

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 May 2013

**Public Authority:** Crown Prosecution Service  
**Address:** Rose Court  
2 Southwark Bridge  
London  
SE1 9HS

#### Decision (including any steps ordered)

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1. The complainant requested details of any criminal convictions for five specified police officers. The CPS refused to confirm or deny whether it held this information, relying on the exemption provided by section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that the CPS cited section 40(5) correctly and so it was not required to confirm or deny whether it held this information.

#### Request and response

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3. On 5 July 2012, the complainant wrote to the CPS and requested information in the following terms:  
  
*"Please supply me with details on any criminal convictions recorded on your records for the following police officers currently or previously of [Kent Police], including the offence description(s) and dates of conviction(s). Please include copies of materials that you hold in the form of paper and electronic records including emails. The officers in question are: [five named police officers]."*
4. The CPS responded on 17 July 2012. It stated that at this stage the request was refused under the exemptions provided by the following sections of the FOIA:  
  
30(1)(c) (information held for the purposes of criminal proceedings)

40(2) (personal information)

5. The complainant responded on 29 August 2012 and requested an internal review. The CPS responded with the outcome of the internal review on 30 November 2012, which was to amend its stance to neither confirming nor denying whether it held information falling within the scope of the request, and citing the exemption provided by section 40(5) of the FOIA.

## Scope of the case

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6. The complainant contacted the Commissioner on 13 December 2012 to complain about the refusal to comply with his information request.

## Reasons for decision

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7. Section 40(5) of the FOIA provides an exemption from the duty to confirm or deny where to do so would involve the disclosure of personal data and that disclosure would be in breach of any of the data protection principles. Consideration of this exemption is a two-stage process: first, addressing whether confirmation or denial would involve the disclosure of personal data, and secondly, whether that disclosure of personal data would be in breach of any of the data protection principles.
8. Covering first whether confirmation or denial would disclose personal data, section 1(1) of the Data Protection Act 1998 (DPA) defines personal data 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 any other information which is in the possession of, or is likely to come into the possession of, the data controller".*
9. The view of the Commissioner is that it is clear from the wording of the request without it being necessary to go into detailed analysis that the confirmation or denial would disclose information that both identifies and relates to the individuals named in the request. Confirmation or denial would therefore disclose information that constitutes the personal data of those individuals according to the definition given in section 1(1) of the DPA.

10. The next step is to address whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first principle, which requires that personal data is processed fairly and lawfully, and in particular on whether disclosure would be fair to the individuals 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 subjects, the consequences of disclosure upon the data subjects and whether there is legitimate public interest in the disclosure of this confirmation or denial.
11. Section 2 of the DPA lists what is to be considered sensitive personal data for the purposes of that Act. Included in this list is information concerning the commission or the alleged commission of an offence by the data subject.
12. Any relevant information that the CPS does hold would relate to proceedings that led to the convictions of the individuals named in the request for criminal offences. This information would therefore be the sensitive personal data of the data subjects, as defined in section 2 of the DPA.
13. That this information would be the sensitive personal data of the individuals named in the request is relevant here when considering their expectations about and the consequences of disclosure upon these individuals. The view of the Commissioner is that it is highly likely to be the case that the data subjects would hold a strong expectation that this information would not be disclosed by the CPS and that disclosure despite this expectation would result in distress to those individuals.
14. Sensitive personal data is, by its very nature, information that individuals regard as the most private information about themselves. Further, as disclosure of this type of information is likely to have a detrimental or distressing effect on the data subjects, the Commissioner considers that it would be unfair and in breach of the first data protection principle to disclose the confirmation or denial.
15. In conclusion, the Commissioner finds that the confirmation or denial would be the personal data of individuals other than the complainant and that the disclosure of that personal data would be unfair and in breach of the first data protection principle. The exemption provided by section 40(5) of the FOIA is, therefore, engaged and the CPS was not required to confirm or deny whether the requested information was held.

## Right of appeal

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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](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)

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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**