

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 October 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 an ongoing payment dispute he has with the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny holding any information citing section 40(5)(a) and (b)(i)(personal information) of the FOIA. The Commissioner's decision is that it was correct to rely on 40(5)(a) and he requires no steps.

Request and response

2. On 20 September 2015, the complainant wrote to the MPS and requested information in the following terms:

"I wish to make a freedom of information request in respect of information held about me on MPS systems that I have repeatedly been refused access to. This is in relation to an ongoing payment dispute between myself and the MPS. The information I am requesting is as follows.

Decision log held by CCC in relation to an "overpayment" case concerning me. SPOC is Chief Inspector [name removed], overseeing this matter was Supt [name removed].

Any notes, records or other information concerning decisions made by any parties in relation to the aforementioned "overpayment" issue.

Any notes, records or other information concerning the decision, made on behalf of the MPS, in relation to representations made in writing to the MPS by my solicitor [name removed].

Hand written notes made by Supt [name removed] during a local resolution meeting with myself on 15th June 2015.

Any and all notes, records or other information concerning myself made during a meeting that took place between Supt [name removed] and Chief Inspector [name removed] on Friday 19th June 2015.

MyPlanner records showing the shifts I worked while posted at CCC between 2012 and 2013. One months worth have been supplied proving this information exists but subsequent request have been refused with the explanation being given that these records do not exist. I would like to reiterate at this point the fact they do exist as one months worth has already been provided.

Unedited daily postings sheets from when I worked at CCC between 2012 and 2013. Email sent to DI [name removed] on 15th May, originally dated 14th May, containing information relating to me and the aforementioned matters. Any an all attachments are required as all relate directly to me.

Investigation record in relation to allegation of fraud made to Chief Inspector [name removed] on 1st April 2015, where I was the victim of fraud (NCRS mandate this should be recorded as a crime or crime related incident if there is credible evidence to the contrary).

Emails sent to and from the following people in relation to me and this case from January 2015 to present: [names removed] CCC Mailbox - Flexible Working Audit".

3. The MPS responded on 22 September 2015. It stated that it would neither confirm nor deny holding the requested information by virtue of section 40(5) of the FOIA. It advised the complainant of his rights to request his personal data under the subject access provision of the Data Protection Act 1998 (the 'DPA') and explained to him how to do so.
4. Following an internal review the MPS wrote to the complainant on 3 October 2015. It maintained its position, clarifying that it was relying on sections 40(5)(a) and (b)(i) of the FOIA.

Scope of the case

5. The complainant contacted the Commissioner on 5 October 2015 to complain about the way his request for information had been handled. He was dissatisfied because the MPS had refused to provide him with the information he had requested.
6. The Commissioner will consider the MPS's response below.

Reasons for decision

Section 40 – personal information

7. 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.
8. 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".
9. The 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."*
10. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
11. Having considered the wording of the request in this case, the Commissioner is satisfied that the complainant is, or would be, the

subject of this requested information. This is because the information he has requested is, by its own definition, about or connected to the complainant.

12. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
13. In relation to such information, the provisions of section 40(5)(a) mean that the public authority is not required to comply with the duty to confirm or deny whether it holds the information, as the duty to confirm or deny 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).
14. The Commissioner is satisfied that confirming or denying whether it holds any information under the terms of the FOIA means that the MPS would be confirming, to the world at large, whether it holds information about an '*ongoing payment dispute*' raised by this complainant. He therefore considers that the section 40(5)(a) exemption is engaged and that the MPS was correct to rely on it to neither confirm nor deny holding the complainant's personal information by virtue of the absolute exemption at section 40(1).
15. As he has found that 40(5)(a) is engaged in respect of all of the information requested the Commissioner has not found it necessary to consider the application of section 40(5)(b)(i) to the request - which would relate to third parties - although it is his initial view that this would also be engaged.

Other matters

16. The Commissioner is advised that the complainant has not made a subject access request for this information. In his view this would be the appropriate action for the complainant to take.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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
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SK9 5AF