

Freedom of Information Act 2000 (Section 50) Decision Notice

Date: 7 February 2011

Public Authority: Chief Constable of Dyfed-Powys Police
Address: Police Headquarters
PO Box 99
Llangunnor
Carmarthen
SA31 2PF

Summary

The complainant requested information on a report he had made about a vehicle being driven on a specific road. Dyfed-Powys Police refused to confirm or deny whether it held information falling within the scope of the request and cited sections 40(5) and 30(3) of the Act. The Commissioner has investigated and determined that Dyfed-Powys Police was correct to rely on section 30(3) to refuse to confirm or deny whether it held any relevant information. The Commissioner does not require any steps to be taken.

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. On 24 July 2010 the complainant contacted Dyfed-Powys Police in relation to a report he had made to West Mercia Police Force on 16 July 2010, which he understood had been passed on to Dyfed-Powys Police. The report in question concerned a lorry which the complainant believed to have been "overloaded and dangerously driven" on a particular road within Dyfed-Powys Police's jurisdiction. The complainant requested:

"Can you please tell me what action was taken in regards to my report? Was the lorry stopped and examined? Was the owner of the lorry contacted?"

3. Dyfed-Powys Police responded to the request on 3 August 2010 and refused to either confirm or deny whether it held information falling within the scope of the request. Dyfed-Powys Police cited the exemptions provided by section 40(5) (personal data) and section 30(3) (investigations).
4. On 5 August 2010 the Complainant requested an internal review of Dyfed-Powys Police's decision to refuse his request.
5. Dyfed-Powys Police provided the outcome of its internal review on 25 August 2010 and upheld its decision to neither confirm nor deny whether it held the requested information.

The Investigation

Scope of the case

6. On 31 August 2010 the complainant contacted the Commissioner to complain about the public authority's refusal to disclose the information he had requested.

Chronology

7. On 13 October 2010, the Commissioner wrote to Dyfed-Powys Police to confirm that the complaint had been deemed eligible for formal consideration under the Act.
8. Dyfed-Powys Police responded to the Commissioner on 4 November 2010 providing further information in support of its view that it was entitled to neither confirm nor deny whether it held information relevant to the request.
9. On 13 December 2010, the Commissioner sought from Dyfed-Powys Police further clarification of its reasons behind its application of section 30(3) and its assessment of the public interest test. Dyfed-Powys Police provided this information on 23 December 2010.

Analysis

Exemptions

Section 30 Investigations and proceedings

10. The Commissioner has initially considered Dyfed-Powys Police's application of section 30. Section 30 is a class-based exemption, which means that there is no need to demonstrate harm or prejudice in order for the exemption to be engaged. Section 30(3) provides an exemption from the duty to confirm or deny in relation to any information, whether held or not, that falls within any of the classes specified in sections 30(1) or 30(2). In this case, Dyfed-Powys Police has confirmed that it considers the classes of information specified in section 30(1) would be relevant if it held any information that falls within the scope of the request. All relevant sections of the legislation are reproduced in the attached legal annex.
11. Section 30(1)(a)(i) provides an exemption to disclosure for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person should be charged with an offence. Section 30(1)(a)(ii) provides an exemption for information held for the purposes of an investigation conducted with a view to it being ascertained whether a person charged with an offence is guilty of it. In order for the exemptions within section 30(1) to be applicable, any information held must be held for a specific or particular investigation, and not for investigations in general.
12. The Commissioner has therefore considered whether, if at the time of the request Dyfed-Powys Police held information falling within the scope of the request, any such information would fall within the classes specified in section 30(1)(a)(i) and / or (ii).
13. Dyfed-Powys Police stated that on receipt of reports of this nature, ie a potentially overloaded vehicle being driven on the highway, it can relay information to Officers to carry out observations of the vehicle. The Officers would have the power to stop any vehicle to establish whether an offence had occurred under the Road Traffic Act 1998. Further, Dyfed-Powys Police has confirmed that it has the power to investigate whether a vehicle is overloaded under section 78 of the Road Traffic Act 1988 and Regulations 75 to 80 of the Road Vehicles (Construction and Use) Regulations 1986.
14. The public authority in this case is a police force and the Commissioner is satisfied that it has the power to carry out

investigations of the sort described in sections 30(1)(a)(i) and (ii) to establish whether an offence had occurred.

15. The Commissioner is satisfied that any information falling within the scope of the request that may be held by Dyfed-Powys Police would have been held for the purposes of a specific investigation, which it has a duty to conduct with a view to ascertaining whether a person should be charged with an offence or whether a person charged with an offence is guilty of it. The Commissioner is therefore of the view that the exemption at section 30 is engaged.
16. As section 30 is a qualified exemption the Commissioner has gone on to consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether Dyfed-Powys Police holds any information falling within the scope of the request.

Public interest arguments in favour of maintaining the duty to confirm or deny whether the requested information is held

17. Dyfed-Powys Police have put forward the following arguments in favour of maintaining the duty to confirm or deny whether it holds information relevant to the request:
 - The police service is charged with enforcing the law, preventing and detecting crime and protecting communities they serve and as such there is a public interest in the transparency of policing such investigations.
 - Confirming or denying whether the information were held could increase public confidence and trust in the Dyfed-Powys Police and how it deals with such reports from members of the public.
 - There is a public interest in ensuring that members of the public are confident in the way that Dyfed-Powys Police acts on information it receives about possible offences. Confirming or denying whether any information is held would provide an indication of any action taken and whether any efforts have been made to ensure that perpetrators of any alleged crimes are brought to justice.
18. The Commissioner considers that there is a public interest in members of the public having access to information that would provide assurance and confidence that Dyfed-Powys Police is

acting appropriately and taking any necessary steps to enforce the law.

Public interest arguments in favour of maintaining a 'neither confirm nor deny' response

19. The public interest inherent in maintaining the exemption is preserving the ability of public authorities to carry out any investigation to which the information relates and to decide whether proceedings are necessary. It also protects the investigative process so far as disclosure would result in a detriment to future investigations.
20. Dyfed-Powys Police has argued that:

“to confirm or deny the existence of any information concerning a report made by a member of the public concerning a ‘overloaded and dangerously driven lorry’ would undermine any such investigation which would impinge of any alleged offenders’ right to a fair trial under Article 6 of the Human Rights Act. This may result in sub-judice and Dyfed Powys Police being held in contempt of court”.
21. In Dyfed-Powys Police’s view it is in the public interest to safeguard the investigation process and confirming or denying whether any information is held could impede any investigation process which may or may not have taken place.
22. The Commissioner gives weight to the public interest argument in relation to the potential to undermine criminal investigations. He also considers that to confirm or deny whether any information in this case was held would identify whether or not a particular person’s activities have been detected and could risk comprising any ongoing investigation. It could be the case that any such individual was the subject of ongoing monitoring to determine whether any offence had been committed and disclosure could impact on Dyfed-Powys Police’s ability to detect crime and prosecute an offender.

Balance of the public interest arguments

23. The Commissioner believes that the public must be satisfied that Dyfed-Powys Police takes seriously information it receives from members of the public that may point to the existence of criminal activity, and that it investigates such matters thoroughly using sound and effective methods. Sufficient information should therefore be made available to give the

public reassurance that its work is done expeditiously both in general and in a specific case.

24. The Commissioner's guidance on the duty to confirm or deny¹ explores the implications of the wording of the request in relation to the duty to confirm or deny. In the Commissioner's view, the wording of the request for information will affect whether or not a public authority will confirm or deny it holds that information. The Commissioner also considers that, in many cases, the more specific the request, the lower the likelihood of the duty arising.
25. In this case, the request is focussed on a particular incident or possible investigation, rather than investigations in general. The Commissioner has also taken into account the timing of the request. The request was submitted to Dyfed-Powys Police on 24 July 2010 and related to a report which was made on 16 July 2010. The fact that any information falling within the scope of the request would have been recorded shortly before the date of the request means that any public interest in confirming or denying whether any information is held is unlikely to have lessened with the passage of time. However, this factor could also be said to weigh in favour of maintaining the exclusion from the duty to confirm or deny in that it could be argued that any harm resulting through confirmation or denial would be greater due to age of any information which may be held. On balance, the Commissioner does not believe that this factor favours either maintaining the duty to confirm or deny whether information is held, or maintaining the exclusion from the duty to confirm or deny whether information is held.
26. The Commissioner also considers the timing of the request to be a factor in terms of the stages of the investigation to which any information held by Dyfed-Powys Police may relate. Given that the request was made 8 days after the report, it is possible that any information held that falls within the scope of the request may relate to an investigation that was ongoing at the time of the request. Alternatively, any investigations that were closed by that time may have been completed only recently prior to the date of the request. The likelihood of new evidence coming to light and the investigation being reopened would be higher in relation to an investigation that had been

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/dutytoconfirmordeny.pdf

concluded recently than it would be in relation to an investigation that had been closed for a longer period. The Commissioner recognises that confirming or denying whether information is held in relation to an investigation that was either ongoing at the time of the request, or one that had been closed recently prior to the date of the request, could lead to prejudice to an ongoing or potential reopened investigation and considers this to be a valid factor in favour of maintaining the exclusion from the duty to confirm or deny.

27. The Commissioner notes the view of Dyfed-Powys Police that to confirm or deny whether information was held would breach the first data protection principle. However, he does not consider this to be a relevant public interest test consideration in relation to the application of section 30.
28. In the Commissioner's view, where the existence of any information is already in the public domain, a refusal to confirm or deny is not appropriate. In this case, the Commissioner has been unable to identify any information relevant to the request in the public domain.
29. The Commissioner recognises the public interest in principle in protecting information acquired during police investigations. Accordingly he gives weight to the factors favouring maintaining the exclusion from the duty to confirm or deny whether information is held where the information, if held, has implications for the investigation of potentially criminal activities.
30. The Commissioner accepts that, in this case, there are factors in favour of, and against, maintaining the duty to confirm or deny whether information is held. However, he considers that, in all the circumstances of the case, the public interest in maintaining the exclusion from the duty to confirm or deny outweighs the public interest in confirming/denying whether information is held. He has given particular weight to the timing of the request in relation to the age of any information which might be held, the fact that any information that may be held would relate to a specific investigation, and the potential prejudice to any investigation which may have been ongoing, or recently closed at the time of the request. He has therefore decided that Dyfed-Powys Police was correct to apply section 30(3).

Section 40(5) – Duty to confirm or deny in relation to personal data

31. Dyfed-Powys Police also argued that the duty to confirm or deny whether information was held did not arise because of section 40(5) in relation to personal data. As the Commissioner determined that section 30(3) was applicable, he did not proceed to make a determination with regard to Dyfed-Powys Police's application of section 40(5).

The Decision

32. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it correctly applied section 30(3) to the request.

Steps Required

33. The Commissioner requires no steps to be taken.

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 7th day of February 2011

Signed

Anne Jones

Assistant Commissioner

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Refusal of Request

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."

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,

- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct."

Section 30(2) provides that –

"Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources."

Section 30(3) provides that –

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)."