

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 February 2015

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 information about a police officer from the Metropolitan Police Service (the "MPS"). The MPS initially refused to confirm or deny whether it holds the information citing section 40(5) (personal information) of the FOIA. During the Commissioner's investigation it changed its position to section 40(2). The Commissioner's decision is that section 40(2) is properly engaged. He does not require any steps.

Request and response

2. In early November 2014, the complainant wrote to the MPS and requested information in the following terms:

"Please can you tell me when PC [number redacted] joined the Metropolitan Police and when he finished his training and started patrols on the street".
3. The MPS responded on 12 November 2014. It refused to confirm or deny holding the information citing section 40(5) of the FOIA.
4. Following an internal review the MPS wrote to the complainant on the 12 November 2014. It maintained its position.

Scope of the case

5. The complainant contacted the Commissioner on 17 November 2014 to complain about the way his request for information had been handled. He advised that he did not accept that the requested information was 'personal data' and he wished the Commissioner to consider the citing of section 40(5).
6. During the investigation the MPS changed its position. It confirmed that it did have an officer with the collar number cited but refused to provide any further details claiming it would be unfair to do so and in breach of the Data Protection Act 1998 (the 'DPA').
7. The Commissioner will consider the application of section 40(2) to the requested information.

Reasons for decision

Section 40(2) – personal information

8. Section 40(2) of the FOIA provides an exemption from disclosure of information which is the personal data of a third party and where disclosure would breach any of the data protection principles contained in the Data Protection Act (the DPA) or section 10 of that Act.
9. In order to rely on section 40(2) the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as:

*" ... data which relate to a living individual who can be identified
a) From these 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."*

Is the information personal data?

10. The first question for the Commissioner to consider is whether the requested information is personal data as defined in section 1 of the DPA.

11. The complainant's request is worded so that it only refers to the officer's collar number and he therefore does not accept that his request includes any personal data. However, that collar number is a unique identifier and, as such, the Commissioner has no hesitation in accepting that it is the officer's personal data as it allows him to be specifically identified. For example, if a member of the public wished to write in and complain about an officer then they would only need to cite that unique number, and an actual name would not be required for the MPS to be able to identify the officer concerned.

Would disclosure breach any of the data protection principles?

12. The first protection principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met".

13. In the case of an FOI request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA Schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

14. When considering the fairness element of the first data protection principle, the Commissioner takes into account a number of factors depending on the circumstances of each case. In this case, he considered:
- the reasonable expectations of the data subjects and the nature of the information;
 - the consequences of disclosure; and
 - any legitimate interests in the public having access to the information.

Reasonable expectations of the officer

15. The Commissioner acknowledges that there will be circumstances where, for example, due to the nature of the information and/or the

consequences of it being disclosed, an individual will have a strong expectation that the information will not be disclosed.

16. The MPS explained it had changed its position from one of neither confirming or denying that the collar number related to one of its officers as it accepted that there was a legitimate public interest in knowing whether someone is employed by the MPS. However, it had gone on to conclude that any further disclosure of information would be unfair and that an officer would not reasonably expect such details to be disclosed. It further confirmed that it had contacted the officer who confirmed that he would object to such disclosure.
17. In respect of disclosure of any further details into the public domain, the MPS is of the opinion that an officer would have a reasonable expectation that there would not be any additional disclosure of information about his employment details, such as his length of service. However, the Commissioner does not find that the information requested is intrusive. He also finds that it is reasonable for a public servant to expect to be asked to provide information about their experience and ability to undertake their role which is paid for by the public purse.

Consequence of disclosure

18. When considering the consequences of disclosure in this case, the Commissioner has taken into account the nature of the withheld information. He has also considered the fact that disclosure under FOIA is to the world at large and not just to the complainant.
19. Given the nature of the information and the reasonable expectations of the police officer, the Commissioner is not satisfied that disclosure of the withheld information would cause unnecessary and unjustified distress to him.

Any legitimate interests in the public having access to the information

20. Even where he finds that disclosure of personal information would be fair, the Commissioner must also consider whether or not there is any legitimate interest in its disclosure, as per schedule 2 of the DPA.
21. The Commissioner considers that disclosure of information can help promote transparency and accountability. However, he also notes that the MPS has confirmed that the officer is a serving police officer.
22. The MPS has argued to the Commissioner that officers have a status of 'police constable' and, as such, it makes no difference how long they have been in that role. The Commissioner accepts that the officer

concerned will have had the necessary training and have been given the associated statutory powers to act as a *bona fide* police constable. In light of this, the Commissioner can see no legitimate interest in knowing the precise date of when this officer qualified, the crux of the matter being that he is a suitably qualified constable.

23. The Commissioner also notes that, although invited to do so, the complainant has not put forward any arguments in support of disclosure.

Balancing the rights and freedoms of the data subject with legitimate interests

24. The Commissioner accepts that there is a wider public interest in transparency when it comes to fitness of a police officer to undertake his duties. However, in this case, it has already been confirmed that he is fit to undertake his duties as he holds the position of police constable and has therefore undertaken the necessary training required to hold that role. Revealing the actual date of his completion of any training will not assist the public in determining his ability to undertake this role. In the Commissioner's view it is the role of the MPS as his employer to determine this.
25. The Commissioner is satisfied that disclosure would not be unfair to the police officer in the particular circumstances of this case. However, in this case the Commissioner has not found any compelling reasons which would justify infringing the privacy rights of the individual concerned. He therefore concludes that the exemption at 40(2) is properly engaged.

Right of appeal

26. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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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