



## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 6 April 2006**

**Public Authority: The Chief Officer of Suffolk Constabulary**

**Address: Police Headquarters  
Martlesham Heath  
Ipswich  
IP5 3QS**

#### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that the public authority has not dealt with the complainant's request in accordance with Part I of the Act [in that it has failed to comply with its obligations under section 1(1). This failure stems directly from a failure to correctly apply the exemptions in Part 2 of the Act relating to personal information, investigations and law enforcement to the requested information.**

**The Commissioner requires the Suffolk Constabulary to provide the complainant with copies of the withheld information subject to two redactions.**

#### **1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**

**1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').**

**1.2 Where a complainant has made an application for a decision, unless:**

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## **2. The Complaint**

- 2.1 The Complainant has reported that on 13 May 2005 the following information was requested from the Public Authority in accordance with section 1 of the Act.

- A copy of the report written by (name of Senior Officer) on his interview with (name of Police Constable)
- A copy of the Constable's pocket notebook entry (relating to the incident giving rise to the complainant's complaint against the Constable)

- 2.2 The request was acknowledged upon receipt.

- 2.3 A refusal notice was issued on 13 June although this was apparently not received by the complainant until 17 June 2005. The notice gave three grounds for the refusal of the request:

- Section 30 (Investigations and proceedings). It was argued that disclosure would be likely to inhibit other members of the public from providing information to the police in future misconduct hearings and that this risk outweighed the public interest in examining the procedures followed by the police.
- Section 31 (Law enforcement). It was argued that disclosure would compromise the confidentiality of other internal misconduct proceedings and that this risk was not outweighed by the public interest in transparency.
- Section 40 (Personal Information). It was stated that the requested information principally contains personal information relating to the officer concerned and other persons interviewed in connection with the investigation and that disclosure did not accord with the data protection principles.

- 2.4 The refusal notice also contained the statement:

"This action (i.e. the giving of the refusal notice) cannot be taken as confirmation or denial that Suffolk Constabulary holds the information you have asked for."

- 2.5 On 21 June 2005, the complaint requested an internal review of the refusal. This was completed and the results communicated to the complainant on 25 July 2005, It was explained that the request had been considered with reference to ACPO (Association of Chief Police Officers) guidance on the Act. A reasonably detailed account of how

the reviewing officer had carried out a harm test in relation section 31 of the Act was provided. In brief it was argued that there would be harm to the other individuals involved in the misconduct investigation; harm to the community, in that there may be damage to police community relations, and harm to the police who might find it more difficult as a result of disclosure to encourage witness in other cases to come forward.

### 3. Relevant Statutory Obligations under the Act

**Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

3.2 **Section 2** provides that section 1(1) is disapplied where any provision of Part 2 of the Act applies.

3.3 **Section 30** provides –

“(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of

- (a) any investigation with the public authority has a duty to conduct with a view to it being ascertained-
  - (i) whether a person should be charged with an offence...

(2) Information held by a public authority is exempt information if –

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to –
  - (i) investigations falling within subsection 1(a)...
- (b) it relates to the obtaining of information from confidential sources.”

3.4 **Section 31** provides –

“(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice...

- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)...

(2) The purposes referred to in subsection (1)(g) to (i) are ...

- (b) the purposes of ascertaining whether any person is responsible for any conduct which is improper...”

3.5 **Section 40** provides –

“(1) 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....

“(2) Any information to which a request for information relates is also exempt information if –

(a) it constitutes personal data which do not fall within subsection (1) and... the disclosure to a member of the public otherwise than under this Act would contravene any of the data protection principles ...”

**4. Review of the case**

4.1 The background to the complaint lies in a separate complaint made by the complainant against a police constable. The complainant and the constable had been involved in an incident leading to the prosecution of the complainant for a motoring offence. The complainant had been found not guilty by the court. He had also made a complaint about the constable which had been investigated by a senior officer. Since there were no witnesses to the incident involving the complainant and the constable, the complaint had not been upheld.

4.2 The complainant's principal concern in his complaint under the Act was with the denial of his request for information. He also questioned the apparent refusal of the public authority to confirm or deny the holding of the information he had requested and its compliance with its stated target date for response.

4.3 The Commissioner contacted the public authority with a request for a copy of the information that had been refused and for a full copy of the refusal notice, since the complainant had only supplied a part of this. The public authority was also asked to provide a copy of whatever information had been given to the complainant following the investigation of his complaint against the Police Constable.

**5. The Commissioner's Decision**

5.1 The Commissioner has considered the following matters:

- The promptness of the response to the information request
- The refusal to confirm or deny the holding of the requested information
- The reliance on section 30
- The reliance on section 31
- The reliance on section 40

## 5.2 The timeliness of the response

5.2.1 Section 10 of the Act provides that a response to a request for information must be given promptly and, in any event, within 20 working days. In this particular case, the complainant reports not having received a response until 17 June 2005, although the refusal notice was dated 13 June. This constitutes a delay of some 5 working days. Self evidently this is a breach of the Act.

5.2.2 The Commissioner notes this breach and comments that full compliance would have been achieved had the public authority responded to the request by email.

## 5.3 Neither confirm nor deny ("NCND") response

5.3.1 The Commissioner agrees with the complainant that in this particular case there was no reason for the public authority to deny the holding of information which the complainant knew to exist. The Commissioner advises the public authority to review the routine reliance use of the "NCND" response which appears to have been given in this case.

## 5.4 Section 30

5.4.1 It is not clear from the information available to the Commissioner whether reliance is placed on s.30 in respect only of the information relating to the unsuccessful prosecution of the complainant or also in respect of the investigation of his complaint about misconduct.

5.4.2 Insofar as the information relates to the unsuccessful prosecution, the Commissioner agrees that the requested information is exempt.

5.4.2 The Commissioner has considered that application of the public interest test to the exempt information. Given that that prosecution has now been brought and the matter concluded and given that there is nothing in the requested information which would prejudice any future investigations such as information as to investigative techniques, the Commissioner finds no compelling case for maintenance of the exemption. He has considered the argument advanced by the public authority as to the "chilling effect" which disclosure might have on future investigations. The Commissioner has concluded that, if in releasing the information, the public authority made explicit the reasons why the information could be safely released in this case, it would be able to successfully manage any risk.

5.4.3 The Commissioner has concluded that there is some public interest, acknowledged by the public authority, in allowing public scrutiny of the actions of the public authority and considers that this outweighs the public interest in maintaining the exemption.

5.4.4 Insofar as the information relates to the investigation of misconduct by a police officer, the Commissioner does not consider that the exemption is engaged since there is no allegation of any criminal misconduct by the officer.

5.4.5 Nor, for the sake of completeness, does the Commissioner find that the refused information relates to any confidential sources of information.

## 5.5 Section 31

5.5.1 The Commissioner accepts that the refused information is held for purposes specified in section 31. The public authority is under a statutory duty to conduct investigations into complaints about the misconduct of officers. However, as the public authority acknowledges, this exemption contains a test of prejudice.

5.5.2 In its review of the refusal of the complainant's request, the public authority suggests that release of the information would result in harm to individuals, the community and the police. With the exception of a paragraph in the final section of the Report by the Investigating Officer (see 5.5.6 below), the Commissioner does not accept the arguments advanced. The principal individuals involved are the complainant, the Police Constable and the Investigating Officers. The fact of the complaint is known to all parties together with the outcome of the investigation. The Commissioner does not accept that harm to any of these individuals would flow from disclosure.

5.5.3 The public authority also suggests that there would be harm to the community since disclosure might give rise to a fear that incidents could not be reported in confidence. While the Commissioner fully accepts the public interest in ensuring the confidentiality of witness statements, he does not accept in this particular case, where the only witness is the complainant, that harm would arise. In any event he considers that this is a risk which the public authority could easily manage by explaining why, in this particular instance, disclosure can be safely made.

5.5.4 Finally, the public authority suggests that disclosure would entail harm to the police. However, as this argument is put, the harm identified is identical to that under the heading of "harm to the community."

5.5.5 Since, in the Commissioner's view, there would be no prejudice to the purposes listed in the section, it is not necessary for him to consider the application of the public interest test.

5.5.6 Although the Commissioner does not accept that the majority of the Report of the Investigating Officer is exempt by virtue of section 31, he does accept that a single paragraph, 33 is exempt. This is by way of an aide memoire of the Investigating Officer. Although it has no bearing

upon this particular case, the Commissioner accepts that both that it engages the exemption and that the public interest requires that the exemption be maintained.

## 5.6 Section 40

5.6.1 The complainant's request was refused on the basis that it was a request for third party information. The Commissioner considers that in some respects at least the requested information was personal data of which the applicant was the subject. While the Commissioner concedes that the notebook entry made by the Police Constable is, from one perspective, information about the note taker, insofar as it records information about the complainant, it is also personal data about him.

5.6.2 The possibility that personal data may relate to two separate individuals is recognised by section 7(4) of the Data Protection Act 1998. This provides –

“Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless-

(a) the other individual has consented to the disclosure of the information to the person making the request, or

(b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual.”

5.6.3 Whether or not the Police Constable in this case has consented to disclosure, the Commissioner does not believe that there would be any unfairness to him in disclosing the information recorded in his notebook in this case. The very nature of police notebooks is that from time to time their contents can be expected to be made public. Entries are therefore made with that possibility in mind. Had the entry related to individuals other than the complainant and the police officer, the Commissioner may have taken a different view. However, that is not the case in this instance.

5.6.4 The report into the complainant's allegation of misconduct is divided between different headings. The first three pages of the report record the details of the complainant, a summary of the complaint, and the details of the officer complained of. This information is known to the complainant. There are also details of an officer representing the Police Federation present at the interview between the senior officer and the Police Constable. Section 2 of the Data Protection Act defines “sensitive personal data” as including details of trade union membership. The Commissioner agrees that the identity of the Officer representing the Police Federation should be withheld since its

disclosure could not be justified by reference to Schedule 3 of the Data Protection Act.

- 5.6.5 The next section of the Report effectively provides the same information as the Constable's notebook and, for the reasons given in 5.6.3 (above) the Commissioner considers may be disclosed with breach of the Data Protection Act.
- 5.6.6 The report then has sections headed "Investigation," "Witnesses" and "Documentation". The Commissioner does not consider that release of any of this information would contravene the Data Protection principles.
- 5.6.7 The following section is headed "Officer Interview". Although the Commissioner accepts that the focus of this interview is upon the Constable rather than the complainant, in terms of its factual content it consists of the same information contained in the Constable's notebook. The Commissioner does not consider that the disclosure of that section of the interview would breach the Data Protection Act.
- 5.6.8 The Report concludes with sections headed "Conclusions" and "Recommendations". This information is already known to the complainant and the Commissioner does not consider that disclosure would breach the data Protection Act.
- 5.6.9 The final page of the Report is headed "NOT TO BE DISCLOSED" and takes the form notes made by the Investigating Officer. The Commissioner considers that the first paragraph of this page, number "32", is personal data relating to that Officer and that there is a justification for removing this. (This is the same paragraph referred in 5.5.6 above.) The Commissioner does not, however, consider that the remainder of this section may be withheld by virtue of s.40.

## 5.7 Other

- 5.7.1 The Commissioner has considered only the question of the refusal of the complainant's request and the grounds advanced by the public authority for this. In the course of investigating this complaint, the Commissioner was provided with a copy of the letter sent to the Complainant by the Deputy Chief Constable. In the Commissioner's view this contains most of the relevant information contained in the documents requested by the complainant. Although the public authority may have wished to argue, therefore, that the requested information was available to the applicant by other means and that it was therefore exempt by virtue of s.21, the Commissioner considers that there is a real value in providing copies of the actual documents so that the complainant can compare them with the information which he has received.



**6. Action Required**

- 6.1 In the light of the above, the Commissioner requires the public authority to provide the complainant with copies of the requested information with the exception of the information relating to the representative of the Police Federation and paragraph 32 of the report into the complainant's allegation of misconduct by the Police Constable.
- 6.2 The Commissioner requires this information to be provided within 30 days of the date of this Notice.

**7. Right of Appeal**

- 7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

- 7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the 6th day of April 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**