

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 21 July 2011

**Public Authority:** Chief Constable of Merseyside Police  
**Address:** Police Headquarters  
PO Box 59  
Canning Place  
Liverpool  
L69 1JD

### Summary

---

The complainant requested information relating to a 1993 murder conviction that followed an investigation carried out by the public authority. The public authority refused the request, citing the exemptions provided by sections 30(1)(a)(ii) (information relating to an investigation) and 40(2) (personal information) of the Act. The Commissioner finds that the public authority cited the exemption provided by section 40(2) correctly and so is not required to disclose the information. However, he also finds that the public authority failed to comply with the procedural requirements of the Act in that it did not respond to the request within twenty working days of receipt.

### 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.

### The Request

---

2. The complainant requested the following information on 3 September 2010:

*"Concerning the case of Eddie Gilfoyle, the following reports..."*

*a) A report dated March 28 1995 prepared for J J Brighouse of the Crown Prosecution Service;*

*b) A report dated July 12 1995 which was also sent to J J Brighouse."*

3. The initial response to this request was dated 30 September 2010. In response to request (a), the complainant was advised that the exemption provided by section 30(1)(a)(ii) (information relating to an investigation) of the Act was believed to be engaged, but that an extension of time was required in order to allow the public authority to consider the balance of the public interest.
4. In response to request (b) the public authority stated that it had been unable to locate the information requested and asked the complainant to provide further information in order to assist it in locating this information. The complainant responded to this on the same date and provided to the public authority a copy of a letter in which reference is made to the information specified in request (b).
5. The substantive response to the request was dated 18 October 2010. Request (a) was refused, with the exemptions provided by sections 30(1)(a)(ii) and 40(2) (personal information) cited. In response to request (b), the public authority confirmed that it had been able to locate relevant information following the clarification provided by the complainant. One document was disclosed, but the remainder of the request was refused, with the exemptions provided by sections 30(1)(a)(ii) and 40(2) cited.
6. The complainant responded to this and requested that the public authority carry out an internal review. The public authority responded with the outcome of the internal review on 8 November 2010. The conclusion of this was that the exemptions cited previously were upheld.

## **The Investigation**

---

### **Scope of the case**

7. The complainant contacted the Commissioner's office in connection with this request on 15 November 2010. The complainant indicated at this stage that he did not agree with the reasons given for the refusal of his request.

## Chronology

8. The Commissioner contacted the public authority in connection with this request on 25 January 2011. The public authority was asked to supply to the Commissioner's office a copy of the information withheld from the complainant and respond with any further representations for the cited exemptions that it wished to provide. The public authority responded with the requested information on 1 February 2011.

## Background

---

9. On 4 June 1992 Paula Gilfoyle was found dead. Her husband, Eddie Gilfoyle, was later convicted of her murder.

## Analysis

---

### Exemptions

#### Section 40

10. The public authority has cited section 40(2), which provides an exemption for any information that constitutes the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. This exemption is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice. The case made by the public authority is that the information in question constitutes the personal data of Mr Gilfoyle. The first step in considering whether this exemption is engaged is to establish whether the information in question constitutes personal data. If this information is personal data, the next step is to consider whether the disclosure of this would breach any of the data protection principles.
11. On the issue of whether the information in question, or any part of it, constitutes the personal data of Mr Gilfoyle, section 1(1) of the Data Protection Act 1998 (the DPA) provides the following definition of personal data:

*"'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."*

12. This provides two criteria that must be fulfilled for information to constitute personal data; the information must relate to an individual, and that individual must be identifiable either from that information directly, or from that information combined with other information available to the holder of that information. The Commissioner considers it clear that the information in question here relates to Mr Gilfoyle in that it relates to an investigation that led to his conviction.
13. As to whether Mr Gilfoyle is identifiable from this information, the two documents that constitute the information in question here identify Mr Gilfoyle by name as the subject. The Commissioner therefore considers it clear that Mr Gilfoyle is both identifiable from these documents, and that they relate to him.
14. The Commissioner has concluded that the information in question relates to Mr Gilfoyle and that he would be identifiable from this information. This information is, therefore, the personal data of Mr Gilfoyle according to the definition given in section 1(1) of the DPA. Given the nature of this information, the Commissioner has also gone on to consider whether it is sensitive personal data.
15. Section 2(g) of the Data Protection Act provides that personal data consisting of information as to the commission or alleged commission by the subject of an offence is sensitive. The Commissioner considers it clear that this description applies to the information in question and so this is, therefore, sensitive personal data.
16. Turning to whether the disclosure of this information would breach any of the data protection principles, the Commissioner has focused here on the first data protection principle, which requires that personal data be processed fairly and lawfully. On the issue of whether disclosure would be, in general, fair, disclosure via the Act effectively renders information publicly available. This means that the first data protection principle will be satisfied only if it is fair to Mr Gilfoyle to disclose this sensitive personal data into the public domain. As this information would be disclosed into the public domain, rather than only to Mr Gilfoyle or only to any other specified party, any argument that disclosure would be fair on the basis that this would be necessary to assist Mr Gilfoyle to challenge his conviction would not be valid. The Commissioner does, however, acknowledge the more general public interest in the public being able to question the safety of criminal convictions.
17. The information in question here is sensitive personal data. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves. Due to the sensitivity of this information, the Commissioner believes that disclosure

of this into the public domain would be likely to have a distressing impact upon Mr Gilfoyle. He also considers that it would not be fair to Mr Gilfoyle to put information into the public domain that could, potentially, prejudice any future appeal against his conviction. The Commissioner considers that there is an important difference between limited disclosure of information to affected parties and the wider disclosure of information under the Act. Therefore, the Commissioner concludes that disclosure of this information would be unfair and in breach of the first data protection principle. Having already found that this information is the personal data of Mr Gilfoyle, his overall conclusion is that the exemption provided by section 40(2) is engaged.

## **Procedural Requirements**

### **Section 10 and 17**

18. In failing to respond substantively to request (b) within twenty working days of receipt, the public authority did not comply with the requirements of sections 10(1) or 17(1).

## **The Decision**

---

19. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied the exemption provided by section 40(2) correctly. However, the Commissioner also finds that the public authority did not comply with sections 10(1) and 17(1) in that it failed to reply to request (b) within twenty working days of receipt.

## Right of Appeal

---

20. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

21. 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.
22. 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 21<sup>st</sup> day of July 2011**

**Signed** .....

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

## Legal Annex

---

### **Section 10(1) provides that –**

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

### **Section 17(1) provides that -**

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

### **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.”