

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 January 2011

Public Authority: Metropolitan Police Authority
Address: 10 Dean Farrar Street
London
SW1H 0NY

Summary

The complainant asked the Metropolitan Police Authority (the 'MPA') to provide a full staff list, including positions held and contact details, and details for three particular named individuals. The public authority disclosed the requested details for its more senior staff members but refused to disclose the remainder using the exemption under section 40(2) (personal information) of the Freedom of Information Act 2000 (the 'Act').

The Commissioner's decision is that the exemption at section 40(2) is engaged and that disclosure would breach the Data Protection Act (the 'DPA').

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The Commissioner has published guidance about the release of details of his own staff. This can be found on his website¹.

The Request

3. The complainant made a request to the MPA on 16 April 2010 for the following information:

"I have been attempting to have an allegation of attempting to pervert the course of justice by the commissioner of the Metropolitan Police addressed by the MPA since the 22 Dec 09.

Despite numerous email and telephone calls the staff dealing with this matter have refused to respond with any information whatsoever.

My requests are passed by intermediaries who are not willing or authorised to give the contact details for the actual staff involved.

As such under the FOIA I hereby request the names, positions / job titles / email and telephone contact details, both landline and mobile, for all members of staff within the MPA.

Specifically to include [names of three named individuals redacted] and the current chair of the MPA and/or head of the MPA if they are not the same person."

On 5 May 2010 the MPA provided the complainant with a redacted organisational chart and the names and positions of its Senior Management Team and MPA Members, but withheld the names of those junior to the MPA's Senior Management Team under the exemption at section 40(2) (personal information). The MPA confirmed the name of its current chairperson and advised that contact details, along with those of the MPA vice chair and its Chief Executive, could be accessed via two weblinks which it provided to the complainant.

4. On 7 May 2010 the complainant wrote again to the MPA to request that an individual with "*some understanding of the FOIA*" consider his request and provide him with the information. The MPA responded to

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http://www.ico.gov.uk/upload/documents/foi_request_responses/information_about_ico_employees.pdf

the complainant on 11 May 2010 again confirming the details it had disclosed to him and reiterating the reasons for withholding the information in relation to its more junior members of staff. The MPA invited the complainant to request an internal review of its decision.

5. The complainant requested an internal review on 11 May 2010, the result of which was confirmed to him by letter on 21 May 2010. The internal review maintained the MPA's position with the addition that details of MPA senior personnel who fulfilled a Head of Unit role should also be disclosed. It provided the complainant with a revised structure chart. It also confirmed that two of the three named individuals were not employed by the MPA.

The Investigation

Scope of the case

6. On 15 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider an issue which is outside the scope of this investigation as it relates to matters which are not suitable for determination by way of a Decision Notice.
7. On 27 September 2010 the Commissioner wrote to the complainant to commence his investigation. He apprised the complainant of the issues which he could consider and advised the complainant accordingly. The complainant contacted the Commissioner on 29 September 2010 with more details relating to why he believed that section 40(2) did not apply to part of his request.
8. The Commissioner has therefore considered the MPA's application of the exemption contained within section 40(2) of the Act to part of this particular information request.
9. The Commissioner has written to the complainant separately regarding his other allegation which is not addressed in this Notice because it is not a requirement of Part 1 of the Act.

Chronology

10. On 29 September 2010 the Commissioner wrote to the MPA seeking additional information about its application of the exemption at section 40(2) to part of the requested information.
11. The MPA provided its response on 15 October 2010 detailing why it had applied section 40(2) to part of the request.

12. The Commissioner sought further clarification from the MPA on 18 October 2010 to which it responded on 22 October 2010.
13. On 27 October 2010 the Commissioner wrote to the complainant outlining his preliminary view following investigation and invited him to withdraw his complaint. In the absence of a response the Commissioner proceeded to a Decision Notice in respect of this complaint.

Analysis

Exemptions

Section 40 – personal information

14. The MPA has cited the exemption at section 40(2) of the Act in relation to its staff who are junior to its Senior Management Team, and guided the complainant to the publically available sources for details of its Senior Management Team and MPA Members. Following the internal review it subsequently released the details of those MPA senior personnel employed as a Head of Unit.
15. Details of any staff whose grades would have normally meant they were deemed suitable for disclosure have been provided to the complainant and are not therefore under consideration. Therefore, the Commissioner is only considering whether or not the public authority was correct to withhold the details of those staff which it classed as being non-public-facing junior staff.
16. The MPA's main arguments centre on the application of the first data protection principle. This is because it believes that disclosure of the personal data in question would be unfair and would not satisfy one of the conditions for processing listed in Schedule 2 of DPA.
17. In analysing the application of section 40(2), the Commissioner therefore considered (a) whether the information in question was personal data and (b) whether disclosure of the personal data under the Act would contravene the first data protection principle.

Is the information personal data?

18. Personal data is defined in section 1 of DPA 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 intentions of the data controller or any other person in respect of the individual."

19. The Commissioner is satisfied that the staff details are their 'personal data'. This is because they can be identified by both the data controller and the public by their name.

Would disclosure contravene the first data protection principle?

20. The first data protection principle has two main components. They are as follows:

- the requirement to process all personal data fairly and lawfully; and
- the requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data.

21. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle.

22. It is important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it.

23. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* [EA/2006/0011 and EA/2006/0013] (following *Hogan and Oxford City Council v The Information Commissioner* [EA/2005/0026 and EA/2005/0030]) confirmed that: "*Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions*" (paragraph 52)².

²http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf

24. In this case the MPA directed the complainant to its website explaining that the names and positions of its Senior Management Team and MPA Members could be accessed via the weblink, and also advised how he could contact MPA personnel at all levels. It stated the following to the complainant:

"The names of each member of staff are personal data and have therefore been redacted on the attached structure chart. The disclosure of the names of staff junior to the MPA's Senior Management Team would contravene the first data protection principle."

25. The MPA supplied the complainant with the organisation chart referred to above showing the names of its officers above Grade 3, and explained to the Commissioner that staff below this grade would not expect to have their names placed in the public domain. The MPA advised the Commissioner that it had released the details of one staff member below Grade 3 whose role is public-facing. It further confirmed that two of the three named individuals who were not employed by the MPA had provided the complainant with their job titles, work email addresses and telephone numbers directly.
26. The public authority advised the Commissioner that its staff above Grade 3 who fulfil a Head of Unit public facing role have a reasonable expectation that their names would be disclosed and subsequently decided to disclose the details for these additional staff to the complainant following the internal review.

Would disclosure be fair and lawful?

27. The Commissioner has considered whether or not the disclosure of personal information about junior staff below MPA's Grade 3 without public-facing roles would be fair and lawful. In doing so he has considered the expectations of the persons and the degree to which the release of the information would infringe on their privacy.
28. When assessing the expectations of the data subjects the Commissioner considers it appropriate to take into account the type of information that is already in the public domain about the parties. He also believes that the level of detriment to the privacy of the persons if the requested information were released to be important.
29. The Commissioner notes that the withheld names and contact details for MPA staff relate purely to their professional capacity and there are no 'private' considerations regarding any of these parties. However, he also notes that the public authority has only withheld information about those junior members of staff whose roles are *not* public-facing and whose details cannot be said to already be in the public domain. The

Commissioner can therefore understand that such staff would reasonably expect their details to remain 'private' as they would not anticipate any requirement for them to be made 'public' in order for them to fulfil their occupational role.

30. Whilst the Commissioner believes that senior staff should anticipate that such information is likely to be disclosable, he also believes that more junior staff who do not normally deal directly with the public would not presume to have this information released. In line with his own guidance³, the public authority has determined that its own staff who fall within this category would not anticipate such disclosure.
31. Although the Commissioner considers that this information relates to individuals in a professional capacity rather than a private one, he does not consider that disclosure would be fair as such staff members would not reasonably expect their details to be placed into the public domain. Consequently, he considers that it is unfair to release staff names in these circumstances and that disclosure would breach the first data protection principle. Therefore, he has not gone on to consider any schedule 2 conditions.

The Decision

32. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

33. The Commissioner requires no steps to be taken.

³http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/public_authority_staff_info_v2.0_final.pdf

Right of Appeal

34. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 19th day of January 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 40(2) provides that –

Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

Section 40(3) provides that –

The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - 1. any of the data protection principles, or
 - 2. section 10 of that Act (right to prevent processing likely to cause damage or distress), and

in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.