

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 June 2014

Public Authority: Office of the Police and Crime Commissioner for Merseyside

Address: Allerton Police Station
Rose Lane
Liverpool
L18 6JE

Decision (including any steps ordered)

1. The complainant requested information from the Office of the Police and Crime Commissioner for Merseyside (OPCCM) relating to two complaints he had made to it. The OPCCM refused to either confirm or deny holding information within the scope of the request, citing section 40(5) of FOIA (personal information).
2. The Commissioner's decision is that the OPCCM was correct to neither confirm nor deny holding information within the scope of the request. The Commissioner requires no steps to be taken.

Request and response

3. On 23 November 2013, the complainant wrote to the OPCCM and made the following request for information:

"I would like to request under the Freedom of Information Act 2000 all paperwork and correspondence involving the two complaints I issued to the Office of Police and Crime Commissioner. Including all correspondence between yourself and the Merseyside Police during your alleged investigation into the matters I reported."

4. The OPCCM responded on 13 December 2013. It refused to confirm or deny whether it held information within the scope of the request. It cited section 40(5) (personal information) as its basis for refusing to confirm or deny holding that information. It told the complainant that if relevant

information were held, it would be considered personal information. It informed him of his right to make a subject access request under the Data Protection Act 1998 (DPA).

5. Following an internal review the OPCCM wrote to the complainant on 8 February 2014, upholding its decision.

Scope of the case

6. The complainant contacted the Commissioner on 14 February 2014 to complain about the way his request for information had been handled, specifically OPCCM's refusal to confirm or deny whether it holds relevant information.
7. The Commissioner considers the scope of his investigation to be with respect to the OPCCM's application of section 40(5).

Reasons for decision

Section 40 - personal information

8. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.
9. Section 40(1) of FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".
10. The DPA defines personal data 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 two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
12. Having considered the wording of the request in this case, the Commissioner is satisfied that the complainant is, or would be, the subject of this requested information. This is because the information he has requested is, by its own definition, about or connected to the complainant.
13. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.
14. In relation to such information, the provisions of section 40(5) mean that the public authority is not required to comply with the duty to confirm or deny whether it holds the information, as 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).
15. In correspondence with the complainant, the OPCCM explained that the FOIA exists to place official information into the public domain. Once access to information is granted to one person under the FOIA, it is then considered "public" information and must be communicated to any individual should a request be received. As an exemption, section 40 operates to protect the rights of individuals in respect of their personal data.
16. Explaining the principle of neither confirming nor denying whether personal information is held, the OPCCM told the complainant:

"For a public authority to provide even a response to section 1(1)(a) by confirming or denying that such requested information is held by the public authority confirms that the personal data asked about in the request actually exists or does not exist. Either response amounts to a public disclosure of personal data in respect of the data subject of the request."
17. The Commissioner is satisfied that confirming or denying whether it holds any information under the terms of the FOIA means that the OPCCM would be confirming, to the world at large, whether it holds a complaint raised by this complainant. He therefore considers that the section 40(5) exemption was relied upon correctly by the OPCCM in this case.

Other matters

18. The Commissioner notes that an applicant wishing to access their own personal data is free to pursue this right under the DPA. Furthermore, he considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act. In this respect, he is satisfied that the OPCCM explained to the complainant his rights to make a subject access request for his own personal data under the DPA.

Right of appeal

19. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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