



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 11 July 2006

Public Authority: Department for Culture, Media & Sport
Address: 2 – 4 Cockspur St
London
SW1Y 5DH

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has not dealt with the Complainant's request in accordance with Part I of the Act. The complaint was that information had been withheld without valid reason. The Department for Culture, Media & Sport (the "DCMS") withheld information on the basis that it was exempt under s.35 and s.40 of the Freedom of Information Act 2000. The Commissioner agrees that the requested information was exempt by virtue of section 35. However, the Information Commissioner considers that despite the fact that the requested information was exempt, the public interest required disclosure. He therefore requires the DCMS to provide to the complainant the information withheld under this provision. The Commissioner also finds that some of the information withheld under section 40 is not subject to this exemption and that this information should be provided to the complainant.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

The Complainant has advised that on 13 June 2005 the following information was requested from the public authority in accordance with section 1 of the Act.

“Please be so kind as to provide all available information since the year 2004 as required by the Freedom of Information Act 2000 that relates directly to the transfer of pensions from the Principle Civil Service Pension Scheme to the Police Pension scheme in relationship to the transfer of those constables from the Royal Parks Constabulary into the Metropolitan Police Service.”

The DCMS responded initially on 21st July 2005 and on 4th August 2005 to acknowledge the information request and to inform of the progress in handling the request.

The DCMS provided a substantive response to the request, providing some of the information requested and a refusal citing exemptions in relation to information withheld, on 16th January 2006.

3. Relevant Statutory Obligations under the Act

Section 35(1)(a) provides that:

“Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

(a) the formulation or development of government policy.”

Section 40 provides that:

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

(a) it constitutes personal data which do not fall within subsection (1), and
(b) either the first or second condition below is satisfied.

(3) The first condition is-

(a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

(i) any of the data protection principles, or
(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

4. Review of the case

The complainant initially contacted the Commissioner to complain about the delay in the provision of a substantive response by the DCMS. The Commissioner contacted the DCMS to raise the issue of the delay in their providing a substantive response to the information request. The DCMS responded to this acknowledging that there had been delays in their responding to the information request and that they would be responding imminently.

After the Commissioner had received confirmation from the DCMS that a response to the information request had been sent, the complainant was contacted to ascertain how he wished to proceed with his complaint. The complainant indicated that he wished the Commissioner to consider the application of exemptions in this instance. This decision focuses on the application of exemptions by the DCMS, rather than the delay in their initial response as the issue of delay was resolved when the DCMS provided a substantive response to the information request.

The Commissioner contacted the DCMS in connection with its application of the exemptions. The DCMS provided to the Commissioner copies of the information that had been withheld as exempt. The Commissioner reviewed the information withheld with regard to whether the exemption cited did apply to this information and whether the public interest was in favour of the disclosure of this information.

5. The Commissioner’s Decision

The Commissioner’s decision in this matter is as follows:

Section 35 – information relating to the formulation or development of Government policy

The Commissioner considered initially whether the information withheld constituted information relating to the formulation or development of government policy. The Commissioner is satisfied that the information provided by the DCMS demonstrates that the transfer of the pensions from the Principal Civil Service Pension Scheme to the Police Pension Scheme was a matter of government policy, involving Ministerial input and primary legislation. The requested information must, therefore, constitute information relating to the formulation and development of government policy and be subject to the exemption..

However, even though the information is exempt it must be disclosed if the public

interest in disclosure is equal to or stronger than the public interest in maintaining the exemption.

In his published guidance the Commissioner lists a number of public interest factors favouring the disclosure of information. These include:

- furthering the understanding of and participation in the public debate of issues of the day...
- promoting accountability and transparency by public authorities for decisions taken by them...
- promoting accountability and transparency in the spending of public money. ..
- allowing individuals and companies to understand decisions made by public authorities affecting their lives ...

The Commissioner is satisfied that a number of these factors are relevant in this case. There is evidently a wide ranging public debate about pension provisions, particularly as they affect public and civil servants. In addition to the public interest in knowing how the new arrangements may impact upon the staff affected, there is also a public interest in accountability for the spending of any public money made as a result of the new arrangements.

The public interest in disclosure must be weighed against the public interest in maintaining the exemption. The Commissioner recognises, for instance, that there is a public interest in allowing the government what is often described as “private thinking space” in which to formulate policy. The Commissioner also recognises the risk of “politicising” the civil service if advice by named official is the subject of public comment, particularly when that advice is currently under consideration or has been given very recently.

In this particular case, the Commissioner is influenced by the fact that the decision to merge the Royal Parks Constabulary into the Metropolitan Police has been taken and the necessary enabling legislation enacted. He has also taken into account the fact that the decision concerning the transfer of the pension arrangements may be regarded as ancillary to the main decisions on the merger.

While the Commissioner accepts that in some cases disclosure of the inner workings of government may have an adverse affect on future decisions, he does not think that this is likely in this case. On the contrary, it seems reasonably clear to the Commissioner that if, in the future, the government developed a policy to merge one public body into another, it would be obliged to consider the associated pension arrangements. The Commissioner does not think that it is likely that the disclosure of the background information in this particular case would compromise the development of a policy in another case that would arise.

In summary, although the Commissioner accepts that the requested information is exempt, he believes that in this instance the public interest requires disclosure.

Section 40 – personal data

Information has been withheld under this provision for the stated reason that it is personal data relating to junior officials and that the identity of these officials is not

information that is in the public domain. The stance of the DCMS is that to disclose this information would contravene the first data protection principle, which requires that personal data be processed fairly and lawfully.

Each case must be considered on its merits. The Commissioner accepts that there will be cases in which there would be clear unfairness to individuals in the disclosure of their names alone. For instance, it may be unfair (and therefore a breach of the first data protection principle) to disclose the names of staff working in the prison service or in controversial scientific research.

However, in this particular case, the Commissioner does not agree that there would have been any unfairness to DCMS staff involved in the development and implementation of the policy regarding the pensions arrangements of former members of the Royal Parks Constabulary if their names had been included in the information provided to the complainant.

Personal information relating to employees of the Royal Parks Constabulary has been withheld as well as that relating to DCMS employees. This personal data relates to the pension entitlements of these individuals and the Commissioner accepts that to release this information would be unfair and thus in breach of the first data protection principle.

The decision of the Commissioner in relation to the application of section 40 in this instance is, therefore, that this exemption has not been correctly applied to all information withheld under this provision. The Commissioner does recognise, however, that the personal data withheld under this provision that related to employees of the Royal Parks Constabulary was exempt under section 40 and thus was withheld in accordance with the Act.

6. Action Required

The Commissioner requires that the DCMS shall provide to the complainant the remainder of the requested information with the exception of any information which identifies employees and former employees of the Royal Parks Constabulary

This action shall be taken by the DCMS within 35 days of the date of this notice.

7. Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Reference: FS50083603

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 11th day of July 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**