

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 14 December 2009**

**Public Authority:** North Wales Police  
**Address:** Police Headquarters  
Glan-y-Don  
Abergele Road  
Colwyn Bay  
LL29 8AW

### Summary

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The complainant requested information in relation to the investigation of the offence of bigamy for the period 1 May 2005 to 1 January 2008. North Wales Police provided the number of complaints of bigamy that it had received but refused to provide any further details, citing section 40(2) of the Act. The Commissioner has investigated and has upheld the public authority's application of section 40(2).

### The Commissioner's Role

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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

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2. On 23 January 2008 the complainant contacted North Wales Police ('NWP') to request the following information:  
"Please provide statistics to show the number of complaints/investigations by North Wales Police for the offence of bigamy between 01/05/05 and 01/01/08 together with the final outcome i.e. no further action or caution or prosecution."
3. NWP responded on 25 April 2008. It stated that it had investigated 4 complaints of bigamy. NWP however declined to provide the final outcomes to the complainant as it considered that release of this information would breach the Data Protection Act 1998 (the DPA) and was therefore exempt under section 40(2) of the Act.

4. On the same day the complainant requested an internal review of the decision to withhold the information. NWP responded on 19 June 2008 upholding its decision not to provide the final outcomes. NWP explained that due to the small number of cases involved and the information in the public domain, it considered that individuals could be identified from its disclosure of the final outcomes ('the withheld information').

## The Investigation

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### Scope of the case

5. On 27 June 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to consider whether NWP had complied with the Act in its application of section 40(2) to his request.

### Chronology

6. The Commissioner contacted NWP on 27 October 2008 to request further information on its application of section 40(2) of the Act.
7. NWP responded on 25 November 2008. It provided a detailed submission to the Commissioner on the application of section 40(2) of the Act. NWP also provided the Commissioner with details of previous requests for information it had received on this subject and media reporting over the death of an individual charged with bigamy.
8. The Commissioner wrote to NWP on 11 December 2008 requesting further information. NWP responded on 6 January 2009 providing the information requested.
9. Upon examining the representations put forward the Commissioner wrote to NWP on 27 February 2009. The Commissioner was concerned that NWP had not provided sufficiently detailed arguments in order for him to make an informed decision on the application of section 40(2).
10. NWP provided further representations in support of its application of section 40(2) on 9 April 2009.

### Analysis

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#### Exemption: Section 40(2) Personal data of third parties

11. The full text of section 40(2) of the Act and the relevant sections of the DPA can be found in the Legal Annex at the end of this notice.

12. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant.
13. In this case NWP stated that the requested information constituted the personal data of unnamed third parties and was therefore exempt under section 40(2) of the Act. In order to reach a view on NWP's arguments the Commissioner first considered whether the withheld information is the personal data of the third parties.

### **Is the requested information personal data?**

14. Section 1 of the DPA defines personal data as data which relates to living individuals who can be identified:
  - From those data, or
  - From those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

### **NWP's submission**

15. NWP explained that given the small number of cases involved, it considered that it was foreseeable that disclosure of the withheld information, when taken with information available in the public domain, would be likely to lead to identification of the individuals concerned.
16. NWP provided more detail to the Commissioner relating to the specific request for information in this case and provided further arguments to support its application of section 40(2) of the Act. In particular it referred the Commissioner to previous information requests and media reporting on the issue.
17. Due to the nature of the information requested the Commissioner is unable to provide in detail the arguments submitted by NWP as this includes references to the withheld information.

### **Complainant's submission**

18. The complainant argued that the DPA covers only data which can be used to identify an individual. He suggests that the disclosure of the withheld information (in this case the final outcomes of bigamy complaints/investigations) could not identify any living person.

### **Commissioner's View**

19. In reaching a view as to whether the withheld information is personal data the Commissioner is mindful of the wording of section 1 of the DPA and Article 2 of Directive 95/46/EC (the European Directive enacted in the UK by the DPA). Article 2 states:

*“personal data” shall mean any information relating to an identified or identifiable*

*natural person ...; an identifiable person is one who can be identified, directly or indirectly ...”*

20. Under this definition, the key issue is whether the information requested relates to an 'identifiable' individual. The Commissioner also had regard to his technical guidance on what is personal data which can be found at:  
[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)
21. The Commissioner accepts that it could prove problematic if several requests made under the Act, which in themselves are focused on non personal data, are then compiled to form a 'mosaic' of requests, which can lead to personal data being deduced from a number of disclosures of information. He acknowledges that it is possible that an informed individual, with a particular interest may be able to discover personal data about particular individuals by combining apparently anonymous data with other data at their disposal.
22. Bearing this in mind and given the sensitivity of the withheld information the Commissioner has carefully considered NWP's submissions. The Commissioner considers that it is a viable scenario that a motivated requestor could piece together information to reveal personal data, and this conclusion has been supported by the evidence provided by NWP.
23. The Commissioner has had regard to the fact that there have only been four investigations of bigamy undertaken by NWP between 1 January 2005 and 1 January 2008. The Commissioner accepts, taking into consideration the further evidence provided by NWP, that it would not be able to anonymise the data to the extent that it would not be possible to identify any living individual.
24. The Commissioner is therefore satisfied that there is a significant risk of direct or indirect identification, due to the small of number of cases and the information in the public domain.
25. Therefore, it is his view that the information constitutes personal data in so far as individuals could be identified from the information. As such, he considers that section 40(2) of the Act is engaged.

#### **Is the requested information sensitive personal data?**

26. The Commissioner has considered whether the information constitutes sensitive personal data. Section 2 of the DPA defines sensitive personal data as information relating to, amongst other things:
  - The commission or alleged commission by any individual of any offence or
  - Any proceedings for any offence committed or alleged to have been committed by an individual.
27. Having considered the nature of the information and the purpose for which the information was created, the Commissioner is satisfied that the information in question is sensitive personal data.

## **Would disclosure of the information contravene any of the data protection principles?**

28. The first principle of the DPA requires that personal data is processed fairly and lawfully and that such data is not processed unless:
- At least one of the conditions in schedule 2 is met,
  - In the case of sensitive personal data, at least one of the conditions in schedule 3 is met.
29. As the Commissioner considered the withheld information to constitute sensitive personal data he initially considered whether one of the conditions in schedule 3 could be met. He reasoned that if it was not possible to demonstrate that at least one of the schedule 3 conditions could be met, there would be no need to consider whether a schedule 2 condition could be met.
30. Having considered the conditions listed in schedule 3 the Commissioner formed the view that none of those conditions could be met. Accordingly the Commissioner believes that the disclosure of this information would be in breach of the first principle of the DPA. Therefore he is satisfied that the exemption available at section 40(2) of the Act is engaged.
31. As the Commissioner has determined that a schedule 3 condition cannot be met - and as a consequence disclosure would breach the first principle of the DPA - he has not gone on to consider whether there is a schedule 2 condition or whether the disclosure would be fair.

## **Procedural requirements**

### **Section 10 – Time for compliance**

32. Section 10(1) of the Act requires that a public authority issue a refusal to a request for information within 20 working days.
33. The complainant made a request dated 23 January 2008; NWP issued a refusal notice on 25 April 2008. NWP took 65 working days to issue a refusal to the request and therefore breached section 10(1) of the Act.

### **Section 17 – Refusal of request**

34. Section 17(1) of the Act requires a public authority to issue an adequate refusal notice within 20 working days.
35. In failing to issue a refusal notice within the time for compliance, NWP breached section 17(1) of the Act.
36. Further, section 17(1)(c) of the Act provides that public authorities seeking to withhold information must state the reasons why the exemption is engaged.

37. The Commissioner's view is that NWP failed to adequately explain why the exemption available at section 40(2) was engaged. NWP therefore breached section 17(1) (c) of the Act.

### **The Decision**

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38. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the Act:

- NWP correctly withheld information in reliance on section 40(2)

39. However, the Commissioner finds that NWP breached section 10(1), 17(1) and 17(1) (c) of the Act.

### **Steps Required**

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40. The Commissioner requires no steps to be taken.

## Right of Appeal

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41. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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 14th day of December 2009**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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

## Legal Annex

### Freedom of Information Act 2000

#### Time for Compliance

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

#### Refusal of Request

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

#### 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.”

## **Data Protection Act 1998**

### **Section 1**

In this Act, unless the context otherwise requires –

“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;

### **Section 2**

In this Act “sensitive personal data” means personal data consisting of information as to –

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,

(d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),

(e) his physical or mental health or condition,

(f) his sexual life,

(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

### **Schedule 3**

#### **Conditions relevant for purposes of the first principle: Processing of sensitive personal data**

**(1)** The data subject has given his explicit consent to the processing of the personal data.

**(2)** — (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.

(2) The Secretary of State may by order—

(a) exclude the application of sub-paragraph (1) in such cases as may be specified, or

(b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

**(3)** The processing is necessary—

(a) in order to protect the vital interests of the data subject or another person, in a case where—

(i) consent cannot be given by or on behalf of the data subject, or

(ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or

(b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.

**(4)** The processing—

(a) is carried out in the course of its legitimate activities by any body or association which—

(i) is not established or conducted for profit, and

(ii) exists for political, philosophical, religious or trade-union purposes,

(b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,

(c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and

(d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

**(5)** The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

**(6)** The processing—

(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),

(b) is necessary for the purpose of obtaining legal advice, or

(c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

**(7)** (1) The processing is necessary—

(a) for the administration of justice,

(b) for the exercise of any functions conferred on any person by or under an enactment, or

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

(2) The Secretary of State may by order—

(a) exclude the application of sub-paragraph (1) in such cases as may be specified, or

(b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

**8.** (1) The processing is necessary for medical purposes and is undertaken by—

(a) a health professional, or

(b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph “medical purposes” includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

**9.** (1) The processing—

(a) is of sensitive personal data consisting of information as to racial or ethnic origin,

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and

(c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Secretary of State may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

**10.** The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.