

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 14 May 2007

**Public Authority:** Gwent Police Authority  
**Address:** Police Headquarters  
Croesyceiliog  
Cwmbran  
Gwent  
NP44 2XJ

### Summary

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1. The complainant requested from Gwent Police Authority a copy of a report written by West Mercia police into allegations made against serving police officers in the Gwent police force. As the report contained information about the complainant, the request was made under both the Freedom of Information and Data Protection Acts. A copy was provided to the complainant by the Police Authority, with some information redacted by virtue of section 40(2) of the Freedom of Information Act. The basis of the complaint was that the information should not have been redacted. However, the Commissioner decided that the Police Authority applied the Act appropriately in redacting the personal data of others.

### The Commissioner's Role

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2. The Commissioner's role 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 Freedom of Information Act 2000 (the 'Act'). This Notice sets out his decision.

### The Request

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3. On 6 February 2005 the complainant requested the following information from Gwent Police Authority under both the Act and section 7 of the Data Protection Act 1998:

*"... the report produced by West Mercia Police following their investigation arising from a series of complaints ... against Gwent Police and individuals within that force."*

4. On 24 February 2005 the Police Authority responded by providing a copy of the report to the complainant, "which has been amended to delete information about third parties in accordance with the Data Protection Act."
5. On 7 March 2005 the complainant wrote to the Police Authority requesting details of why the redactions had been made. The Authority responded on 8 March 2005 citing section 40(2) of the Act. On 1 July 2005 the complainant submitted a complaint to the Information Commissioner.

## **The Investigation**

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### **Scope of the case**

6. On 1 July 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the application of the section 40(2) exemption for the information redacted.

### **Chronology of the case**

7. The Commissioner wrote to the Police Authority on 12 April 2006 seeking further information about the redactions and a full unredacted copy of the report.
8. The Police Authority replied on 25 April 2006 providing copies of correspondence and both full and redacted copies of the report.

### **Findings of the case**

9. The redacted version of the report released to the complainant on 24 February 2005 was provided under both the Data Protection Act 1998 (the 'DPA') and the FOI Act. Both Acts provide a means of access to official information – section 7 of the DPA allows individuals access to their own personal data, and section 1 of the FOI Act allows anyone to request access to any official information held by a public authority.
10. The report in question in this case contains the personal data of the complainant, the personal data of others and information that does not constitute personal data of any individual.
11. The complainant was provided with personal data relating to him by the Police Authority under the DPA. His right of access to any remaining information needs to be considered under the FOI Act.

12. The Police Authority withheld the redacted information citing section 40(2) of the FOI Act. The Commissioner is satisfied that the information withheld does not constitute the personal data of the complainant and therefore he has concentrated his investigation on whether it was appropriate for the Police Authority to withhold the information redacted by virtue of the section 40 exemption.

## Analysis

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13. The Commissioner has considered the public authority's response to the complainant's request for information.

## Exemptions

### Section 40

14. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties, the disclosure of which would breach any of the data protection principles. The full text of section 40 is set out in the Legal Annex to this notice.
15. In order for the Police Authority to rely on the section 40(2) exemption, therefore, it must demonstrate that the information withheld in this case constitutes 'personal data', the disclosure of which would contravene at least one of the data protection principles.

### Does the information withheld constitute 'personal data'?

16. Section 1(1) of the DPA states that:

*““personal data” means 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. During the course of his investigation, the Commissioner has been provided with a copy of the full report as well as a redacted version that is identical to the one received by the complainant. It is clear that the information withheld would identify a number of individuals who were involved to a greater or lesser extent in the investigation that was the subject of the report. Furthermore, that information is biographically significant, in that it would identify those individuals and their connection to the investigation.

18. Accordingly, the Commissioner believes that the information withheld does constitute the 'personal data' of those individuals, within the definition set out above.

Would disclosure breach any of the data protection principles?

19. Schedule 1 of the DPA sets out the eight data protection principles. Data controllers (i.e. those who process personal data) must comply with these eight principles when processing personal data. In this context 'processing' has a wide meaning, covering the obtaining, holding and disclosing of data. The Police Authority is the data controller in this instance.
20. The Police Authority has stated that disclosing the information that has been withheld would breach the first data protection principle. The first principle states:
- "Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*
- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*
21. The key issue in this case is whether, in releasing the information requested, the Police Authority would be processing that data 'fairly and lawfully'.
22. In considering fairness, the Commissioner looks at various factors. The first and paramount consideration must be given to the consequences of processing (in this context disclosing the information requested) to the interests of the data subjects. In the context of this report, the consequences for each individual will differ according to their role in the investigation. For example, there are a number of individuals who are named in the report who played no more than a marginal role in the events described, whereas there are others who were the subject of serious allegations investigated by the West Mercia force.
23. In terms of the officers subject to the allegations under investigation, it is the Commissioner's view that the disclosure of their identities and the allegations against them would be unfair. This is because there is the clear possibility that individuals subject to serious allegations would suffer detriment if the nature of the allegations became widely known.
24. In terms of the individuals named in the report who were involved only on the periphery of the investigation, it is less likely that such individuals would suffer detriment if their personal data were released. However, in judging fairness it is also necessary to consider the reasonable expectations of the individuals. Those individuals who may have been involved in the investigation only in a minor capacity would not reasonably expect that their identities would be revealed.

## **The Decision**

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25. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act, because it applied the section 40(2) exemption appropriately to the information withheld.

## **Steps Required**

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26. The Commissioner requires no steps to be taken.

## Right of Appeal

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27. Either party has the right to appeal against this Decision Notice to the Information 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)

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

**Dated the 14<sup>th</sup> day of May 2007**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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

## Legal Annex

### Personal information.

**Section 40(1)** 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.”

**Section 40(2)** provides that –

“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
- (b) either the first or the second condition below is satisfied.”

**Section 40(3)** provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

**Section 40(4)** provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

**Section 40(5)** 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), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data

- protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

**Section 40(6)** provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

**Section 40(7)** provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.