

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 01 October 2012

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant made various requests for information relating to the professional history of a named individual. The Metropolitan Police Service (MPS) refused to confirm or deny whether it held this information and cited the exemption provided by section 40(5) (personal information).
2. The Commissioner's decision is that the MPS applied section 40(5) correctly in relation to some of the requests and so in relation to those requests it is not required to confirm or deny whether the requested information is held. However, in relation to the remainder of the requests the Commissioner finds that section 40(5) is not engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - In relation to requests 1 to 4 and 11, provide to the complainant confirmation or denial as to whether this information is held. In relation to any information that is held, this should either be disclosed, or a refusal notice valid for the purposes of section 17 of the FOIA should be issued.
4. The public authority 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 15 March 2012 the complainant wrote to the MPS and requested information in the following terms:

"I wish to make a formal request for information on an employee's service history / conduct history.

This man's name was [named individual].

1. I would like a full list / copy of his service history from the start of his career.

2. I would like a full list / copy of his conduct history from the start of his career.

3. I would like a full list / copy of his Job Placements from the start of his career.

4. I would like a full list / copy of positions held from the start of his career.

5. I would like a full list / copy of any time he has been the subject of any investigations (cleared or not) from the start.

6. I would like a full list / copy of any disciplinary actions from the start of his career.

7. I would like a full list / copy / number of any criminal convictions / cautions.

8. I would like a full list / copy / number of any and all complaints made against him, or anyone he was working directly with or under from the start of his career.

9. I would like to know if at any time before 20 March 2003 this officer submitted any form of intelligence with regards to [named individual].

10. I would like to know if at any time between 1995 until 2003 did this officer report any crimes of a personal nature at his home address.

11. I would like a list of the dates for promotions during his career."

6. The MPS responded on 27 March 2012. It refused to either confirm or deny whether the information requested was held and cited the exemption provided by section 40(5) of the FOIA.

7. Following an internal review the MPS wrote to the complainant on 24 May 2012. It stated that the refusal to confirm or deny under section 40(5) was upheld.

Scope of the case

8. The Commissioner received the complaint about the refusal of this request on 10 May 2012 (the complainant supplied a copy of the correspondence giving the internal review outcome later). The complainant indicated at this stage that he did not agree with the reasoning given by the MPS for the refusal of his request.

Reasons for decision

Section 40

9. Section 40(5) provides an exemption from the duty to confirm or deny where to do so would disclose personal data and the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process; first, confirmation or denial in response to the request must involve the disclosure of personal data. Secondly, this disclosure must be in breach of at least one of the data protection principles.
10. Turning first to whether confirmation or denial would disclose personal data, personal data is defined in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

“ ‘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”.*
11. The request is specifically for information about a named individual and as a result it is inescapable that confirmation or denial would disclose information that both identifies and relates to the individual named in the request. The view of the Commissioner is that it is clear that confirmation or denial in response to the requests would disclose personal data relating to the individual named in the request.

12. Turning to whether the disclosure of this personal data would be in breach of any data protection principle, the Commissioner has focussed on the first data protection principle, which requires that personal data be processed fairly and lawfully, and whether disclosure would be, in general, fair to the individual named in the request. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of the information in question.
13. Owing to what the arguments of the MPS and the considerations of the Commissioner reveal, as well as that the MPS has expressed a preference that its arguments remain confidential, the remainder of the analysis is given in a confidential annex which has been supplied only to the MPS. The conclusion of this analysis is that section 40(5) is engaged in relation to requests 5 to 10. However, in relation to requests 1 to 4 and 11, the conclusion of the Commissioner is that the exemption provided by section 40(5) is not engaged. At paragraph 3 above the MPS is required to supply to the complainant confirmation or denial as to whether information falling within the scope of those requests is held.

Other matters

14. In its correspondence with the ICO the MPS stated that it may also cite section 31 if the citing of section 40(5) was not upheld. The Commissioner does not regard this indication as constituting the citing of any of the exemptions provided by section 31, so this section has not been addressed in this notice.
15. As the MPS will be aware, the approach of the ICO is to give a public authority one further opportunity to explain its position during a section 50 investigation. Where a public authority cites further exemptions to those relied on at the refusal notice and internal review stages, it should explain the reasons for this in writing at the earliest opportunity to both the complainant and the ICO.

Right of appeal

16. 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

17. 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.
18. 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

Jon Manners
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