

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 May 2013

Public Authority: Chief Constable of Lancashire Constabulary
Address: Lancashire Constabulary Headquarters
Saunders Lane
Hutton nr Preston
PR4 5SB

Decision (including any steps ordered)

1. The complainant requested information relating to allegations against him which he had reported to the police as an offence. Lancashire Constabulary stated that the information was exempt under two limbs of section 40, being either the complainant's 'personal data' or the 'personal data' of third parties.
2. The Commissioner's decision is that Lancashire Constabulary was entitled to rely on the exemption at section 40(5) in relation to the entirety of the request. He requires no steps to be taken.

Request and response

3. On 11 October 2012 the complainant made the following request for information under FOIA:

"An internal Her Majesty's and Revenue and Customs report [report name redacted] found that staff at HMRC had made a number of false sexual allegations against me. See here: [blog address redacted]"

I reported these false sexual allegations to the Police as an offence under the Protection from Harassment Act 1997 between 2004 -2008 - because it created a hostile and intimidating environment and left me feeling very stressed.

As such, please confirm how many staff in HMRC you interviewed in relation to this matter. Please tell me how many you charged?"

4. The complainant used the 'whatdotheyknow' website to make his request for information to Lancashire Constabulary, thereby making the context of his request publically available on that website.
5. Lancashire Constabulary responded on 7 November 2012. To the extent that it related to his personal information, it refused to provide the requested information, citing section 40(1) of FOIA (personal information). To the extent that it related to any persons who may have been interviewed or charged in connection with an offence, it refused to confirm or deny whether it held any additional information within the scope of the request, citing section 40(5).
6. When he sought an internal review the complainant said:

"I am not asking for personal information I am asking for the number of staff in HMRC you:

a) interviewed

b) charged

in relation to this hate crime. Please provide the figures or I will refer the matter to the Information Commissioner for his action".
7. Lancashire Constabulary provided an internal review on 21 December 2012 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 28 December 2012 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of his investigation to be Lancashire Constabulary's application of the section 40 exemption.

Reasons for decision

Section 40 personal information

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. 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 of the individual."

12. Under section 40(1) information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted.
13. In addition, in relation to such information public authorities are not obliged to comply with section 1(1)(a) - confirming whether or not the requested information is held - by virtue of section 40(5)(a). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
14. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
15. Having considered the wording of the request in this case the Commissioner is satisfied that the complainant is, or would be, the subject of the requested information. This is because he has requested information about allegations made against him that he reported to the police as an offence. In the Commissioner's view, the requested information, if held, would identify the complainant and be linked to him in respect of any police investigation into the allegations.
16. The Commissioner therefore considers that Lancashire Constabulary correctly applied section 40(1) in this case. Further, as section 40(1) would apply the public authority was not required to comply with section 1(1)(a) because section 40(5)(a) would apply.

Third party information

17. With respect to third party information, Lancashire Constabulary told the complainant:

"should any information be held by the force in relation to suspects or alleged offenders in this case, disclosing this information to a third party would be a breach of the Data Protection Act 1998 and

as such, I can neither confirm nor deny whether any additional information relevant to your request is held by the Constabulary”.

18. The Commissioner is satisfied that the information requested, if held, would contain information about third parties, ie those who may have been interviewed or charged “*in relation to this matter*”.
19. Section 40(2) of FOIA provides an exemption for information that is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied. In this particular case the condition in question is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles as set out in Schedule 1 to the Data Protection Act 1998 (DPA).
20. In relation to a request regarding the personal data of a third party, section 40(5)(b)(i) excludes a public authority from complying with the duty imposed by section 1(1)(a) if complying with that duty would contravene any of the data protection principles or section 10 of the DPA, or would do so if the exemptions in section 33A(1) of that Act were disregarded.
21. However, as he considers that the information is properly exempt by virtue of the absolute exemption at section 40(1) the Commissioner has not gone on to consider whether section 40(2) – or indeed section 40(5)(b) – would be properly cited in respect of this information.

Other matters

22. In the Commissioner’s view, this decision will not disadvantage the complainant. 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, Lancashire Constabulary told the complainant:

“However, should you wish to obtain any information the Constabulary holds about you, for example relevant crime reports or incident logs, a Subject Access form needs to be completed”.

The Commissioner is satisfied that Lancashire Constabulary explained clearly to the complainant what information it required from him in order to proceed with a subject access request.

Right of appeal

23. 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

24. 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.
25. 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
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Wycliffe House
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