

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 10 July 2012

Public Authority: The Police Ombudsman for Northern Ireland
Address: New Cathedral Buildings
St Anne's Square
11 Church St
Belfast
BT1 1PG

Decision (including any steps ordered)

1. The complainant requested internal investigation reports from the Police Ombudsman for Northern Ireland (PONI). PONI confirmed that it held relevant information, but withheld this information under section 40(2) of the FOIA. The Commissioner's decision is that PONI was entitled to rely on the exemption at section 40(2). The Commissioner does not require any steps to be taken.

Request and response

2. On 15 April 2011, the complainant requested the following information from PONI:

"...please provide me with a copy of each of the internal investigation reports that have taken place in the Police Ombudsman's Office since September 2009."

3. PONI responded the same day to request clarification of the information sought. The complainant advised on 5 May 2011 that her request was for the following information:

"All reports generated by the internal staff of the Police Ombudsman and any third parties that have been engaged by and/or engaged with the Police Ombudsman's Office."

4. PONI responded to the clarified request on 3 June 2011. PONI provided the complainant with copies of a staff survey report and a corporate

governance report. PONI also directed the complainant to various reports published on its website. Finally, PONI advised that it held information relating to disciplinary matters, but this was exempt under section 40 of the Act.

5. Following an internal review PONI wrote to the complainant on 6 July 2011. PONI provided the complainant with a number of additional corporate governance reports, but advised that it did not hold any further information of the description specified in the request.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant advised the Commissioner that she believed PONI had interpreted her request too narrowly, and indicated that she had reason to believe that PONI held other information relevant to her request. However the complainant was unable to provide the Commissioner with evidence to support this view as she said she had received it in a confidential manner.
7. The Commissioner therefore considered the scope of the case to include two key issues:
 - Was the complainant's requested interpreted in too narrow a manner?
 - Was PONI entitled to rely on the exemption at section 40(2) in respect of the information it considered relevant to the request?
8. The Commissioner inspected the withheld information, ie the investigation reports, which were contained in disciplinary and grievance files held by PONI. The Commissioner inspected the entire files to ensure that any relevant investigation reports were identified and considered.

Reasons for decision

Interpretation of the request

9. The complainant was of the view that PONI interpreted her request too narrowly. On receipt of the request, for "*internal investigation reports*", PONI contacted the complainant for clarification as explained at paragraph 3 above. PONI's response of 3 June 2011 set out its understanding of what information might fall within the scope of the request. The complainant advised on 8 June 2011 that she was not

happy with the way her request had been handled. Specifically the complainant indicated that:

"I don't think what was provided earlier this week covers all that I asked for. I think your office has unduly narrowed my requirements and for these reasons I request an internal review."

10. However the complainant did not provide any details as to the information she had expected to receive, or how she considered the request ought to have been interpreted. In any event, the internal review resulted in audit reports being disclosed, on the grounds that they could be described as investigative reports.

11. The Commissioner asked the complainant what information she felt PONI ought to have considered as falling within the scope of her request. The complainant told the Commissioner that her request had been clear, and added

"For clarification I wish your office's investigation to examine the Police Ombudsman's Office withholding of information in relation to disciplinary investigations."

12. The complainant made reference to a particular type of information she considered relevant, but advised that she could not disclose any information about it to the Commissioner as she had a duty to protect her sources. The complainant did however clarify that she was not seeking information which could identify any individual.

13. The Commissioner understands the complainant's position, but is mindful of section 8(1)(c) of FOIA, which states that for a request to be valid it must describe the information requested. Applicants can not be expected to know what information is held by a public authority before making a request, but equally applicants have a responsibility to make it as clear as possible what information they are seeking. If an authority is not clear about the interpretation of the request, then it should contact the complainant to clarify the request, and the Commissioner has produced guidance to assist public authorities in this regard.¹

1

http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/~/_/media/document/library/Freedom_of_Information/Practical_application/INTERPRETING_A_REQUEST.ashx

14. From the information provided by the complainant it is not clear to the Commissioner what information the complainant considers to be outstanding in respect of her request. The Commissioner notes that PONI did contact the complainant to clarify her request, but is of the view that the complainant did not provide meaningful clarification which could have helped PONI identify any specific information sought.
15. In the interests of thoroughness the Commissioner considered whether PONI was likely to hold any other information which might be relevant to the request. The Commissioner concluded that, as internal investigations may relate to disciplinary matters, they might also relate to grievances raised by PONI staff. PONI agreed that grievances could involve internal investigations which might result in a report, but that this information would be exempt under section 40(2) in a similar manner to disciplinary information. The Commissioner has considered this information in his analysis of section 40(2) below.
16. In light of the above, the Commissioner finds that PONI could have interpreted the complainant's request as including information relating to grievances. However he finds no evidence to suggest that the request was interpreted unduly narrowly. Therefore the Commissioner has gone on to consider the withheld information in this case, namely internal reports held by PONI relating to disciplinary cases and grievances.

Section 40(2): personal information

17. Section 40(2) of the Act states that a public authority is not obliged to disclose information 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 Data Protection Act 1998 (the DPA).

Would disclosure of the requested information constitute a disclosure of personal data?

18. The DPA defines personal information as:

"...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 of the data controller or any person in respect of the individual."

19. The withheld information in this case comprises investigation reports relating to named individuals who were either the subject of disciplinary investigations, or who had raised grievances. The withheld information also contains personal information relating to other individuals such as witnesses. The complainant advised the Commissioner that she was not seeking any information which could identify individuals. However, the Commissioner is of the view that it would be extremely difficult to remove all such information from the investigation reports and leave meaningful information. Therefore the Commissioner has gone on to consider the application of the section 40 exemption to all of the withheld information.
20. In particular the Commissioner considered whether there was any generic information contained within the reports which could be disclosed to the complainant, such as standard paragraphs as to how the complaint or grievance would be investigated. However the reports did not follow a consistent format and none contained any such generic information. Therefore the Commissioner is satisfied that all of the withheld information in this case is personal data of individuals other than the complainant.

Would disclosure of the requested information breach any of the data protection principles?

21. PONI argued that disclosure of the withheld information would breach the first data protection principle in that disclosure would be unfair to the individuals in question.

The first data protection principle

22. The first data protection principle has two main components. They are:
- the requirement to process all personal data fairly and lawfully; and
 - the requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.
23. The Commissioner's general approach to the first data protection principle is to consider the fairness element first. If the Commissioner finds that disclosure would be fair he will then move on to consider the other elements of the first data protection principle.

Would disclosure of the information be fair?

24. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. He

has then balanced these against the general principles of accountability, transparency and legitimate public interest in disclosure.

Expectations of the individuals concerned

25. The Commissioner is of the view that public sector employees should expect to have some personal information published (for example, salary bands) as they are paid from the public purse. However the Commissioner considers that disciplinary and grievance matters are generally considered more “private” to individuals. In addition, PONI’s policy and procedures in relation to both disciplinary and grievance matters specify that information obtained in the course of an investigation will be kept confidential.
26. PONI confirmed to the Commissioner that it had contacted one individual in response to a previous request for similar information, but this individual had refused consent to disclose any personal information relating to him. PONI had not sought consent from any other individual, and also explained that some of the individuals in question had since left PONI, so it was not possible to contact them to seek consent.
27. The Commissioner considers that individuals who are subject to disciplinary matters, or who raise grievances, are generally entitled to expect that their personal information would not be disclosed into the public domain. Otherwise, public authorities as employers would find it more difficult to encourage staff to engage with disciplinary or grievance procedures, whether as the subject of an investigation or as a witness. The Commissioner recognises that individuals have a reasonable expectation that a public authority, in its role as a responsible data controller, will respect confidentiality, particularly where this is explicitly stated in a policy.

Consequences of disclosure to the individuals

28. In the absence of information regarding consent the Commissioner has taken into account the fact that matters are, according to PONI policy, dealt with in confidence. The Commissioner accepts that individuals involved in disciplinary and grievance matters would be likely to feel uncomfortable if relevant information was published in the public domain. This would be particularly difficult with regard to personnel-related information that individuals may not have been able to share with colleagues at the time of the investigation. This could in turn make it more difficult for individuals to undertake their work duties, particularly in a relatively small organisation. It is the Commissioner’s view that such disclosure would represent unnecessary intrusion into the individuals’ private lives, and would cause unjustified distress to those individuals.

General principles of accountability, transparency and legitimate public interest in disclosure

29. The Commissioner appreciates that there is a general public interest in accountability and transparency, and the public is entitled to be informed as to how PONI operates. On the other hand the Commissioner recognises that this legitimate interest must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the individuals whose information is being considered for disclosure into the public domain.
30. The Commissioner has published guidance on section 40 and its application in relation to the personal information of public authority employees². This guidance suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life. Although the information does relate to the individuals as PONI employees, the Commissioner recognises that information relating to personnel matters such as discipline and grievances will often be inherently "private" in nature. These issues may be relatively innocuous (for example the approval of annual or special leave), but will still be personal to the individual who is aggrieved or accused. In the Commissioner's opinion there is a much weaker public interest in disclosing this kind of information into the public domain.
31. Despite the arguments set out above, the Commissioner recognises that in some circumstances it will still be fair to disclose information of the type withheld, ie where there is an overriding public interest in disclosure. Such scenarios may include those where the withheld information reveals crucial matters regarding the operation of the public authority which should be brought to light in the interests of accountability and transparency. Although the Commissioner must be careful not to disclose the substance of the withheld information, he is satisfied that it does not contain anything which would carry a strong public interest which would override the fact that its disclosure would be likely to cause unwarranted distress to the individuals concerned.

2

http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Data_Protection/Detailed_specialist_guides/PUBLIC_AUTHORITY_STAFF_INFO_V2.ashx

32. In the absence of a compelling public interest in disclosure, the Commissioner finds that disclosure of the withheld information would be unfair to the individuals, and would thus contravene the first data protection principle. Therefore the Commissioner finds that section 40(2) is engaged, and that PONI was entitled to withhold this information.

Right of appeal

33. 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

34. 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.
35. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF