

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 17 September 2009

Public Authority: Chief Constable of Hampshire Police
Address: Hampshire Constabulary
Police Headquarters
West Hill
Romsey Road
Winchester
SO22 5DB

Summary

The complainant requested the details of complaints made about a named police officer. The public authority refused to confirm or deny whether it held information falling within the scope of this request and cited the exemption provided by section 40(5)(b)(i) and section 30(3). The Commissioner finds that confirmation or denial would disclose personal data and that the disclosure of this personal data would be in breach of the first data protection principle. The exemption provided by section 40(5)(b)(i) is, therefore, engaged and the public authority is not required to take any steps. However, the public authority did not comply with the requirements of section 17(1)(b) of the Act in not fully citing the exemption.

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. The complainant's request was dated 11 December 2008 and was worded as follows:

" Please inform me of any and all complaints made about the above officer named at top of page during his time with the police service, not just Hampshire Police.

Please include all Recorded Complaints whether they are recorded as substantiated or not and any complaints that were not recorded but remain on file.

Please inform me of the nature of each complaint. Please also inform me of any criminal convictions the officer has and what they were for.

I refer to his time as a Police Constable as well as any higher rank he may have held as well as his time as a Sergeant..."

3. The public authority responded in a letter dated 17 December 2008. The public authority refused to confirm or deny whether it held information falling within the scope of the request and cited the exemption provided by section 40(5) and section 30(3).
4. The complainant requested an internal review on 22 December 2008 and the public authority responded with the outcome of this review on 29 January 2009. The refusal of the request was upheld. This letter stated that the reviewer was satisfied that the legislation had been complied with fully.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner initially on 5 February 2009 and stated that he did not agree with the exemption cited by the public authority. During an exchange of correspondence between the complainant and the Commissioner's office the complainant was made aware on 16 June 2009 of the precedent set by the Commissioner previously that, where details of complaints made about named employees of a public authority have been requested, the exemption provided by section 40(5)(b)(i) would be engaged. The complainant wrote on 25 June 2009 to confirm that he nevertheless wished to continue with this case.
6. The public authority had also cited section 30(3) at the time of the refusal but, as section 40(5)(b)(i) is engaged, the Commissioner does not intend to look at this exemption.

Chronology

7. Following the receipt of the complaint, the Commissioner contacted the public authority on 26 February 2009 to make it aware that the complaint had been made.
8. As referred to above, an exchange of correspondence between the Commissioner and the complainant took place. On 16 June 2009 the Commissioner wrote to the complainant pointing out that any Decision Notice on this complaint was likely to uphold the decision made by Hampshire Constabulary and to record that no further action was required. The reason for this is that the

potential for detriment to the named individual through disclosure of information relating to complaints made against him is a significant issue here.

9. The complainant wrote to the Commissioner on 26 June 2009 to confirm that he wished to continue with this case as he did not feel that his request was personal data because it related to the police officer's professional life.

Analysis

Substantive Procedural Matters

Section 17

10. The public authority failed to cite the correct subsection (40(5)(b)(i)) at either the refusal notice or internal review stage. In so doing, the public authority did not comply with the requirement of section 17(1)(b) of the Act. This section of the Act is set out in full in the attached Legal Annex, as are all other sections of the Act referred to in this notice.

Exemption

Section 40(5)(b)(i)

11. Section 40(5)(b)(i) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
 - constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the DPA. The first data protection principle, which requires that personal data be processed fairly and lawfully, is the relevant principle in this case.
12. The Commissioner's analysis of whether the above criteria would be fulfilled follows.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

13. The complainant has requested information relating to complaints made about a specific named individual within the public authority and any previous public authority. The stance of the public authority is that confirming or denying whether information falling within the scope of the request is held would disclose whether complaints had been made about this individual. The public authority further argues that this would constitute a disclosure of personal data relating to this individual.
14. The Commissioner agrees that confirming or denying whether the requested information is held would constitute a disclosure of personal data. Confirming or denying would unavoidably disclose whether complaints had been made about

the individual named in the request. As this information would clearly relate to an identifiable individual, the Commissioner accepts that this information would constitute personal data.

Would disclosure of this personal data be unfair and in breach of the first data protection principle?

15. The personal data that would potentially be disclosed here would most likely relate to the named individual in a professional capacity. This is significant in that the Commissioner has made a clear distinction when issuing decisions about requests for information relating solely to professional matters and information relating to an individual outside their professional capacity. The Commissioner's position has been that he considers it far less likely that disclosure of personal data relating to professional matters would be unfair than disclosure of information relating to an individual in a non-professional capacity.
16. It is important to consider what expectation of disclosure the individual would hold. The Commissioner would consider it reasonable that employees of the public authority would have an expectation that information about complaints made against them individually, including whether or not any complaints have been made, would not be disclosed, even without any specific notification of this.
17. The potential for detriment to the named individual through disclosure of information relating to complaints made against them is a significant issue here. The Commissioner's previous Decision Notice FS50086498 includes this argument about the issue of detriment:

"To release the fact that a complaint has been made against an employee may lead to assumptions being made about that employee's competence. However, the complaint may be unsubstantiated or malicious, or certain employees may be involved more frequently with difficult decisions that are more likely to result in dissatisfaction. Therefore, releasing this information does not aid transparency or accountability but could be misleading and unfair to particular employees."

18. This argument also applies in this case. A counter argument rests on the fact that an employee of a public authority, particularly a police officer, should have an expectation of accountability. The public authority has demonstrated its commitment to openness and accountability through publishing information on its website concerning 'Complaints & Discipline'. The Commissioner considers this significant as it demonstrates that the public authority has attempted to be open and accountable about the issue of complaints made about its service and any disciplinary action within the restriction of not wishing to disclose details of complaints made about individual employees. The Commissioner also notes that oversight of the public authority, including oversight of police officers, is provided by its own Professional Standards Department and by Hampshire Police Authority.

Conclusion

19. As mentioned previously, the Commissioner has taken a clear line that disclosure

of personal information relating solely to an individual in a professional capacity would be less likely to be considered unfair than disclosing information about an individual's private life. It can also be argued that employees of public authorities, particularly police officers, should have an expectation that they will be accountable.

20. However, the Commissioner has also previously concluded that disclosure of information about complaints made against individual employees would be unfair, as the employees would have a reasonable expectation that such information would not be disclosed, and because of the potential detriment that could result from disclosure of information of this kind. It is also of significance that the public authority has demonstrated transparency on its website through publishing details about complaints and discipline.
22. The conclusion of the Commissioner is that the exemption from the duty to confirm or deny provided by section 40(5)(b)(i) is engaged. In making this decision the Commissioner has first concluded that confirming or denying that the requested information is held would constitute a disclosure of personal data. The Commissioner considers that it is clear that confirming or denying whether the requested information is held would disclose information that could be linked to an identifiable individual.
23. Secondly, the Commissioner concludes that disclosure of this personal data would be unfair and thus would be in breach of the first data protection principle. In making this decision, the Commissioner has taken into account the lack of expectation on the part of the individual named in the request that this information would be disclosed, the potential for detriment as a result of disclosure, and that the public authority has disclosed complaints and disciplinary information on its website.

The Decision

24. The Commissioner's decision is that the public authority responded to the request for information in accordance with the Act in that the exemption from the duty to confirm or deny provided by section 40(5)(b)(i) is engaged.
25. However, the Commissioner also finds that the public authority failed to comply with the procedural requirements of sections 17(1)(b) as covered above at paragraph 10.

Steps Required

26. The Commissioner requires no steps to be taken.

Right of Appeal

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@tribunals.gsi.gov.uk.
Website: 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 17th day of September 2009

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Freedom of Information Act 2000

Section 17

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.”

Section 40

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(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).”

Data Protection Act 1998

Section 1(1) provides 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 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 intentions of the data controller or any other person in respect of the individual.”

The first data protection principle provides that –

“Personal data shall be processed fairly and lawfully...”