

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 March 2014

**Public Authority:** Chief Constable of Humberside Police  
**Address:** Police Headquarters  
Priory Road  
Hull  
HU5 5SF

#### **Decision (including any steps ordered)**

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1. The complainant has requested information in connection with his own conviction. The Commissioner's decision is that the complainant has requested his own personal data and that the public authority should have neither confirmed nor denied holding any information by virtue of section 40(5)(a) of the FOIA. He does not require any steps.

#### **Request and response**

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2. On 7 June 2013, the complainant made a lengthy request relating to his own conviction (see appendix, which has been anonymised to prevent identification of any parties referred to).
3. The public authority responded on 5 July 2013. It cited section 12 (appropriate limit) to forego disclosure.
4. Following an internal review the public authority wrote to the complainant on 1 August 2013. It again cited section 12 and added section 40(5) (personal data). During further correspondence with the Commissioner it also advised that, with hindsight, it believed sections 40(1) and 40(2) may have been more appropriate.
5. It is of note that the complainant has also made a subject access request for information under the terms of the Data Protection Act, which is worded to cover the same information as this request. The

Commissioner has further commented on this in "*Other matters*" at the end of this notice.

## Scope of the case

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6. The Commissioner received a complaint from the complainant on 30 August 2013 about non-disclosure of the requested information.
7. The Commissioner will therefore consider how the public authority has handled the request.

## Reasons for decision

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### Section 40 – personal information

8. Section 40(1) of the FOIA provides that:

*"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject".*

9. Section 40(5) of the FOIA provides that:

*"The duty to confirm or deny –  
(a) 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)".*

10. According to the Commissioners' guidance<sup>1</sup>:

*"If someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA, but the public authority should deal with the request as a subject access request under the Data Protection Act (DPA)."*

11. The Commissioner here notes the wording of the complainant's request which includes the phrase: "*These and other matters clearly concern me*". He takes this as the complainant's acknowledgement that the

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<sup>1</sup>[http://ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Data\\_iled\\_specialist\\_guides/Neither\\_confirm\\_nor\\_deny\\_in\\_relation\\_to\\_personal\\_data\\_and\\_regulation\\_foi\\_eir.pdf](http://ico.org.uk/~media/documents/library/Freedom_of_Information/Data_iled_specialist_guides/Neither_confirm_nor_deny_in_relation_to_personal_data_and_regulation_foi_eir.pdf)

request, although being cited as made under the terms of the FOIA, is clearly made in relation to him and his conviction; any data which, if retained by the public authority, will be held in connection with that conviction.

12. The Commissioner is of the opinion that any information requested, if held, would be the personal data of the complainant as it relates specifically to his own conviction. All information would accordingly be exempt from disclosure under section 40(1) and therefore, under section 40(5)(a), the public authority is not required to confirm or deny that it is held under the terms of the FOIA.

### **Other matters**

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13. The public authority has also dealt with a separate request made by the complainant under the terms of the DPA. The complainant is unhappy with that response and has therefore made a further complaint to the Commissioner. Complaints made under the DPA are not dealt with by way of a decision notice as the provisions of the DPA are different to those of the FOIA. The Commissioner has therefore provided the complainant with a separate assessment under the terms of the DPA at the same time as this notice.
14. It may be useful to note that if the complainant is dissatisfied with the assessment then there is no access to the First-tier Tribunal; any redress should be made by him directly to the courts<sup>2</sup>.

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<sup>2</sup>[http://ico.org.uk/~media/documents/library/Data\\_Protection/Practical\\_application/TAKING\\_A\\_CASE\\_TO\\_COURT.ashx](http://ico.org.uk/~media/documents/library/Data_Protection/Practical_application/TAKING_A_CASE_TO_COURT.ashx)

## Right of appeal

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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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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**

## Appendix

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*"Here is the first of my requests for information under the freedom of information act. There will be more to follow in the near future. [name redacted]"*

*PS For your information the date of officer [name redacted] search of [location redacted] was 6-8 weeks prior to the [date redacted].*

*Request:*

*My name is [name redacted]. I am currently residing at the above address.*

*In [date redacted] I was charged with the murder of [name redacted] and eventually went to trial at [location redacted] Crown Court. The trial started on the [date redacted] and ended on the [date redacted] which resulted in guilty verdicts against myself and [name redacted].*

*During the trial I was aware that most of the crown witnesses were perjuring themselves. I can say this because I know I am truly innocent of anything to do with the murder of [name redacted]. I have taken a polygraph test because which although not accepted in British law shows I have nothing to hide ...*

*Further background information has been removed to prevent any possible identification of the parties concerned.*

*I maintain my innocence and I am formaly [sic] making requests under the freedom of information act. These and other matters clearly concern me.*

*My requests are as follows:*

*Any and all requests and correspondence to record my family and legal visits whilst I was in HM Prison [location redacted].*

*All e mails and internal memo regarding the loss of [name redacted] taxi logs for the night of the [date redacted].*

*All evidence of surveillance of myself from the [dates redacted].*

*All correspondence regarding the prison hospital incident book and its whereabouts.*

*Any and all correspondence between [name redacted] police ... [details redacted].*

*When did officer [name redacted] first report to his superiors that he was searching the [location redacted] site for the [name redacted] murder*

*weapon based on the evidence of [name redacted]: I would like a record of when officer [name redacted] first reported to his superiors that he had received information regarding the whereabouts of [details redacted].*

*Who gave permission for him to conduct the search with a fellow officer.*

*Was the metal detectors used police property and who gave permission and who signed them out.*

*Was officer [name redacted] using a police vehicle if so it would have to be logged out and I request any such logs.*

*Any and all communications between officer [name redacted] and his superiors before, during and after the search.*

*When was the search officially logged as an official crime scene.*

*What date did [name redacted] officially start searching the [location redacted] site and what date did he finish.*

*What dates were statements taken from [name redacted] and [name redacted] after reporting to officer [name redacted] the possible whereabouts of [details redacted].*

*Was any forensic officers present during any of the searches and what procedures were followed.*

*Who made the decision not to secure the site with incident tape during officer [name redacted]'s search of the [location redacted] site.*

*What forensic procedures were in place had the [details redacted]".*