Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2019

Public Authority: Chief Constable of West Midlands Police
Address: Police Headquarters
Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant requested information relating to an historic police investigation and trial. West Midlands Police ("WMP") disclosed the majority of the requested information, but it withheld the names of two alleged police informants under the exemption at section 30(2)(b) (investigations and proceedings) and private addresses contained within court transcripts, under section 40(2) (personal information).

2. The Commissioner's decision is that WMP was entitled to rely on section 30(2)(b) to withhold information, but that section 40(2) was not engaged.

3. The Commissioner requires WMP to take the following steps to ensure compliance with the legislation.

    - Disclose to the complainant the address information which has previously been withheld under section 40(2).

4. WMP must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 4 September 2017 the complainant wrote to WMP and requested information in the following terms:

> *"I request copies of all information and artefacts held by WMP relating to what became known as the '1892 Walsall Anarchist Bomb Case'. I would like you to supply documentary evidence in pdf format and illustrations in jpeg form. Included in your reply I would specifically request details, illustrations and locations of such items as the 'Walsall Bomb 1892' included in Andrew Cook's book on 'M' (published by TEMPUS, 2004)."*

6. WMP initially responded to the request on 9 October 2017. It refused the request under section 14(1) (vexatious requests) of the FOIA. The Commissioner issued a decision notice on 17 April 2018 (reference FS50713120) dismissing the application of section 14(1) and requiring WMP to issue a fresh response to the request.

7. WMP wrote to the complainant on 21 May 2018, informing him that it was considering the application of sections 30 (investigations and proceedings), 31 (law enforcement) and 40 (personal data) to withhold information, and that it required further time to consider the balance of the public interest. On 16 June 2018 it disclosed the requested information, including a document entitled "*Walsall Anarchist Trial 1892*", a handwritten transcript of the trial ("the transcript"), with redactions in respect of section 31(1)(a) and (b), section 30(2)(b), section 40(2) and section 21(1) (information accessible to applicant by other means).

8. On 25 June 2018, the complainant requested an internal review of the decision to apply sections 30, 31 and 40. WMP responded on 20 July 2018 and revised its position. It disclosed a fuller version of the transcript, but a small amount of information was redacted under sections 30(2)(b) and 40(2) of the FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 11 August 2018 to complain about the decision to apply section 30(2) and 40(2) to redact information from the transcript.

10. In respect of the application of section 30(2) he argued that the identities of police informants cannot be considered to be confidential as they were identified in open court at the time of the trial and their names printed in the press. Regarding section 40(2), he said that

WMP had failed to make convincing arguments as to why it applied. He also dismissed WMP's claims that knowledge of the history of their property may cause distress to the current occupiers, pointing out that a heritage plaque had been erected by the council at one property, publicly marking the accused's time living there in the nineteenth century.

11. The analysis below considers whether WMP was entitled to apply section 30(2) and section 40(2) to redact information from the transcript.

Reasons for decision

Section 30 (investigations and proceedings conducted by public authorities)

12. This exemption has been cited in respect of redactions of two names of people who were accused by the defendants of being police informants. Nothing in this decision notice should be taken as indicating either that they were, or were not, police informants.

13. Section 30(1)(a)(i) of the FOIA states:

> *"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-*
>
> *(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-*
>
> *(i) whether a person should be charged with an offence".*

14. Sections 30(2)(a) and (2)(b) of the FOIA state:

> *(2) Information held by a public authority is exempt information if-*
>
> *(a) it was obtained or recorded by the authority for the purposes of its functions relating to-*
>
> *(i) investigations falling within subsection (1)(a) or (b), and*
>
> *(b) it relates to the obtaining of information from confidential sources."*

15. The phrase "at any time" means that information will be exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation.

16. Section 30 of the FOIA is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. In order for the exemption to be applicable, any information must be held for a specific or particular investigation and not for investigations in general. Therefore, the Commissioner has initially considered whether the requested information would fall within the class specified in section 30(1)(a)(i).

17. The public authority in this case is WMP. As a police force, it clearly has the power to conduct criminal investigations, and the information in this case is held in respect of a particular criminal investigation. The Commissioner is therefore satisfied that it would fall within the class specified in section 30(1)(a)(i).

18. Section 30(2)(b) applies in respect of information obtained for the purposes set out in 30(1)(a), from a confidential source. The Commissioner accepts that a confidential source is a person who provides information on the basis that they will not be identified as the source of that information.

19. WMP explained its reasons for applying section 30(2)(b) as follows:

> *"Statements made by one of the accused references an individual as being an Agent Provocateur or 'police spy'. It strongly implies the accused believed that this 'police spy' had provided the authorities with the time that he would be arriving in London, thereby facilitating his arrest.*
>
> *The second references relate to a number of responses given by William Melville and one reference by Christopher Taylor. The questions are not included in the transcript, but the responses strongly imply that the questions relate to a named individual being an informant."*

20. From the information she has viewed, the Commissioner considers that the information does relate to the purpose which section 30(2)(b) was designed to protect - the obtaining of information from confidential sources, in connection with a criminal investigation.

21. Consequently, the Commissioner is satisfied that section 30(2)(b) is engaged.

22. Section 30 is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining this exemption outweighs the public interest in disclosing the information.

23. In considering where the public interest lies in this case, the Commissioner has been guided by the Information Tribunal in the

case of *Toms v Information Commissioner & Royal Mail [EA/2005/0027]*[1], which stated:

> *"… in striking the balance of interest, regard should be had, inter alia to such matters as the stage or stages reached in any particular investigation or criminal proceedings, whether and to what extent the information has already been released into the public domain, and the significance or sensitivity of the information requested".*

Public interest in disclosing the information

24. WMP said that disclosing information about judicial processes would provide a greater transparency in the legal system and the actions of law enforcement agencies. It is clear that there is a public interest in public authorities operating in as transparent a manner as possible, as this ensures they operate effectively and efficiently.

25. The complainant argued that the identities of the alleged informants can no longer be considered to be "confidential" because they were reported in open court at the trial and can still be found today in historical press reports on the matter.

26. On this point, WMP has responded:

> *"Information read out in open court is not necessarily considered to be in the public domain. ICO Guidance states that "even if the information was at one time considered a matter of public record (e.g. by being revealed in open court) …… this does not mean it is still available in practice at the time of the request. For example, information disclosed in court may briefly enter the public domain in theory, but its availability in practice is likely to be short-lived unless it passes into other more permanently available sources (e.g. online newspaper reports)" (ICO Guidance Information in the public domain paras 25 to 26).*
>
> *In this case it is also worth noting that "Even if the information itself is already in the public domain, this is not decisive and is not an automatic argument either for or against disclosure" (ICO Guidance Information in the public domain para 39). Furthermore "care should also always be taken to consider whether the FOI disclosure might actually reveal anything new. For example, the*

[1]http://foiwiki.com/foiwiki/info_tribunal/DBFiles/Decision/i56/MrPTomsvInfoComm20Jun06v7307.pdf

withheld information could be more detailed than the information in the public domain, could corroborate a previously unreliable source or leak, or could confirm that the public authority did not have any additional information" (ICO Guidance Information in the public domain para 44).

In this case, a search of the Internet indicates that there is a lot of information available in the public domain. However none of it can be considered to be official confirmation of this specific information."

Public interest in maintaining the exemption

27. WMP explained that the integrity of the relationship between the police and covert human intelligence sources (CHIS) requires protection. In that respect, the release of information by any policing body that would confirm (or appear to confirm) the identity of any alleged CHIS would cause harm.

28. It explained that criminal investigations and proceedings are often dependent on information being volunteered (or provided upon payment) by members of the public. Some of these individuals who are in contact with the criminal fraternity risk their lives when they divulge information. As this is such a sensitive and delicate area, disclosure of the names of those who were alleged to have provided information, even after the passage of time, would be enough to discourage people providing information in the future. This would result in a reduced flow of intelligence to the police and a negative impact on future operational activities. WMP explained that:

"*Release of this information would amount to the 'official' naming of alleged informants and would thereby undermine the relationship between West Midlands Police and CHIS. Anything that appears to undermine the trust and confidence, necessary for the effective working of this relationship, would reduce the quality of information the service receives. This would in turn hinder the prevention or detection of crime, subsequently affecting the force's future law enforcement capabilities.*

It is worth noting that if this relationship were undermined it would not only damage the operational effectiveness of West Midlands Police, but also other agencies, some of which are outside the Police Service."

29. WMP went on to refer the Commissioner to several cases in which the First-tier Tribunal and the Upper Tribunal had considered the disclosure of historical information about state informants. It said:

"ICO guidance states, "Section 30(2) exists to protect [confidential] *sources and ensure they continue to provide information to the authorities" (ICO Guidance "Investigations and proceedings (section 30)" para 29).*

The public interest therefore relies on the ability to "protect the identity of the informants beyond their lifetime, whatever the age of the material, for the fear of compromising the trust and safety of existing and potential agents" (Tribunal EA/2008/0078 para 17). In this case of [sic] *the age of the information in question is not a strongly relevant factor, as it is the detrimental effect of release on current relationships between the Police Service and CHIS that is in question."*

…

This case has strong similarities to Tribunals EA/2010/0183 and EA/2008/0078 (cited above). In both cases the information was extremely old and "'some' of the information had already been accessed by others" (Tribunal EA/2008/0078 para 16). In spite of this, both Tribunals ruled that the names of CHIS should not be released, stating in EA/2008/0078 that the evidence "confirmed the overriding if not exceptional public interest in play in favour of maintaining the exemption set out in section 30(2)(a) and (b) of FOIA". Furthermore "The Tribunal is therefore firmly of the view that the substituted Decision Notice as set out above at the outset of this judgment"… (that the information should not be released) …."represents the overwhelming importance of the longstanding policy adopted by the MPS that informants can be assured that their names and identities will not be disclosed even after they die" (para 21).

Tribunal EA/2010/0183 cites the then Foreign Secretary, Robin Cook, who, in reply to a Parliamentary question in February 1998, said "When individuals or organisations co-operate with the service they do so because an unshakeable commitment is given never to reveal their identities. This essential trust would be undermined by a perception that undertakings of confidentially were honoured for only a limited duration" (para 38).

Although it refers to a different exemption, Information Tribunal Keane vs The Information Commissioner (EA/2015/0013) also revolves around the release of the names of historical informants. In that Tribunal Officer "A" gave a witness statement in which they stated "I strongly believe that disclosure of the information requested would have an immediate and significant effect in that it would undermine the trust in whole [sic] CHIS system. As a result, the MPS, other LEA's [law enforcement agencies] and the Security

Services would lose many of its existing CHIS and many people would be deterred from becoming CHIS. Equally, I believe that such an effect would rapidly extend beyond the MPS and directly undermine the ability of all UK LEA's and Security Service to recruit and retain CHIS." The Tribunal noted that Officer "A" produced "a powerful expert witness statement which the majority finds compelling" (paras 36-37).

The Tribunal noted that, even though the information was over 100 years old, it had the ability to undermine the current relationships between current Law Enforcement agencies and CHIS. "As long as the MPS is operating in this way, anything they did in the past retains strong protection because it would be exactly they and no one else that would be responsible for redeeming the promise of perpetual secrecy" (para 38). The decision to withhold the information with respect to this Tribunal was upheld at the Upper Tier Tribunal case number GIA/3119/2015.

The use of Informants is an essential tactic used by law enforcement, and it is vitally important that CHIS are assured that their identity will be treated with the utmost confidentiality and would never be disclosed, even after death. It is only through maintaining absolute discretion (and the appearance of absolute discretion) that the police service can recruit and retain informants."

Balance of the public interest

30. WMP has accepted that there is a public interest in facilitating transparency with regard to the legal system and the actions of law enforcement agencies. However, it said that this is considerably outweighed by the public interest in ensuring the flow of information from confidential informants, which depends on its ability to give assurances of confidentiality.

31. The Commissioner accepts that on-going investigations need to be protected and it is highly unlikely that she would decide that information should be disclosed where there could be any possible impact on investigative processes. However, clearly in this case the investigation is over a century old and so there is no such risk.

32. However, she does accept the importance of WMP (and other law enforcement agencies) being able to attract individuals to act in undercover roles in order to fulfil vital police work, and their need to feel reassured that their identities will never be made public, even after their death; such an argument, put forward by the then Foreign Secretary in 1998 (see paragraph 29, above), provides significant weight.

33. Whilst the Commissioner notes the complainant's arguments, any information which may or may not currently be in the public domain about alleged informants in this case has not been placed there by WMP. The Commissioner also recognises the sensitivities around protecting CHIS, and WMP's significant concerns in maintaining its ability to attract informants without risk of compromise. She accepts that disclosing the information in this case may erode the trust between the police and those who provide it with vital information thereby potentially undermining the entire CHIS network.

34. Having considered the competing public interests in this case, the Commissioner finds that the public interest in not undermining the integrity of the confidential informant system outweighs the public interest in transparency and thus that WMP was entitled to rely on section 30(2)(b) to withhold the requested information.

Section 40 (personal data)

Applicable data protection regime

35. The information request, and WMP's notification that it needed further time to consider the public interest test, predate the coming into force of the Data Protection Act 2018 on 25 May 2018. However, WMP's final response to the request was made after the new legislation came into force.

36. WMP assured the Commissioner that its decision to apply section 40(2) was finalised prior to 25 May 2018, and that the public interest extension period (notified to the complainant on 21 May 2018, in accordance with the provisions of section 17(2) of the FOIA) was used only to consider the public interest in the application of section 30 and section 31 (the claim in respect of the latter being subsequently discontinued). The Commissioner has accepted this assurance and considers that the arguments relating to personal data fall to be considered under the Data Protection Act 1998 (the DPA), the access regime for personal data which was in force prior to 25 May 2018.

37. WMP has cited section 40(2) to make around 20 redactions to conceal the addresses of individual properties referred to in the transcript. The addresses are the residences of witnesses and of the accused, and also premises which the accused were observed entering.

38. WMP's rationale for withholding the information was that the addresses of the properties identified in the transcript are the personal data of their current occupiers and that it would be unfair (and therefore a breach of the first data protection principle of the DPA) to disclose them in circumstances which linked them to an historic crime.

39. Section 40(2) of the FOIA provides an exemption from disclosure for information that is the personal data of an individual other than the requester, where the disclosure of that personal data would be in breach of any of the data protection principles of the DPA.

40. It is necessary to establish whether the withheld information constitutes personal data and, if so, whether disclosure of it would be in breach of any of the data protection principles.

Are the addresses identified in the transcript the personal data of their current occupiers?

41. The definition of personal data is given in section 1(1) of the DPA:

> *"'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"*.

42. 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.

43. In the transcript, the addresses cited are of specific, individual properties linked to witnesses or to suspects, as owners, residents or visitors. As the case dates back some 126 years, all concerned will have been deceased for some time. The DPA only applies in respect of information relating to living individuals. Therefore, the information does not constitute the personal data of the witnesses or the suspects.

44. Even though it does not directly identify them, WMP has argued that the withheld information constitutes the personal data of the current residents at those addresses.

45. The Commissioner has considered whether addresses, devoid of the names of their occupiers, are nevertheless their personal data. Following the Tribunal's decision in the case of *England & L B of Bexley v Information Commissioner (EA/2006/0060 & 0066),* the

Commissioner's established approach[2] is that the addresses of private properties will constitute personal data, even without the corresponding disclosure of the names of their occupiers. The redactions are, therefore, personal data according to the definition in section 1(1) of the DPA.

46. The Commissioner must then go on to consider whether disclosure would breach any of the data protection principles. It was WMP's position that disclosure would breach the first data protection principle.

Would disclosure contravene the first data protection principle?

47. The first data protection principle of the DPA states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

48. In the case of a FOIA request, personal data is "processed" when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

49. The Commissioner has first considered whether disclosure would be fair. In considering whether disclosure of personal information is fair the Commissioner has taken into account the following factors:

- the data subject's reasonable expectations of what would happen to their information;
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the data subject); and
- the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

[2] See for example, https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013677/fs50623497.pdf and https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432001/fs_50558963.pdf

Reasonable expectations of the data subjects

50. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subjects (in this case, the current residents of the properties identified in the transcript). However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.

51. WMP said that it was unlikely that the current occupants of the addresses would be aware of the history of their houses, and that the addresses are not currently in the public domain with respect to this investigation / trial. Nevertheless, it said:

> *"The reasonable expectations of anyone living at an address would be that this address would not be publically linked with a crime by the police, regardless of how historical that crime was."*

52. The complainant has drawn the Commissioner's attention to a heritage plaque, installed by the local council, on the front wall of one of the addresses, which says the following:

> "*Joseph Deakin*, *famous anarchist and founder-member of Walsall Socialist Club, lived here in the Nineteenth century*"

53. The Commissioner considers it reasonable to assume that the occupants of that particular address would be likely to be aware of its connection to the Walsall Anarchist case. However, the Commissioner also considers that, in the main, the occupiers of the other addresses may be less likely to be aware of any link between their property and the Walsall Anarchist case, and so would also be unaware that their personal data is held by WMP. It follows from this that they would not expect that this personal data would be disclosed to the public in response to an FOI request.

Consequences of disclosure

54. WMP has argued that disclosure of the addresses, in a manner which links them to a criminal case, would be unfair to the current occupiers.

55. WMP referred the Commissioner to her decision in a previous case, FS50558963[3], which considered, in part, whether private addresses pertaining to evidence heard in the case of the 1974 Birmingham pub bombings should be disclosed. In that case the Commissioner took the view that disclosure would be unfair to the current occupants of the addresses and upheld the application of section 40(2) to withhold the information.

56. WMP said that similar considerations applied in this case. It said that despite its considerable age, there is still public interest in the Walsall Anarchist Bomb case:

> *"A search of the Internet bears this out … therefore there would be interest in these addresses. It is not clear what that interest may amount to, but it is worth noting that – at the time of this event – police guards had to be placed outside the addresses of some of the people involved."*

57. WMP believed that disclosure of individual addresses in connection with the case would be unfair because it could cause damage and distress to their current occupants, although it was unable to elaborate further on the nature of what damage or distress it envisaged:

> *"It is not clear what distress disclosure may cause, but it is far from certain that no distress or repercussions would follow."*

58. The Commissioner has considered the impact of disclosure on the current occupiers of the addresses. In doing so, she has taken particular account of the age and nature of the offences in question, as she did in the decision cited by WMP. In that case, the offences in question led to wide-scale loss of life, significant injury, miscarriages of justice, and, having occurred in 1974, were still within recent memory. Since the original convictions in the case were overturned, nobody has been charged in connection with the bombing and the case remains unsolved. It clearly remains a very sensitive and, for those affected, traumatic incident.

59. In contrast, the offences in this case occurred over a hundred years ago, and so it is unlikely that anyone directly affected by them would still be alive. The offences tried related to a conspiracy to plant bombs in the furtherance of anarchist ideology, and did not involve any loss

[3] https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432001/fs_50558963.pdf

of life or injury. The fact that the local council has placed a heritage plaque at one of the addresses strongly suggests that while there may well be interest in its significance from some quarters (particularly among working class, social and local historians) there is now unlikely to be any stigma or trauma attached to being associated with the case. WMP has not been able to identify to the Commissioner any other threat to the wellbeing or privacy of the current occupants by the addresses being disclosed; and there is no evidence to suggest that the properties would be devalued by being associated with the case (in the case of the property with the heritage plaque, the reverse may actually be true), as might be the case for addresses associated with violent crimes. Furthermore, the disclosure would reveal nothing about the current occupants of the property, other than that they live in houses connected to an historical trial. It therefore cannot be considered to constitute an intrusion into their private lives.

60. The Commissioner is therefore not persuaded that disclosure of the addresses in this case would have a detrimental effect on the privacy or wellbeing of the current occupants of the properties.

The legitimate public interest

61. Assessing fairness also involves balancing the data subjects' rights and freedoms against the legitimate interest in disclosure to the public. The question here is whether any legitimate public interest that does exist outweighs any factors against disclosure. The Commissioner accepts that legitimate interests will include the general public interest in transparency and accountability.

62. In this case, WMP has argued that there is no legitimate interest which would be served by disclosure:

> *"There is no discernible legitimate interest in either the public or the requester having access to the addresses, as they shed no light on the trial or on the investigation. It is not necessary to know what these addresses are in order to understand what happened at the trial and they have no relevance with respect to understanding the investigation."*

63. While the Commissioner considers that the redacted information adds relatively little to the public's overall understanding of the transcript, its disclosure would enhance its value as an historical, publicly available document. It also has a value for reference purposes. The complainant is a historian and says that he had been researching the case for some time and plans to publish his work when his research is complete. The addresses would therefore allow him to present a complete picture of the events considered in the trial, which would possibly inform public understanding of the case.

64. The Commissioner therefore considers that that there is a legitimate, public interest which would be served by the disclosure of the addresses.

The Commissioner's view

65. In assessing whether disclosure would be fair, the Commissioner has found that, while it may not necessarily fall within the data subjects' reasonable expectations, she has not been able to identify that disclosure would cause them any detriment or represent an intrusion into their privacy. She has also determined that disclosure would serve the legitimate interests of the complainant and, in view of the nature of his work, the wider public. She believes that in the absence of any stronger arguments as to why the information should not be disclosed, these legitimate interests outweigh the data subjects' reasonable expectations.

66. Taking all the above into account the Commissioner considers that disclosure would be fair.

67. As the Commissioner has found that it would be fair to disclose the addresses, she has gone on to consider whether any of the conditions from schedule 2 of the DPA can be met.

68. For the purposes of her decision the Commissioner has focussed on the sixth condition, which states:

> "*The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.*"

69. The sixth condition carries a three part test:

- there must be a legitimate interest in disclosing the information;
- disclosure into the public domain must be necessary to meet that public interest; and
- would disclosure cause any unwarranted harm to the individuals?

Legitimate interest in disclosure

70. The Commissioner considers that she has already demonstrated a legitimate interest in disclosure at paragraphs 61 – 64, above.

Is disclosure necessary to meet that public interest?

71. Disclosure would enable a more complete, historical document to be placed in the public domain, and would inform the complainant's research into the subject area. Disclosure would be required in order to meet these legitimate interests.

Would disclosure cause any unwarranted harm to the individuals?

72. The Commissioner maintains that disclosure would have no discernible intrusion into the privacy of the data subjects and that there is no evidence that any harm would occur.

The Commissioner's conclusion

73. The Commissioner considers that the three part test for the sixth condition has been met. However, in addition to meeting a Schedule 2 condition, any disclosure must also be lawful in order to comply with the first principle.

74. "Lawful" refers to statute law and common law, whether criminal or civil. This includes industry-specific legislation or regulations. Furthermore, a disclosure that would breach an implied or explicit duty of confidence or an enforceable contractual agreement would also be unlawful.

75. WMP has not offered any argument that disclosure would be unlawful and the Commissioner has been unable to identify any grounds on which the disclosure may be considered unlawful.

76. Therefore, since the disclosure would be fair, lawful and there is a basis for processing in the sixth condition of schedule 2 of the DPA, the Commissioner is satisfied that disclosure would not breach the first data protection principle, and thus that section 40(2) is not engaged.

Right of appeal

77. 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
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

78. 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.

79. 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 .....

Samantha Bracegirdle
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SK9 5AF