

## Freedom of Information Act 2000 (FOIA)

### Decision Notice

**Date:** 15 May 2012

**Public Authority:** The Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

#### Decision (including any steps ordered)

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1. The complainant requested the names of individuals who attended a meeting to discuss issues surrounding expert medical evidence in alleged cases of shaken baby syndrome. The Metropolitan Police Service (the MPS) refused the request under section 40(2) of the Act (personal information).
2. The Commissioner's decision is that the MPS correctly applied the exemption at section 40(2) to the withheld information.
3. The Commissioner does not require the MPS to take any further steps.

#### Request and response

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4. In September 2010 an MPS officer gave a lecture at the "Eleventh International Conference on Shaken Baby Syndrome/Abusive Head Trauma". During this lecture he referred to a multi-disciplinary meeting organised by the MPS to discuss issues surrounding expert medical evidence in alleged cases of shaken baby syndrome.
5. Shaken baby syndrome is a collective term for non-accidental injuries suffered by a baby or young child having been shaken. A disagreement regarding the medical indications of shaken baby syndrome has led to intense debate among the medical community.
6. On 16 March 2011, the complainant requested the following information from the MPS:

*Names of all participants in the meeting (Early 2008) described by [named individual] in appended document:*

*"Multi-disciplinary meeting at New Scotland Yard, London. Police, Crown Prosecution Service, lead and junior prosecution counsel, lead medical experts in pathology, paediatrics, ophthalmology, head of homicides sections. Decided to discuss situation, identify main problems and some solutions".*

7. The document referred to was a note of the lecture at the conference referred to above, taken by a participant at that conference.
8. The MPS responded on 7 April 2011. It stated that the request was being refused under section 14(1) of the Act as it was vexatious.
9. Following an internal review the MPS withdrew its reliance on section 14 and issued a revised refusal notice on 28 July 2011. The MPS now withheld the requested information under the exemption at section 40(2) of the Act.

### **Scope of the case**

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10. The complainant contacted the Commissioner to complain about the way her request for information had been handled, and in particular the MPS's refusal to disclose the requested information.
11. Although the complainant's request referred to a single meeting, the MPS holds information relating to two meetings. Therefore the withheld information in this case comprises the names of the individuals who attended either meeting.

### **Reasons for decision**

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12. Section 40(2) of the Act states that a public authority is not obliged to disclose information if to do so would:
  - constitute a disclosure of personal data, and
  - this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

*Would disclosure of the requested information constitute a disclosure of personal data?*

13. The DPA defines personal information 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 of the data controller or any person in respect of the individual."*

14. In this case the Commissioner is satisfied that the information is personal data. This is because the individuals can be identified by their names, particularly if combined with other information held by the MPS (the data controller in this instance). The individual's names in this context also identify the individuals as having attended the meetings.

*Would disclosure of the requested information breach any of the data protection principles?*

15. The MPS has argued that disclosure of the withheld information (i.e. the names of the individuals who attended the meetings) would breach the first data protection principle in that disclosure would be unfair and unlawful.

*The first data protection principle*

16. The first data protection principle has two main components. They are:

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

17. The Commissioner's general approach to the first data protection principle is to consider the fairness element first. If the Commissioner finds that disclosure would be fair he will then move on to consider the other elements of the first data protection principle.

*Would disclosure of the information be fair?*

18. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. He has then balanced these against the general principles of accountability, transparency and legitimate public interest in disclosure.

*Expectations of the individuals concerned*

19. The MPS was unable to confirm whether the individuals concerned had received explicit assurances that their attendance at the meetings would not be disclosed into the public domain. However the MPS argued that

individuals had been invited to attend the meetings, and had therefore participated on a voluntary basis.

20. As the MPS has been unable to provide evidence relating to the individuals' expectations regarding disclosure, the Commissioner is of the view that it is difficult to assess fully the expectations of the individuals concerned. The Commissioner is generally of the view that individuals attending meetings to provide expert advice to public bodies should have a general expectation that they may be named. However the MPS did seek consent from the individuals after the request was received and the Commissioner has considered their views below.

*Consequences of disclosure to the individuals*

21. The MPS advised the Commissioner that it had contacted each of the individuals concerned to ask if they would consent to their names being disclosed in response to the request. The MPS received 19 responses, although some of the individuals did not respond. Of the 19 responses four individuals were content for their names to be disclosed, although one individual said that he would only consent if everyone's name was disclosed. The remaining 15 refused.
22. The Commissioner has seen correspondence from the individuals to the MPS regarding the issue of consent. As indicated above, some of the individuals expressed strong concerns about the consequences of disclosing their names, and therefore the fact that they attended the meetings.
23. The concerns expressed all referred to the issue of shaken baby syndrome being highly contentious within the medical community. For example, some individuals expressed concern that they would be harassed by individuals and pressure groups who disagreed with their opinions. Further, more than one individual advised that they had previously received personal threats owing to their involvement in shaken baby and child protection cases. Another individual gave details of their personal experience, which the Commissioner has not reproduced within this Notice as it would identify that individual.
24. Some individuals also raised concerns that, if they were publicly known to have attended the meetings organised by the MPS, they would be wrongly perceived as "partial" in subsequent cases. Given that the meetings were to discuss the subject of expert medical evidence, these some individuals were concerned that they would be seen as having taken a particular "side", which could make their work more difficult.

## **General principles of accountability, transparency and legitimate public interest in disclosure**

25. The Commissioner has published guidance on section 40 and its application in relation to the personal information of public authority employees<sup>1</sup>. Although the individuals whose names were withheld in this case may not all be public authority employees, the guidance is useful in considering possible disclosure of individuals' interactions with public authorities.
26. In this case the withheld information is the names of people who attended one or two meetings. However, the names cannot be considered in isolation, but need to be looked at in the context of the meetings. Disclosure of an individual's name in this case would inform the public that the individual in question attended a meeting organised by the MPS to discuss issues surrounding expert medical evidence in alleged cases of shaken baby syndrome.
27. The Commissioner's guidance suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life. The Commissioner is of the clear view that information relating to an individual's private life (ie their home, family, social life or finances) will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). In this case the individuals were invited to attend the meetings based on their expertise rather than private considerations.
28. The Commissioner is generally of the view that individuals attending meetings to provide expert advice to public bodies should have a general expectation that they would be named. The Commissioner considers that there is also a strong legitimate public interest in understanding which experts the MPS received advice from on a difficult and complex issue.
29. The Commissioner also notes that four of the 19 individuals who provided a view indicated that they would be content for their names to be disclosed.

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[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/personal\\_information.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf)

## Conclusion

30. The Commissioner has carefully considered the views put forward by the 19 individuals who responded to the MPS. The Commissioner is mindful of the strength of feeling among some of these individuals, but is of the view that refusal of consent does not create a "veto" on disclosure of the individuals' names. Rather, it constitutes clear evidence of individuals' views, which must then be balanced against the general principles set out above.
31. In this case the Commissioner considers that the arguments are strong on both sides. Although the Commissioner recognises a significant legitimate public interest in disclosure of the withheld information, it can not justify the harm likely to be caused by disclosure. The Commissioner has seen evidence to suggest that the risk of harassment is real and significant, and the impact of the harassment on individuals and their families would be considerable. The Commissioner is satisfied that disclosure of the withheld information in this case would increase the risk. The Commissioner is also of the view that the additional inference some may draw (rightly or wrongly) from the meetings with the MPS about their role or which "side" they are on, might further encourage harassment.
32. In light of the above the Commissioner finds that disclosure of the withheld information would be unfair, and would thus contravene the first data protection principle. The Commissioner notes that four individuals did consent to their names being disclosed. However, given that the Commissioner's finding in this case he does not consider that it would be fair or appropriate to order disclosure of these four names only.
33. The Commissioner wishes to stress that his decision in this case is limited to the handling of the complainant's request. The Commissioner makes no comment on the validity of any individual's opinion in relation to shaken baby syndrome.
34. The Commissioner therefore finds that the MPS correctly applied the section 40(2) exemption.

## Right of appeal

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

36. 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.
37. 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 .....

**Steve Wood**  
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