

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

### **Decision notice**

**Date:** 28 August 2014

**Public Authority:** Chief Constable of the Police Service of Northern Ireland

**Address:** 65 Knock Road  
Belfast  
BT5 6LE

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

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1. The complainant requested statements that she believed had been made to the Police Service of Northern Ireland (PSNI). PSNI refused to confirm or deny whether it held this information under the exemption provided by section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that PSNI cited section 40(5) correctly and so it was not obliged to confirm or deny whether it held the requested information.

#### **Request and response**

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3. On 5 February 2014 PSNI received the following request in relation to statements the complainant believed had been made by two named individuals:  
  
*"...it is 'integral' that I receive both statements".*
4. PSNI responded on 4 March 2014. It refused to confirm or deny whether it held this information and cited the exemptions provided by sections 30(3) (information held for the purposes of an investigation) and 40(5) (personal information) of the FOIA.
5. The complainant responded on 11 March 2014 and requested an internal review. After a lengthy delay PSNI responded with the outcome of the

review on 12 June 2014. The conclusion of this was that the refusal to confirm or deny under sections 30(3) and 40(5) was upheld.

## Scope of the case

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6. The complainant initially contacted the Commissioner on 29 March 2014 to complain about the refusal of her information request. The complainant was advised at this stage to await the conclusion of the internal review.
7. Following the conclusion of the review the complainant again contacted the ICO. At this stage the complainant indicated that she did not agree with the grounds given for the refusal of her information request.

## Reasons for decision

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### Section 40(5)(b)(ii)

8. This section provides an exemption from the duty to confirm or deny where to do so would involve the disclosure of personal data and that disclosure would be in breach of any of the data protection principles. There are two steps when considering this exemption: first, whether confirmation or denial would involve the disclosure of personal data, and secondly, whether that disclosure would be in breach of any of the data protection principles.
9. The definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) 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 any other information which is in the possession of, or is likely to come into the possession of, the data controller".*
10. Covering first whether confirmation or denial would involve disclosure of personal data, the request relates to statements that may or may not have been given by named individuals in relation to an alleged criminal offence. The Commissioner agrees that confirmation or denial that these statements exist would disclose information that relates to these individuals, namely whether or not they had given statements. As those individuals are named in the request, they would also be identifiable in

relation to the confirmation or denial. Confirmation or denial would, therefore, be the personal data of those individuals according to the definition given in section 1(1) of the DPA.

11. The Commissioner believes that confirmation or denial could also be the personal data of the subject or subjects who may be mentioned in any statements provided and who may have been the subject of any investigation that did take place. Clearly any such statements would *relate to* that individual or individuals as well as the statement giver. As to whether the subject or subjects of any investigation that did take place would be identifiable through confirmation or denial, if this individual or individuals were not the individuals named in the request, whether they would be identifiable through confirmation or denial is less clear.
12. Section 1(1) of the DPA refers to identifiability either directly through the information itself, or through that information combined with other information available to the data controller. In the case of a disclosure made through the FOIA, the data controller is potentially any member of the public. The issue is, therefore, whether confirmation or denial could be linked to the subject or subjects of the possible investigation by any member of the public, including the requester, even without that individual or individuals being named in the request.
13. The view of the Commissioner is that there will be individuals with sufficient existing knowledge to be able to link a confirmation or denial with the subject of any such investigation, even without them having been named in the request. This would include family and friends of that individual or individuals.
14. Having concluded that confirmation or denial of the existence of any statements would involve the disclosure of personal data, the next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully, and in particular on whether disclosure would be in general fair to the data subjects.
15. Section 2 of the DPA sets out what is considered *sensitive* personal data for the purposes of the DPA. Included in this is information as to the alleged commission of an offence by the data subject. Having found that confirmation or denial would be the personal data of the subjects of any investigation that did take place, the Commissioner further finds that this would be their *sensitive* personal data according to the definition in section 2 of the DPA.

16. Sensitive personal data has, by its very nature, been deemed to be information that individuals regard as the most private information about themselves. 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.
17. In conclusion, the Commissioner has found that confirmation or denial in response to the complainant's request would involve the disclosure of personal data and that this disclosure would be in breach of the first data protection principle. The exemption provided by section 40(5) is, therefore, engaged and PSNI was not obliged to confirm or deny whether it held the requested information.
18. Given this conclusion, it has not been necessary to consider section 30(3).

### **Other matters**

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19. The Commissioner's approach to timescales for internal reviews is that these should generally be completed within 20 working days, or within 40 working days in exceptional circumstances. In this case PSNI took three months to complete the review.
20. PSNI should ensure that internal reviews are carried out promptly. A record of the delay in this case has been made and this issue may be revisited should evidence from other PSNI cases suggest that this is necessary.

## Right of appeal

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21. 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: 0870 739 5836

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

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

22. 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.
23. 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**