

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 March 2012

**Public Authority:** Independent Police Complaints Commission  
**Address:** 90 High Holborn  
London  
WC1V 6BH

### Decision (including any steps ordered)

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1. The complainant requested information from the Independent Police Complaints Commission (IPCC) relating to complaints he had made and with respect to his ability to communicate with the IPCC. The IPCC refused either to confirm or deny holding information within the scope of the request citing personal information. The Information Commissioner's decision is that the IPCC was correct to neither confirm nor deny holding information within the scope of the request. He requires no steps to be taken.

### Request and response

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2. The complainant wrote to the Independent Police Complaints Commission (IPCC) on 27 June 2011 and requested information in the following terms:

*"Therefore, under the Freedom of Information Act 2000 I wish to know who exactly in the IPCC made the discission (sic) not to continue investigating my clearly substantiated complaints against Dyfed Powys Police and who it was that decided to further abuse my position in blocking all communication with said IPCC".*

3. There appears to have been further correspondence between the complainant and the IPCC, including the IPCC advising the complainant on 28 July 2011:

*"The request that you are making appears to amount to a request under section 7 of the Data Protection Act."*

4. The IPCC responded formally on 29 July 2011. It explained that it considered that the information, if held, would be the requester's personal data and that it would be exempt from disclosure under the FOIA by virtue of section 40(1). It refused either to confirm or deny holding the requested information, citing section 40(5) (personal information) of the Act. It explained that to confirm or deny whether personal information existed in response to the request could breach the right to privacy afforded to persons under the Data Protection Act 1998 (DPA). It also advised the requester how to make a Subject Access Request under the DPA.
5. The complainant requested an internal review on 29 July 2011.
6. The IPCC upheld its decision in its internal review correspondence which it sent to the complainant on 22 August 2011.

### Scope of the case

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7. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
8. In response to the Information Commissioner's enquiry, the complainant confirmed that:

*"there have been no requests made under The Data Protection Act - Subject Access Request".*
9. The Information Commissioner considers the scope of his investigation to be with respect to the IPCC's neither confirming nor denying holding any information within the scope of the request.

### Reasons for decision

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10. Section 40(1) of FOIA states that:

*"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".*
11. For this exemption to apply, the data referred to must, if held, constitute personal data under the Data Protection Act (DPA). The DPA defines personal data 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 intention of the data controller or any other person in respect to the individual”.*

12. The IPCC, in correspondence with the Information Commissioner explained that:

*“were the IPCC to hold a case file relating to such a complaint, it would contain the personal data of the complainant and more likely than not the personal data of others”.*

13. The Information Commissioner has considered the terms of the complainant's request for information and is satisfied that the information which the complainant seeks, would, if held, amount to his 'personal data'. The information sought would relate to the complainant: it is information referenced to himself, relating to his interaction with third parties in a context which is personal to the complainant.
14. Accordingly, the Information Commissioner is satisfied that, if it were held, the complainant would be the subject of the information requested. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
15. In relation to such information, the provisions of section 40(5) mean that the public authority is not required to comply with the duty to confirm or deny that the information is held, as the duty to confirm or deny 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).
16. The Information Commissioner has therefore concluded that the exemption was relied upon correctly by the IPCC.
17. In the Information Commissioner's view, this decision will not disadvantage the applicant. He considers that an applicant wishing to access their own personal data will still be able to pursue this right under the DPA. Furthermore, he considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act. In this respect, he is satisfied

that the IPCC explained clearly to the complainant what information it required from him in order to proceed with a subject access request.

## Right of appeal

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18. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

19. 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.
20. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**