

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 9 February 2009

Public Authority: Chief Constable of Sussex Police
Address: Police Headquarters
Church Lane
Lewes
East Sussex
BN7 2DZ

Summary

The complainant requested the number of reports of anti social behaviour and a description of the type or category of anti social behaviour reported for a specified post code area and time period. The public authority refused to confirm or deny whether it held information falling within the scope of the requests and cited the exemption provided by section 40(5) (personal information). The reasoning of the public authority for the citing of this exemption focussed on its concern about setting a precedent for confirmation or denial of whether information similar to that requested in this case is held that may apply in future, rather than any concern related to the specific information requested in this case. The Commissioner finds that confirmation or denial of whether information falling within the scope of the requests is held would not constitute personal data and that the exemption provided by section 40(5) is not, therefore, engaged. The public authority is required to provide to the complainant confirmation or denial of whether information falling within the scope of the requests is held in accordance with the requirement of section 1(1)(a). For any information that is held, the public authority is required to either disclose this information to the complainant in accordance with the requirement of section 1(1)(b), or to issue a valid refusal notice that states which provision of the Act prevents disclosure.

The Commissioner's Role

1. 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 28 February 2008 the complainant requested the following information:

"Location: Beresford Lane, Brighton, BN8

Period: 1st August 2007 to 1st February 2008

Please provide the following suitably anonymised information in relation to the above location:

1. The number of complaints of anti-social behaviour reported over the above period by residents/occupiers of the location.

2. A description of the type/category of ASB reported over the above period at the location (See the Respect Standard for Housing Management – Housemark ASB categories)."

3. The response to this was dated 31 March 2008. The public authority stated that there is no Beresford Lane in Brighton, but that the post code given in the requests related to Plumpton Green, East Sussex. The response from the public authority related to that location.
4. In response to the requests, the public authority refused to confirm or deny whether the information requested was held, citing the exemptions provided by sections 31(3) (law enforcement) and 40(5) (personal information). In explanation for its refusal, the public authority stated that the area specified in the requests contained a small number of residences and confirmation or denial and disclosure of the information requested could lead to individuals being identified as those who have made complaints about anti social behaviour to the police or as those who have been the subject of such complaints.
5. The complainant responded to this on 31 March 2008 and requested that the public authority carry out an internal review of the handling of the requests. The public authority responded with the outcome to the review on 22 May 2008, stating that the decision to neither confirm nor deny whether the information requested was held had been upheld. The public authority stated again that it believed that to confirm or deny whether the requested information is held could lead to victims or perpetrators of anti social behaviour being identified. The public authority did not refer to section 31(3) when giving the outcome to the internal review.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner initially on 25 June 2008 and

provided a copy of the exchange of correspondence detailed above. The Commissioner contacted the complainant on 15 July 2008 for an explanation of the scope of the complaint. The original information request had been in 8 parts, but it was noted that the internal review had covered only those 2 parts of the request quoted above. The complainant was asked to specify if the complaint covered all 8 parts of the original request, or just the 2 parts of the request that the internal review had covered.

7. In response to this the complainant specified that the complaint covered only the first 2 parts of the request. The Commissioner's investigation of this complaint has focused only on the 2 parts of the request quoted above and the refusal of these parts of the request under sections 31(3) and 40(5). The approach of the Commissioner in a case such as this where a multiple part request has been made and the parts of the request are clearly distinct is that each request is separate, rather than constituent parts of a single request. This notice covers the two requests referred to above.

Chronology

8. The Commissioner contacted the public authority initially on 16 July 2008. In this letter the basis for the complaint was set out and the public authority was asked to respond with further explanations about the exemptions cited. Firstly, it was noted that in the initial refusal notice the public authority had cited both sections 31(3) and 40(5), whereas the response giving the outcome to the internal review had cited only section 40(5). The public authority was asked to specify whether its stance was that both exemptions applied, or whether it now wished to cite only section 40(5). Secondly, in connection with section 40(5), the public authority was asked to describe how the information in question constitutes personal data, or would constitute personal data if it were held. It was noted that the complainant had specified anonymised information in the requests and that it was not immediately obvious from the wording of the requests how the information in question would constitute personal data. The public authority was also asked to specify which of the data protection principles it believed would be breached through confirmation or denial of whether the information requested is held and to specify how it believed this breach would occur.
9. The public authority responded to this on 6 August 2008. The public authority confirmed firstly that its stance now was as had been stated in the internal review response in that it wished to cite only section 40(5) and not section 31(3). On the issue of how information falling within the scope of the request could constitute personal data, the public authority stated that the postcode specified in the request related to only 15 premises. It believed that a response confirming or denying whether the information requested was held, combined with information about these addresses obtained from the electoral register, could enable identification of individuals.
10. The public authority further believed that the processing of personal data inherent in such a disclosure would not fulfil any condition from Schedule 2 of the Data Protection Act 1998 (the "DPA"). It also believed that no condition from Schedule 3 of the DPA would be fulfilled through this processing, in so doing indicating that

it believed the information in question here constitutes sensitive personal data according to the definition given in section 2 of the DPA (section 2(g) of the DPA provides that personal data relating to the commission or alleged commission by the data subject of any offence is sensitive personal data).

11. The public authority went on to state that it believed it should be taken into account in this case that the complainant organisation intends to request similar information about other areas. The public authority considered this to be an important issue here as it believed that releasing similar information for many different areas would enable the development of a geographical picture of the rate of anti social behaviour in the areas covered by the disclosed information. The public authority believed that the development of such a picture could be damaging to the residents of those areas.
12. The public authority believed that its position was strengthened as a result of the advice provided by the Commissioner's office to the Metropolitan Police Service (MPS) about its proposals for crime mapping. The public authority believed that its position here was consistent with that advice, which had been concerned with ensuring that no individuals could be identified through disclosure of information about crime broken down according to area.
13. An exchange of correspondence between the Commissioner and the public authority followed in which the scope of the second request was clarified. Whilst the complainant had referred to the "*Respect Standard for Housing Management – Housemark ASB categories*" in his request, the public authority stated that it was not familiar with these categories and held no information that conformed to these categories. The Commissioner confirmed his position as being that an objective reading of this request would be that it is for any information recording the type or category of anti social behaviour reported and was not restricted only to information about the "*Housemark ASB categories*".
14. The Commissioner contacted the public authority again on 27 October 2008. The public authority was asked to clarify whether, when a complaint about anti social behaviour is made to the public authority, a record of the type of behaviour reported is made. The public authority was asked to respond confirming whether this is the case and, if yes, to provide some information about the categories by which complaints of anti social behaviour are reported.
15. The public authority responded to this on 13 November 2008. In this response the public authority confirmed that it did make a record of the type of anti social behaviour reported and listed the categories by which such complaints are recorded.

Findings of fact

16. The public authority maintains a record of anti social behaviour complaints lodged within its area.
17. Anti social behaviour complaints are categorised according to the type of behaviour reported.

Analysis

Exemption

Section 40(5)(b)(i)

18. The full provisions of section 40(5)(b)(i) are cited in the legal annex to this decision notice. For this exemption to be engaged, there are two conditions that must be fulfilled:
- Confirmation or denial of whether the requested information is held must constitute personal data, and
 - Disclosure of this personal data would contravene any one of the data protection principles.
19. Covering the first request initially, the public authority believes that confirmation or denial of whether information falling within the scope of this request is held would in effect confirm or deny whether anti social behaviour reports have been made for the area and time period specified in the request. Given that the public authority has confirmed that a record is created when a complaint about anti social behaviour is made, the Commissioner accepts the representations of the public authority on this point.
20. The public authority further believes that confirming or denying whether reports of anti social behaviour have been made relating to the area and time period specified in the request would constitute personal data. This is based on the number of properties in the area specified in the request (15), which the public authority believes is sufficiently low that information relating to this post code area could be linked to individual occupants of these properties. The public authority has also suggested that the perpetrators of anti social behaviour could be identified through confirmation or denial as to whether this information is held.
21. Section 1(1) of the DPA defines personal data as follows:
- “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 is likely to come into the possession of, the data controller”*
22. The Commissioner has considered whether confirmation or denial would disclose information from which a living individual could be identified. This includes whether it would be possible to distinguish from confirmation or denial information revealing that an identifiable individual has been the perpetrator or victim of anti social behaviour.
23. The Commissioner accepts that the address of a property owned by an individual is personal data relating to that individual. This is in line with the following

conclusion of the Information Tribunal in England & London Borough of Bexley v the Information Commissioner:

"...knowing the address of a property makes it likely that the identity of the owner will be found." (paragraph 94)

"The address alone, in our view, also amounts to personal data because of the likelihood of identification of the owner.... In our view this information amounts to personal data because it says various things about the owner. It says that they are the owner of the property and therefore have a substantial asset. ... The key point is that it says something about somebody's private life and is biographically significant." (paragraph 98)

If the information disclosed through confirmation or denial in this case could be related to a single property, this information would, therefore, constitute personal data.

24. The request does not, however, relate to a single address. Instead, any information disclosed through confirmation or denial would relate to 15 properties.
25. The definition of personal data given in the DPA provides that data will constitute personal data where that data combined with any other information available to the data controller would enable identification of individuals. In this case that means considering what information would reasonably be available that could be combined with the confirmation or denial relating to 15 properties to reveal information about a single property or individual.
26. The arguments of the public authority on this point have not been detailed. It has suggested that the fact that the postcode area relates to a limited number of properties and that information about the residents of those properties could be obtained from the electoral register could lead to the knowledge gained through confirmation or denial being linked to identifiable individuals. The public authority has not, however, explained how this link could be made.
27. Having also considered whether any means not identified by the public authority could lead to the confirmation or denial being linked to an identifiable individual, the Commissioner concludes that it is not clear how anything could be learnt about an individual as a result of confirmation or denial, including whether any individual has been the perpetrator or victim of anti social behaviour.
28. The Commissioner may have accepted that disclosure of personal data would occur if the public authority had been able to offer evidence specific to the time and area specified in the request. The public authority has not, however, advanced any arguments specific to the area and time period specified in the request, nor any feasible explanation as to how identification could take place from a confirmation or denial.
29. As noted above the Commissioner would have accepted that confirmation or denial constitutes personal data had the request been for information relating to a single property. The stance of the public authority would also have been more

convincing had the request related to significantly fewer properties than the 15 in the post code area specified.

30. The conclusion of the Commissioner is that he does not accept that information relating to an identifiable individual could be distinguished from confirmation or denial of whether the public authority holds information falling within the scope of the first request. Confirmation or denial would not, therefore, constitute personal data and the exemption provided by section 40(5)(b)(i) is not engaged. As this conclusion has been reached, it has not been necessary to go on to consider whether confirmation or denial would breach any of the data protection principles.
31. Turning to the second request, the public authority has confirmed that it does create a record of the type of anti social behaviour reported when such a complaint is made. The effect of confirming or denying that information is held that falls within the scope of this request would, therefore, be to confirm or deny whether complaints of anti social behaviour have been made in the area and time period specified. However, confirmation or denial that information falling within the scope of the second request is held would not reveal the type or category of any anti social behaviour that has been recorded. The Commissioner believes that the arguments given above in relation to the first request also apply to the second request. The conclusion that section 40(5)(b)(i) is not engaged extends to the second request.

The Decision

32. The Commissioner's decision is that the public authority did not deal with the requests for information in accordance with the Act in that it applied the exemption provided by section 40(5)(b)(i) incorrectly and in so doing failed to comply with the requirement of section 1(1)(a).

Steps Required

33. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Provide to the complainant confirmation or denial of whether information falling within the scope of the requests is held. For any information that is held, this should either be disclosed, or the public authority should provide a reason valid under the Act for why this information will not be disclosed.

34. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

35. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

36. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner is aware that it is likely that the complainant organisation will make similar requests, both to the public authority to which this case relates and to other police forces, and would stress that this notice should not be taken as setting a precedent that will necessarily apply in other cases. Each case is considered individually and the decision of the Commissioner will vary according to the circumstances in each case. The Commissioner would stress to police forces that it should be ensured that arguments advanced in connection with any exemption cited are tailored to the specific information in question.

37. Both the complainant and the public authority raised the issue of the advice provided by the Commissioner's office to the MPS about crime mapping as being of potential relevance to this case. In that case the Commissioner raised concerns with the MPS that it may have been possible to link information about crime broken down according to locality to individuals. In this case the Commissioner would stress that his decision is not that any details of reports of anti social behaviour must be disclosed by the public authority, rather it is that the public authority should confirm or deny whether information falling within the scope of the request is held.

Right of Appeal

38. 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@tribunals.gsi.gov.uk

39. 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 9th day of February 2009

Signed

Steve Wood
Assistant Commissioner

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

Legal Annex

Section 40

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).”