

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 September 2012

Public Authority: Chief Constable of Thames Valley Police

Address: Thames Valley Police Headquarters

Oxford Road

Kidlington

Oxon

OX5 2NX

Decision (including any steps ordered)

1. The complainant requested information held by Thames Valley Police (the police) about a named individual. The police refused to confirm or deny whether it held this information and cited the exemption provided by section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that section 40(5) was applied correctly and so the police are not required to confirm or deny whether information falling within the scope of the request is held.

Request and response

3. On 23 May 2012 the complainant wrote to the police and requested information in the following terms:

“(1) When and how did Thames Valley Police discover that [named individual] had returned to the UK from Canada?”

“(2) What steps - if any - were taken to locate [named individual] after his return to the UK?”

“(3) If there was no attempt to locate [named individual] on the part of T.V.P. who made that decision and on what grounds was it made?”

4. The police responded on 24 May 2012. It refused to confirm or deny whether the requested information was held and relied on the

exemption from the duty to confirm or deny provided by section 40(5) of the FOIA.

5. Following an internal review the police wrote to the complainant on 15 June 2012. It stated that the refusal to confirm or deny under section 40(5) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 19 June 2012 to complain about the way his request for information had been handled. The complainant indicated at this stage that he was dissatisfied with the refusal to confirm or deny whether the information requested was held.

Reasons for decision

Section 40

7. The police relied on section 40(5) when refusing to confirm or deny whether the information requested was held. Section 40(5) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would involve the disclosure of personal data and where the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process; first, confirmation or denial of whether the requested information is held must involve the disclosure of personal data. Secondly it must be addressed whether that disclosure of personal data would be in breach of any of the data protection principles.
8. Turning first to whether personal data would be disclosed through a confirmation or denial, section 1(1) of the Data Protection Act 1998 (DPA) defines personal data as follows:

“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.”*
9. Confirmation or denial as to whether the police hold information falling within the scope of this request would effectively also confirm or deny

police interest in the individual named in the request. The view of the Commissioner is, therefore, that a confirmation or denial would supply information that both relates to and, as a result of this individual being named in the request, identifies that individual. As a result this information would constitute personal data as defined in section 1(1) of the DPA.

10. Turning to whether this disclosure of personal data would be in breach of the data protection principles, the Commissioner has focussed here on the first principle (which states that personal data shall be processed fairly and lawfully) and in particular on whether disclosure would be fair to the individual named in the request. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of this confirmation or denial.
11. It is significant here that the public authority in question is a police force. Section 2 of the DPA defines what is to be considered sensitive personal data for the purposes of that Act. This includes information as to the commission or alleged commission by the data subject of an offence. The view of the Commissioner is that, given the wording of the request and that this was directed to the police, confirmation or denial in this case would itself amount to information about the individual's (alleged) commission of an offence. This means that it is sensitive personal data.
12. That this information would be the sensitive personal data of the individual named in the request is relevant here when considering their expectations about and the consequences of disclosure upon this individual. The view of the Commissioner is that it is highly likely to be the case that the data subject would hold a strong expectation that this information would not be disclosed by the police and that disclosure despite this expectation would result in distress to this individual.
13. Sensitive personal data is, by its very nature, information that individuals regard as the most private information about themselves. Further, as disclosure of this type of information is likely to have a detrimental or distressing effect on the data subject, the Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose the confirmation or denial.
14. In conclusion, the Commissioner finds that the confirmation or denial would be the personal data of an individual other than the complainant and that the disclosure of that personal data would be unfair and in breach of the first data protection principle. The exemption provided by section 40(5) of the FOIA is, therefore, engaged and the police are not

Reference: FS50453212



required to confirm or deny whether the information requested by the complainant is held.

Right of appeal

15. 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

16. 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.
17. 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