complainant.
37. Turning to the possible consequences of disclosure upon the data subject, the expectation of privacy referred to above is also relevant here. The view of the Commissioner is that disclosure, in view of this strong expectation of privacy, would be likely to result in distress to the data subject.
38. As to whether there is any legitimate public interest in this information, the question here is, if there is public interest in disclosure, this outweighs the factors against disclosure covered above. As referred to above, the complainant believes that this vehicle was carrying out surveillance of members of his family. His belief is that this surveillance was being carried out by or at the behest of government agencies. As a result, he would argue that there is public interest in disclosure of this information in order to understand who by and why this surveillance was conducted.

39. As also mentioned above, the Commissioner takes no view on the accuracy of the complainant's claims. He can, however, only make decisions on the basis of the available evidence. In the absence of evidence in support of these claims, the Commissioner must make this decision on the basis that this is simply a case of one member of the public requesting the police to divulge the identity of another. On that basis, the Commissioner does not believe there to be any legitimate public interest in the disclosure of the identity of the owner of this vehicle.
40. For these reasons, the Commissioner finds that disclosure would be unfair and in breach of the first data protection principle. His overall conclusion is, therefore, that the exemption provided by section 40(2) of the FOIA is engaged and so the Constabulary is not required to disclose this information.

Right of appeal

41. 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

42. 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.
43. 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
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