

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 May 2012

Public Authority: The Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant requested information relating to whether a named member of the public has been paid compensation in connection with a specific incident involving a senior police officer. The Information Commissioner's decision is that the Metropolitan Police Service was entitled neither to confirm nor deny holding information relevant to the request. He requires no steps to be taken.

Request and response

2. The complainant wrote to the Metropolitan Police Service (MPS) on 19 June 2011 and requested information in the following terms:

"I would wish to request the following information.

1. Was [named member of the public] paid any damages in connection with the arrest by [named senior police officer]?

2. Was [named member of the public] paid any damages in connection with his detention by the Metropolitan Police in connection with his arrest by [named senior police officer]?

3. Was [named member of the public] paid any financial sum in connection with the incident concerning [named senior police officer]? If so please list amounts in GBP and reasons for

payments."

3. The MPS responded on 22 July 2011. It stated that it neither confirmed nor denied holding any information within the scope of the request, citing section 40(5) (personal information).
4. Following an internal review the MPS wrote to the complainant on 31 July 2011 upholding that position.

Scope of the case

5. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He told the Information Commissioner:

"If [named member of the public] has been paid money from the tax payer in connection with the trial against [named senior police officer], then this raises issues of integrity".

6. The fact that the member of the public was arrested by the senior police officer is not disputed. The Information Commissioner acknowledges the media coverage relating to both that incident and subsequent events involving the individuals named in the request.
7. The Information Commissioner considers the scope of his investigation to be with respect to whether the MPS was correct neither to confirm nor deny holding any relevant information relating to the settlement of a civil case.

Reasons for decision

8. Generally, the provisions of section 40(1) to (4) exempt 'personal data' from disclosure under FOIA if to do so would breach the data protection principles.
9. Section 40(5) further excludes a public authority from complying with the duty imposed by section 1(1)(a) (that is, to either confirm or deny holding the information), if complying with that duty 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 (DPA).

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

10. 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 intention of the data controller or any other person in respect of the individual."

11. The Information Commissioner considers that the way in which the request in this case is worded clearly indicates that the complainant is seeking information which can be linked to a named individual. He considers that to comply with section 1(1)(a) of FOIA would inevitably put into the public domain information about whether the individual named in the request has or has not received payments in the circumstances described in the request.

12. The Information Commissioner is of the view that any information as to whether or not payments were made relating to the settlement of a civil case would constitute the personal data of the individual involved. Therefore, the Information Commissioner considers that to confirm or deny whether the requested information is held would in itself constitute a disclosure of personal data.

Would disclosure of this personal data breach a data protection principle?

13. Having established that the information which would be disclosed by confirming or denying constitutes personal data, the Information Commissioner has examined whether disclosure of that personal data would breach a data protection principle.

14. The first data protection principle states that:

"Personal data shall be processed fairly and lawfully..."

15. In establishing whether disclosure is fair, the Information Commissioner will look to balance the consequences of any release of personal data and the reasonable expectation of the data subject, with general principles of accountability and transparency.

Consequences of disclosure

16. The MPS argued that disclosure would be unfair to the named individual. It told the complainant that it considered:

"civil litigation between the MPS and a named individual, whether proposed, actual or non-existent, to be a confidential matter".

17. In determining whether disclosure in this case is fair the Information Commissioner has taken into account the fact that disclosure under the FOIA is effectively an unlimited disclosure to the public at large, without conditions, and not to the individual applicant. In other words, if information were to be disclosed it would, in principle, be available to any member of the public.
18. The personal data that would potentially be disclosed in this case would relate to the named individual in a private capacity. This is significant in that previous decisions issued by the Information Commissioner have been guided by the principle that information about an individual's private life will deserve more protection than information about someone acting in an official or work capacity. The disclosure of the information would be a significant intrusion into their privacy and there is a reasonable likelihood of distress being caused.
19. The Information Commissioner has considered whether the consent of the named individual has been sought in relation to this request. He notes that there is no obligation on a public authority to seek the data subject's consent to disclosure. However, he considers it good practice to inform the data subject that a request for access to information about them has been made and to take any objections into account. In this case, the Information Commissioner is not aware of anything to suggest that consent has been given.

Reasonable expectations

20. The Information Commissioner considers it reasonable that a member of the public would have an expectation that information revealing whether or not they received payment in relation to a civil action would not be disclosed under the FOIA.

21. When requesting an internal review, the complainant told the MPS:

"I understand that the Metropolitan Police regularly publish that settlement has been reached in relation to those who take civil action against them".

22. In support of this argument, he cited the example of a family who received a financial settlement following the death of their son - a situation which was confirmed publicly.
23. However, the MPS argued strongly that it would be reasonable for an individual to expect that any information about them that is held by the MPS would only be used to support a policing purpose and would otherwise remain confidential.
24. With respect to the example referred to by the complainant, the MPS explained that in that case a joint statement was issued by the MPS and the family concerned. It also told the complainant that the individuals concerned had consented to the disclosure of the information that was made public and, furthermore, that the amount of compensation paid was not disclosed.
25. The Information Commissioner considers that in the circumstances of this case, the individual concerned would have a legitimate expectation that information would not be disclosed which may or may not confirm whether they had received money from the MPS or undertaken civil action.

Balancing the rights and freedoms of the data subject with legitimate interests

26. The request in this case relates to damages – financial payments – in connection with an arrest and detention by the MPS. Notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
27. The complainant argued that:

"Considering the circumstances, this information is very much in the public interest..."
28. The MPS, in its internal review correspondence, recognised the public interest in disclosure of the information:

"as it relates to whether or not public funds were spent in connection with high profile allegations of corruption involving a senior police officer"
29. With respect to the public interest, the MPS explained to the complainant that it is subject to scrutiny by the Metropolitan Police Authority (the Authority). It provided him with a link to information published by the Authority on the role and work of the MPS Directorate

of Legal Services which provided information about civil and threatened actions. That information detailed, on an annual basis, the number of cases and the amounts settled. The MPS provided the Information Commissioner with further information in this regard during the course of his investigation.

30. In this respect, the Information Commissioner acknowledges that there are mechanisms in place to monitor and scrutinise those aspects of the MPS's expenditure of public funds that are relevant to this request. Whilst the existence of this mechanism is not determinative it is relevant when considering the proportionality of intruding into private information. There is no evidence to suggest this mechanism is not working effectively, in general or in relation to this specific case,

Conclusion

31. The request in this case relates to whether damages have been awarded. The Information Commissioner recognises that disclosure of information such as this may benefit transparency and accountability. He also acknowledges the high profile nature of the allegations which gave rise to the request in this case.
32. As disclosure of information under the FOIA is considered disclosure to the public at large and not to the individual applicant, in the case of personal data there is no assumption of disclosure and the Information Commissioner must balance the legitimate public interest in disclosure against the interests of the individual(s) whose data it is.
33. In making a decision in this case, the Information Commissioner is satisfied that confirming or denying that the requested information is held would constitute a disclosure of personal data as it is clear that it would disclose information which is linked to an identifiable individual. Secondly, the Information Commissioner concludes that the disclosure of this personal data would be unfair, and would therefore be in breach of the first data protection principle, as it would reveal information relating to an individual's personal and private circumstances about which they would have an expectation of non-disclosure.
34. Having taken into account the nature of the requested information and the context of the request, the Information Commissioner has concluded that, while there may well be public interest in matters relating to damages, there is no overriding reason justifying disclosure in this case.
35. As the Information Commissioner has found that it would be unfair to disclose the requested information, he has not gone on to consider whether disclosure is lawful. As disclosure would be unfair this would be

a breach of the first data protection principle and therefore section 40 of the FOIA was correctly applied by the MPS.

Right of appeal

36. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF