

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2012

Public Authority: Dyfed Powys Police
Address: Police Headquarters
PO Box 99
Llangunnor
Carmarthen
SA21 2PF

Decision (including any steps ordered)

1. The complainant requested the current rank and role of a named individual including possible roles as a support officer or probationer. Dyfed Powys Police (DPP) refused to confirm or deny if it held this information and cited the exemption provided by section 40(5) of the Freedom of Information Act 2000 ('the Act').
2. The Commissioner's decision is that DPP applied section 40(5) correctly and is not therefore required to confirm or deny whether it holds the requested information.

Request and response

3. On 1 June 2011 the complainant wrote to DPP and requested information in the following terms:
"The current rank and role in Dyfed-Powys Police of a [named individual], including possible roles as a support officer or probationer."
4. DPP responded on 8 June 2011 and refused to confirm or deny if it held any relevant information, citing section 40(5) of the Act. It did however make reference to the complainant's comments in his request which referred to the 'basis of a complaint'. DPP informed the complainant that if he wished to engage with it concerning a complaint he could contact DPP outside of the Act and it provided the various avenues available in which to do so.

5. Following an internal review DPP wrote to the complainant on 12 September 2011 upholding its original response.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He argued that the public has a right to the type of general information he had requested and asked the Commissioner how a citizen could determine if a plain clothes police officer, behaving unprofessionally, is a member of a specific police force without such information.
7. The complainant informed the Commissioner that in recent years he has made two complaints to a separate police force in relation to harassment, intimidation and bullying. He added that this was not via close contact but involved excessive contact with police vehicles and was facilitated by surveillance measures. Both complaints were subsequently escalated to the IPCC (Independent Police Complaints Commission) neither of which were upheld, although the complainant expressed concerns regarding the quality of both investigations.
8. The complainant further explained that the one constant over this period (from 1992) has been the regular appearance of one individual and he informed the Commissioner that by the time of his second complaint he was of the view that s/he may be a serving police officer and may be employed by DPP.

Reasons for decision

9. Section 40 of the Act provides that personal data about third parties should not be disclosed under the Act where do so would breach the data protection principles.
10. In certain cases, merely confirming or denying that the requested information is held (a requirement of section 1(1)(a) of the Act) can itself reveal information which breaches the principles. In such cases, section 40(5)(b)(i) of the Act provides an exemption from section 1(1)(a).
11. In line with the provisions of section 40(5)(b)(i) the Commissioner has first considered whether confirming or denying it holds the requested information would contravene any of the data protection principles. The relevant principle to consider is principle one which relates to fairness.

Would complying with section 1(1)(a) contravene the first data protection principle?

12. The first data protection principle states in part;

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met...'

13. In considering whether confirming or denying whether the requested information is fair, the Commissioner took into account the reasonable expectations of any relevant data subjects and the consequences of disclosure should that information exist, balanced against the legitimate interests of the public.

14. DPP has informed the Commissioner that it employs covert officers and officers who may have assumed a different role to their official one within the police force. It informed the Commissioner that it needs to protect the identity of such individuals, and considers that confirmation of their employment may not only compromise an existing investigation but may prejudice the individual officers concerned and their families. Consequently, when DPP receive requests regarding the employment status of an individual it therefore considers the most appropriate response is to neither confirm nor deny whether it holds such information.

15. DPP is also aware that it cannot just rely on this approach for cases where it holds relevant information, as to do so would in itself be likely to reveal information which would breach the first data protection principle. The argument applies whether or not the individual is employed in a covert role, or indeed, whether or not s/he is an employee of DPP. If DPP only upheld its duty to confirm or deny when it did have an employee of that name, an applicant could reasonably assume that where DPP refused to confirm or deny, the named individual was in fact employed by the authority and in a covert role. It therefore adopts a blanket approach to all such requests.

16. The Commissioner accepts that the potential for damage or distress (not just to the data subject, if one exists, but to family members as well) as a consequence of disclosure would be real and significant. He also acknowledges the rationale behind DPP's approach to such requests.

17. Having considered DPP's submissions, the Commissioner is satisfied that in the context and background of this request, any relevant data subjects would have had a reasonable expectation of privacy and would not expect DPP to confirm or deny if this information is held.

18. The Commissioner does consider that there may be a legitimate public interest in knowing whether a specific individual is employed by DPP and the individual's various roles, however, he considers that in all the circumstances of this case, confirming or denying whether the requested information is held would breach the first data protection principle. The Commissioner is therefore satisfied that any response provided in line with the provisions of section 1(1)(a) of the Act would not be fair.
19. As the Commissioner is satisfied that complying with section 1(1)(a) would contravene the first data protection principle, he finds that DPP was not obliged to either confirm or deny whether the requested information was held.

Right of appeal

20. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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