

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2012

Public Authority: Chief Constable of Northumbria Police
Address: Police Headquarters
North Road
Ponteland
Newcastle Upon Tyne
NE20 0BL

Decision (including any steps)

1. The complainant has requested information relating to complaints he has made about the public authority. Having initially declared the request to be 'vexatious' the public authority subsequently advised that it was exempt by virtue of sections 40(1) and 40(2).
2. The Information Commissioner considers that any information would be the complainant's 'personal data' as it would all relate to complaints he has made about the public authority. It is therefore exempt by virtue of the exemption at section 40(1). Furthermore the exemption provided by section 40(5)(b)(i) should have been applied which means that the public authority was not required to confirm or deny whether it holds any information under the Act.
3. The Information Commissioner does not require the public authority to take any steps.

Request and response

4. On 2 July 2011 the complainant wrote to the public authority and requested information in the following terms:

"Please supply me with copies of all information and documents under Freedom of Information Act concerning these latest complaints, all internal correspondence and also correspondence from NP, its officers to IPCC and its replies concerning these

latest complaints. the only complaints that NP are dealing with relating to me, those which I made during the month of July 2011".

5. This request was one in a series of other requests made by the complainant to the public authority. It initially declared it as 'vexatious' and refused to provide any information.
6. When he sought an internal review the complainant clarified:

"The information I have requested relates to complaints I have made against Northumbria Police officers".
7. The public authority responded on 24 November 2011. It stated that it no longer wished to rely on the request being 'vexatious'. However, it stated that the information was exempt under two limbs of section 40, being either the complainant's 'personal data' or the 'personal data' or third parties. It advised the complainant of the process for applying for his own 'personal data' under the Data Protection Act (the "DPA") and said that disclosure of third party data would breach the DPA.

Scope of the case

8. On 24 November 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled.

Reasons for decision

Section 40 – personal information

9. Under section 40(1) information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with the obligation to confirm or deny whether they hold the requested information, by virtue of section 40(5)(a).
10. After careful consideration of the wording of the request, the Information Commissioner is satisfied that the complainant is, or would be, the subject of all of the information requested. This is because he has requested information about allegations made by him and the material requested would record details of his allegations. Therefore the information would identify him, be linked to him and would relate

to issues involving his interaction with the police. The Information Commissioner considers that he is a 'data subject' within the meaning of the section 40(1) exemption and therefore it would be his personal data. Further, as section 40(1) would apply the public authority was not required to confirm or deny holding the information because section 40(5)(a) would apply.

11. The Information Commissioner further notes that the information requested, if held, would contain information about third parties, ie those who are the subject of any complaints that may have been raised. However, as he considers that the information is properly exempt by virtue of the absolute exemption at section 40(1) he has not gone on to consider whether section 40(2) – or indeed section 40(5)(b) – would be properly cited in respect of this information.

Other matters

12. Within its correspondence with the complainant the public authority advised the complainant:

"... you may wish to request the information you require using Data Protection Legislation whereupon, Section 7 of the Data Protection Act 1998, allows a right of access to personal or sensitive personal data held by the data controller, in this case, Northumbria Police.

The Data Protection Act 1998 sets out that a request must be made in writing and a fee (not exceeding the prescribed maximum) provided along with information which allows the Data Controller to satisfy himself to the identity of the person making the request. This is commonly referred to as Subject Access.

I have enclosed the Subject Access forms required so that you may make your request should you wish. Northumbria Police require that this documentation is completed, copy identification information such as a passport or driving license and a fee of £10 payable by cheque or postal order is provided. The data controller is not obliged to comply with the legislation unless he is supplied with the items detailed."

The Information Commissioner considers this to be the appropriate action for it to have taken.

Right of appeal

13. 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

14. 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.
15. 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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