

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 July 2015

Public Authority: Kent Police
Address: Sutton Road
Maidstone
Kent
ME15 9BZ

Decision (including any steps ordered)

1. The complainant requested from Kent Police (the 'police') six original official police receipts and some relevant photocopies. The police relied on the section 40(5)(a) FOIA exemption to neither confirm nor deny holding the requested information. This is on the basis that, if the requested information were held, it would be the complainant's personal data. Following his investigation, the Commissioner is satisfied that the requested information, if held, would be the complainant's personal data and he does not require the police to take any steps.

Request and response

2. On 7 January 2015, the complainant wrote to the police and requested information comprising:

"... six original official police receipts and six photocopies relevant to them, Kent Police reference [number redacted]".
3. The police responded on 20 January 2015 and relied on the section 40(5)(a) FOIA exemption to neither confirm nor deny holding the information requested. Following an internal review the police wrote to the complainant on 29 January 2015 confirming their decision.

Scope of the case

4. The complainant contacted the Commissioner on 3 February 2015 to complain about the way his request for information had been handled. He complained of what he saw as a wrong decision by the police. He explained that the information would help him in his longstanding efforts to expose what he said were corrupt practices by some officers within the police force.
5. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. In considering such matters, the Commissioner is mindful that whilst an individual may be aware that information does or does not exist because of his involvement in events, it does not follow that the general public will also be aware of the existence of that information. Disclosure under FOIA is disclosure to the world at large and is intended to secure the disclosure of information relevant to the public and in the public interest. It is not intended to disclose information regarding specified individuals or their private interests.

Reasons for decision

Section 40: personal information

6. Section 40(1) of the FOIA provides that:

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

7. Section 40(5) of the FOIA provides that:

"The duty to confirm or deny –

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1)".

8. Under FOIA, an individual can request access to any information held by a public authority. However, an individual's own personal information is exempt from the FOIA right of access. Personal information must instead be determined within the subject access rights regime established under the Data Protection Act 1998 (DPA).

9. The police relied upon section 40(5)(a) of the FOIA to refuse to confirm or deny whether they held information relevant to the complainant's request which would, if held, constitute the complainant's personal data. Section 40(5)(a) provides that the duty to confirm or deny does not arise in relation to information that does fall, or if it were held would fall, within the scope of section 40(1) FOIA. This is because individuals may request their personal data under section 7 of the DPA.
10. In deciding this matter, the Commissioner has seen that the request arose from longstanding correspondence between the police and the complainant. He noted that the police had told the complainant that the information being requested would, if held, be his personal information and therefore not available to him under FOIA. The police explained that, if the requested information were held, then he may have right of access to it through the DPA, and the complainant has indeed made a connected subject access request.
11. Any information covered by the request, if held by the police, would be the complainant's personal information if it relates specifically to the complainant. The complainant said that his information request concerned:

"six official police receipts and so called photocopies that [the police] are stating that I signed. When I can prove that one of the so called receipts was signed by me on an envelope and not on an official police receipt".
12. The police assured the Commissioner that, if held, the requested information would constitute the complainant's personal data. They said that the application of the section 40(5)(a) FOIA exemption was necessary as FOIA disclosures are deemed to enter the public domain and that finding would be consistent with two recent named decisions by the Commissioner. The police also told the Commissioner that the complainant's allegations of misconduct had been investigated by its own officers, by another police force, and by independent complaints bodies. None had upheld the complaints.
13. The Commissioner has concluded that the information requested, if held, would be the personal data of the complainant and would be exempt from disclosure under section 40(1) FOIA. The Commissioner has therefore also decided that section 40(5)(a) FOIA exempts the police from the duty to confirm or deny holding the requested information.

Right of appeal

14. 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

15. 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.
16. 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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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF