

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 December 2012

**Public Authority:** Chief Constable of Dyfed-Powys Police

**Address:** Dyfed Powys Police Headquarters

PO Box 99  
Llangunnor,  
Carmarthen  
SA31 2PF

### Decision (including any steps ordered)

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1. The complainant asked how and why given the Code of Conduct in place at the time, a serving Dyfed-Powys Police Officer could allegedly be found to be trespassing into his home, and allegedly conspiring in a theft of his personal belongings. He also wanted to know under what authority a named DPP employee had issued instructions to a police constable to allegedly break the law. Dyfed Powys Police (DPP) refused to either confirm or deny whether it held any relevant information citing section 30(3), section 40(5)(a) and 40(5)(b)(i) of the Freedom of Information Act 2000.
2. The Commissioner's decision is that DPP has correctly relied on section 30(3) and section 40(5)(a) of the Act. The Commissioner orders no steps.

### Request and response

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3. On 17 July 2012 the complainant wrote to DPP and requested the following information:

*"...I want to know how, given the Code of Conduct in place at that time, a serving Dyfed Powys Police Officer could be found to be trespassing into my home, and conspiring in a theft of my personal belongings.*

*Also ...I want to know under what authority [named DPP employee] issued instructions to the police constable involved to break the law."*

4. On 19 July 2012 DPP contacted the complainant to inform him that the Freedom of Information Act (2000) (the Act) does not apply to personal data where the applicant is the data subject. It added that any such requests become Subject Access Requests (SAR) under the Data Protection Act 1998 (DPA). The complainant was also informed of the process for requesting any personal information DPP may hold regarding him.
5. DPP provided its substantive response on 27 July 2012 citing section 40(5)(a), 40(5)(b)(i) and section 30(3) of the Act. It explained that the duty to neither confirm or deny under section 40(5) of the Act arises when the disclosure of the information into the public domain would contravene any of the data protection principles, section 10 of the DPA or would do so if the the exemptions in section 33A(1) of the DPA were disregarded. It also cited section 30(3) of the Act which provides an exemption from the duty to confirm or deny whether it holds information which is, if it were held, exempt information by virtue of subsection (1) or (2).
6. The complainant was not satisfied with this response and requested an internal review on the same date. Following its internal review DPP wrote to the complainant on 21 August 2012 upholding its original decision.

### **Scope of the case**

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7. On 22 August 2012, the complainant contacted the Commissioner to complain about the way his request for information had been handled. He considered that DPP was being deliberately evasive in its response.
8. The Commissioner notes that DPP informed the complainant of the process to request any information which may constitute his own personal data on 19 July 2012 and again in its refusal notice.

### **Reasons for decision**

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### **Exemptions claimed**

9. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise the applicant whether or not it holds the requested information. However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny in reliance on certain exemptions under the Act.

**Section 30(3) – Investigations and proceedings conducted by public authorities.**

10. Section 30(3) of the Act provides an exemption from the duty to confirm or deny in relation to any information, whether held or not, that falls within any of the classes specified in sections 30(1) or 30(2). In this case DPP considers that section 30(1)(a)(i) to be the relevant class.
11. Section 30(1)(a)(i) applies to information that was at any time held by the public authority for the purposes of an investigation that the public authority has a duty to carry out with a view to it being ascertained whether a person should be charged with an offence. The information must relate to a specific investigation and not to investigations in general.
12. DPP clearly has a duty to carry out investigations which fall under the exemption at section 30(1)(a)(i). Therefore, if DPP held information relating to the allegations made by the complainant, it would be held for the purpose of a specific investigation. The Commissioner is therefore satisfied that the exemption is engaged.
13. However, as this is a qualified exemption the Commissioner has gone on to consider the public interest test.

**Public interest test arguments in favour of confirmation or denial that information is held.**

14. DPP has explained that as the police service is charged with enforcing the law, preventing and detecting crime and protecting communities, there is a public interest in the transparency of policing investigations. It acknowledges that confirming or denying whether such information is held would facilitate transparency.
15. DPP has also acknowledged that any investigations conducted by it are paid for out of taxpayers' money, therefore there is a public interest argument in favour of confirmation or denial as to whether the information is held as this would provide an understanding to the public of how DPP operates and would encourage accountability that DPP is acting in an effective and efficient manner with regard to investigations it undertakes.
16. Confirmation or denial of the information would contribute to the quality and accuracy of the public debate about the effectiveness of the police.
17. In this particular case the complainant has alleged that his home was entered illegally by a serving police officer on the instructions of another (named) serving police officer. He has also alleged that a theft of items amounting to many thousands of pounds took place. Confirmation or

denial of the existence of relevant information would therefore facilitate the public interest in that it would demonstrate that allegations of crimes by DPP's serving police officers were investigated appropriately in accordance with accepted policies and procedures and that DPP was acting with integrity.

**Public interest test arguments against confirmation or denial that information is held.**

18. DPP has argued that confirmation or denial of the existence of information concerning investigations would undermine and prejudice those investigations, which in turn would impinge on any alleged offenders right to a fair trial under Article 8 of the Human Rights Act. This could result in the matter being considered *sub judice* and DPP being held in Contempt of Court. DPP has further argued that this is particularly relevant where (as in this case) a request for information relates to named individuals.
19. DPP has further argued that whilst individuals might be aware of whether information surrounding particular investigations is or is not held by it because of any involvement they may or may not have, it does not follow that the public at large are aware of whether such information does or does not exist. As disclosure under the Act is to the world at large, it would not be in the public interest therefore to confirm or deny whether such information is held or not held.
20. DPP also considers that confirmation or denial of the existence of relevant information could have a further damaging effect on the criminal justice system as it could potentially prejudice law enforcement as members of the public would be reluctant to come forward with information to aid investigations as they would fear that such information may be disclosed in future. DPP has further argued that as the Police Service relies heavily on information it receives from members of the public, this could potentially put individuals at risk as undetected crimes could increase.

**The balance of public interest test**

21. DPP is mindful of the strong public interest in it being transparent in how it undertakes investigations. It has acknowledged that transparency can aid public confidence and can highlight whether the investigation process is carried out properly and appropriately. However, it considers that this has to be balanced against the arguments of neither confirming or denying the existence of any information. In this particular case, confirmation or denial would undermine any such investigation which would impinge on any offenders right to a fair trial. DPP has therefore

concluded that the balance of public interest test is weighted in favour of refusing to confirm or deny whether it holds any relevant information.

22. The Commissioner recognises that the complainant has personal reasons for making the request as he alleges that he has been the victim of a crime. However, the Act is motive blind which means that the Commissioner can only decide whether confirmation or denial that the information is held should be put in the public domain.
23. The Commissioner appreciates that there is a general public interest in informing the public about how police forces such as DPP investigate allegations of crimes and allowing proper scrutiny of such issues. The Commissioner also acknowledges the general public interest in respect of accountability. However, although the public has a legitimate interest in the work of DPP, this does not extend to information which may prejudice DPP in carrying out its core functions. The Commissioner therefore finds that the arguments in favour of maintaining the refusal outweigh the arguments in favour of confirming or denying that the information is held and that DPP was entitled to rely on section 30(3) of the Act.

### **Section 40(5)**

24. Section 40(5)(a) provides that the duty to confirm or deny does not arise in relation to information that falls, or would fall if it were held, within the scope of section 40(1) of the Act. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This exemption is absolute and therefore requires no public interest test. Section 40(1) provides this exemption because individuals have the right to request their own personal information under the Data Protection Act 1998 ('the DPA').
25. DPP cited section 40(5)(a) of the Act to refuse to confirm or deny whether it held information relevant to the complainant's request. It did so because the complainant alleged that he had been the victim of a criminal offence and therefore the information, if held, would in part constitute the personal information of the complainant.
26. The Commissioner is satisfied that the complainant would be a data subject in the event that such information is held. This is because the requested information (if held), would focus on the DPP investigation into an alleged criminal offence in which the complaint was the victim. The information (if held) would identify him, be linked to him and relate to issues involving his interaction with the police. The Commissioner is satisfied that the disclosure of the existence or not of this information would itself be a disclosure of sensitive personal data, and would be unfair. He has therefore concluded that DPP was entitled to refuse to

confirm or deny whether it held the information under section 40(5)(a) of the Act.

27. The Commissioner notes that DPP advised the complainant of his right to make a Subject Access Request under the DPA in its refusal notice of 27 July 2012.
28. The Commissioner further notes that the information requested if held, would contain information about third parties (ie those who are referred to in the request) and notes that DPP also cited section 40(5)(b) of the Act. However, as the Commissioner has already determined that section 30(3) of the Act is engaged for this information if it were held, he has not gone on to consider section 40(5)(b) of the Act.

## Right of appeal

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29. 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)

30. 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.
31. 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**