

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2016

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 a copy of body worn camera footage and any other recorded information in respect of a road traffic collision in which he was involved. The Metropolitan Police Service (the 'MPS') refused to confirm or deny holding the information by virtue of section 40(5)(a)(personal information). The Commissioner finds that it was entitled to do so. No steps are required.

Background

2. The Commissioner understands that the request includes the reference number of a complaint made to the MPS by the complainant. He further understands that it relates to a road traffic collision involving the complainant and that the complainant requires a copy of any information relating to that incident.
3. The MPS has already dealt with a request from the complainant made under the subject access provisions of the Data Protection Act 1998.

Request and response

4. On 31 March 2016, the complainant wrote to the MPS and requested information in the following terms:

"I am writing to make an open government request, AKA Freedom of Information for all the recorded information I request, and which you are required to disclose under the Freedom of Information Act 2000 as put in law by Her Most Gracious Majesty Queen Elizabeth II. Under the Freedom of Information Act 2000, please provide me with copies of the factual recorded information of the following;

1. Body worn camera footage Ref: [reference removed] saved in the form as a master copy and 3 working copies, exhibited as JB/01 from Inspector [name removed]

[name removed]@met.pnn.police.uk

2. Any other body worn camera footage/CCTV footage from the accident scene on the 23/12/2014 at [location removed] roundabout which happened at around 1.00 and all other recorded data such as police statements.

I understand that under the Act I am entitled to a response within 21 days of your receipt of this request or it is a criminal offence under the Freedom of Information Act 2000 Section 77 of altering etc. records with intent to prevent disclosure.

If this request is too wide or unclear etc, or before deciding to not release the data I would be grateful if you could contact me as I understand that under the Act, you are required to advise and assist requesters.

If any of this information is already in the public domain, please can you direct me to it, with page references and URLs if necessary.

If the release of any of this information is prohibited on the grounds of breach of confidence, I ask that you supply me with copies of the confidentiality agreement and remind you that information should not be treated as confidential if such an agreement has not been signed.

Some parts of the request may be easier to answer than others. Should this be the case, I request that you release information as soon as possible.

If my request is denied in whole or in part which under the Freedom of Information Act 2000 Section 77 which is illegal, I ask that you justify all deletions by reference to specific exemptions of the act and why in detail on a point to point basis in defence to the afore mentioned crime. I will also expect you to release all non-exempt material.

I would prefer to receive the information electronically via [name removed]@gmail.com.

If you require any clarification, I expect you to contact me under your section 16 duty to provide advice and assistance if you find any aspect of this FOI request problematic.

Please acknowledge receipt of this request, and I look forward to receiving the information in the near future.

This Freedom of Information Act 2000 is free of being vexatious, repetitious, and fanciful or an abuse of the process, as defined by the current Oxford Dictionary under the Freedom of Information Act 2000.

Please note Section 77 Offence of altering etc. records with intent to prevent disclosure.

1 (b) under section 1 of The Act

any person to whom this subsection applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to the communication of which the applicant would have been entitled.

(2) Subsection (1) applies to the public authority and to any person who is employed by, is an officer of, or is subject to the direction of, the public authority.

And any person guilty of an offence under this section is guilty of a criminal offence.

I reserve the right to appeal your decision to withhold any information or to charge excessive fees”.

5. The MPS responded on 16 June 2016. It refused to confirm or deny holding any information by virtue of section 40(5) of the FOIA.
6. The complainant requested an internal review on 17 June 2016.
7. Having contacted the MPS and determined that it would maintain its position, the Commissioner has used his discretion and issued this notice in the absence of an internal review in order to expedite matters.
8. The MPS has confirmed reliance on section 40(5)(a).

Scope of the case

9. The complainant contacted the Commissioner on the 2 June 2016 to complain about this request.
10. The Commissioner will consider whether or not the MPS was correct to rely on section 40(5)(a) when responding to the information request.

Reasons for decision

11. In this case the Commissioner must decide whether confirmation or denial that the requested information is held should be in the public domain. The Commissioner recognises that the complainant has personal reasons for making his request, however, neither the identity of the applicant nor any personal reasons or private interests for wanting the requested information are relevant to the consideration of an FOIA request.

Reasons for decision

12. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.

Section 40 – personal information

13. The exemption at section 40(5) of the FOIA provides that a public authority does not have to confirm or deny whether requested information is held if to do so would constitute a disclosure of personal data.
14. Section 40(5)(a) provides that the duty to confirm or deny does not arise in relation to information that falls, or would fall if it were held, within the scope of section 40(1) of the FOIA. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because individuals may request their personal data under a separate legislative access regime, namely the right of subject access under section 7 of the Data Protection Act 1998 (DPA).
15. Section 40(1) is an absolute exemption, meaning that if it applies there is no requirement to go on to consider whether disclosure would nevertheless be in the public interest.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

16. Section 1(1) of the DPA defines personal information 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 likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual".

17. In his guidance on section 40 of the FOIA, the Commissioner expanded on what constitutes personal data:

"For data to constitute personal data, it must relate to a living individual, and that individual must be identifiable. In considering whether information requested under FOIA is personal data, the public authority must decide whether the information satisfies both parts of the definition."

18. The complainant's request is for information about body worn camera footage and police statements which are referenced by way of a unique reference number and date. This reference number relates to a complaint raised by the complainant with the MPS and also to a road traffic collision in which he was involved. The Commissioner considers that this is an approach for information which can be linked to a named, living individual - the complainant himself. It is therefore a request for his own personal data, and falls within the scope of section 40(1).

19. It follows from this that to comply with section 1(1)(a) of FOIA (that is, to either confirm or deny holding the requested information) would put into the public domain information about the existence or otherwise of an investigation linked to the complainant; this would constitute a disclosure of personal data that would relate to the complainant.

20. In considering whether the MPS should have applied section 40(5)(a), the Commissioner has taken into account that the FOIA is applicant blind and that any disclosure would be to the world at large. If the information were to be disclosed, it would be available to any member of the public, not just the complainant. Confirmation or denial in the circumstances of this case would reveal to the general public information about the complainant which is not already in the public domain and which is not reasonably accessible to it. The Commissioner therefore

considers that the exemption was correctly relied upon by the MPS in this case.

Other matters

21. Although it has not been necessary for him to consider this matter, the Commissioner would note that any information, if held, could also be relate to third parties. It is his provisional view that the MPS would be entitled to neither confirm nor deny holding such information under the terms of section 40(5)(b) of the FOIA.

Right of appeal

22. 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

23. 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.
24. 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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