

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 July 2017

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 motoring offence which he allegedly committed from the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny holding the information, citing sections 40(5)(a) and (b)(i) (personal information) of the FOIA. The Commissioner's decision is that it was correct to cite section 40(5)(a). No steps are required.

Request and response

2. On 1 December 2016 the complainant wrote to the MPS and requested information in the following terms:

"On Friday the 19th October 2015, at approximately 4pm, Marked Police vehicle [VRM removed], Stopped my vehicle [VRM removed] for allegedly running a red light in [location removed]"

The information I seek is thus:

1. All GPS data for Marked Police vehicle [VRM removed],
2. All GPS data for on board police radio,
3. All GPS data for personal police body-worn radio equipment worn by, both

a. PC [name removed] , [collar number removed] and

b. fellow officer on scene, known only as [collar number removed], to cover the entire journey beginning and between,

- A. [location removed]*
- B. [location removed]*
- C. [location removed]*
- D. [location removed] through to and finishing at*
- E. [location removed]*

4. Copies of all notes taken at the scene by both officers (ie, officers notebooks, etc)

and finally,

5. any and all CCTV footage that was available for the same event, either on board or in the locality".

3. On 13 December 2016 the MPS responded. It refused to confirm or deny holding the requested information, citing sections 40(5)(a) and (b)(i) (personal information) of the FOIA. By way of advice and assistance, it explained that an individual could request their own personal data under the subject access provisions of the Data Protection Act 1998 (the "DPA") and explained how to do so.
4. Following an internal review the MPS wrote to the complainant on 18 January 2017. It maintained its position.

Scope of the case

5. The complainant contacted the Commissioner on 6 April 2017 to complain about the way his request for information had been handled. He stated:

"I have tried again and again to obtain evidence vital to my case in the county court following an incident I was wrongly accused of running a red light. I have been denied this evidence time and again by police and CPS from the outset".

6. 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. The FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

7. The Commissioner will consider the MPS's application of section 40(5) to the request below.

Reasons for decision

Section 40 – personal information

8. The MPS has confirmed to the Commissioner that, if held, the information would primarily relate to the complainant; it also found that it would be the personal data of the two officers identified. It is therefore relying on both 40(5)(a) and (b)(i). The Commissioner will first consider the application of 40(5)(a).
9. 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.
10. 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”.
11. 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.”*
12. 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.
13. 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 in its entirety.

14. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
15. In relation to such information, the provisions of section 40(5) 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).
16. 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 details of the alleged offence referred to by the complainant. She therefore considers that the section 40(5)(a) exemption was correctly relied upon by the MPS in this case.
17. As she finds that 40(5)(a) is properly cited in respect of the request in its entirety the Commissioner has not considered section 40(5)(b)(i).

Other matters

18. The complainant was advised at refusal stage, and again at internal review, that the proper access regime to use when requesting one's own personal data is the DPA. The Commissioner is satisfied that this was clearly explained and she considers this best practice by the MPS.
19. As she understands it, the complainant has not submitted a subject access request. Should he decide to do so it should be borne in mind that there are also exemptions from disclosure under the terms of the DPA and that such an application may not guarantee that he receives all the information that he seeks.

Right of appeal

20. 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

21. 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.
22. 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

Carolyn Howes
Senior Case Officer
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Wycliffe House
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