



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 6 April 2006

Public Authority: The Chief Officer of Staffordshire Police

**Address: Staffordshire Police HQ
Cannock Road
Stafford
ST17 0QG**

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.

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

1.1 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').

1.2 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- the application has been withdrawn or abandoned,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.

1.3 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

2.1 On 17 January 2005 the complainant submitted a request for the following information:

- (a) 'Evidence to show why Staffordshire Police have taken no action to recover public funds wasted by your malicious informant';
- (b) 'Evidence to show why Staffordshire Police refused to release the name of a malicious informant';
- (c) 'Evidence to show why Staffordshire Police are protecting a known malicious informant';
- (d) 'Evidence to show why Staffordshire Police are knowingly breaching the Data Protection Act where a malicious intent has been proven beyond a reasonable doubt'.

- 2.2 The Public Authority responded on the 27 January 2005 on the basis that they were not obliged to comply with the request by virtue of section 14 of the Act.
- 2.3 The complainant requested an internal review of this decision on the 15 April 2005 following advice from the Commissioner.
- 2.4 The internal review conducted by the Public Authority upheld the initial decision to refuse access to the information on the basis that section 14 of the Act had been applied correctly. The review also stated that information which would identify an informant would be exempt by virtue of sections 30, 31, 38, 40, and 41

3. Relevant Statutory Obligations under the Act

- 3.1 **Section 1.**—(1) 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.

- 3.2 **Section 2(2)** provides –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that-

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

- 3.3 **Section 14.**—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent

identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

3.4 Section 30.—(2) 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.

3.5 Section 40.—(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 the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of 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) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

4. Review of the case

4.1 When considering this complaint the Commissioner has made a decision on three issues. One, whether the request was vexatious, two, whether the specific information requested was held, and three, whether information which could identify the confidential informant is exempt from disclosure under this Act.

Section 14 – Vexatious or repeated requests

4.2 The case officer took the view that the requests, although pejoratively phrased, were not vexatious. He reached this position on the basis that to be considered vexatious a request should be either manifestly unreasonable, or designed to cause disruption or annoyance, or harassing, or not have a serious purpose or value.

4.3 The Complainant was seeking the information in order to right an injustice he perceived had been caused by the way the Public Authority had dealt with allegations made by a confidential informant about the Complainant. Clearly the request had a serious purpose, and although annoyance could have been caused by the request it is not clear that this was the intention of the Complainant. As the first request from the Complainant under this legislation the request could not be characterised as harassing or manifestly unreasonable.

4.4 On 24 August 2005 we asked the Public Authority to reconsider its decision to deem the request vexatious under section 14.

4.5 The Public Authority did so and issued a new refusal notice dated 30 September 2005.

Section 1 – Is the requested information held by the public authority?

4.6 The refusal notice of 30 September 2005 explained that the specific information requested under (a), (b) and (c) was not held:

“In each case there was no evidence of malicious intent on the part of the informant and therefore no reason for Staffordshire Police to consider whether to conduct an investigation into a ‘malicious’ informant. Neither was there any need to contemplate the recovery of public funds.”

4.7 With regard to (d) the Commissioner had previously conducted an assessment of processing on behalf of the Complainant with regard to the processing of personal data and had not found evidence that the Public Authority had breached the Data Protection Act 1984, or the 1998 Act if that had been in force at the time.

4.8 On this basis the Commissioner is satisfied with the assurances of the Public Authority that the specific information requested under (a) to (d) is not held,

although information which would identify the informant is held, and that the Public Authority has complied with section 1(1(a)) of the Act.

- 4.9 However, from the request, and their knowledge of the applicant prior to the coming into force of the Act, the Public Authority took the view that the applicant wished to obtain information which would identify a confidential police informant who had, several years earlier, made a statement to the Public Authority which led to the Complainant being investigated.
- 4.10 The authority was thus encouraged to take a reasonably wide view of the request, considering not only the information specifically requested but also information broadly related to it. This approach is consistent with that adopted by the Information Tribunal when considering the appeal of Mr EA Barber v The Information Commissioner (EA/2005/0004).

Exemptions

- 4.11 The third issue this notice considers is the application by the Public Authority of the exemptions under Part II of the Act.

a) Section 30 – Investigations and proceedings conducted by a public authority

- 4.12 For the purposes of this notice the Commissioner has taken the view that the exemption under section 30 is most relevant to information which would identify the informant and therefore focused the Decision Notice on this.
- 4.13 The Commissioner is satisfied that section 30(2)(b) is engaged as the information in question was obtained from a confidential source. As a class based exemption prejudice need not be demonstrated here. However the exemption is qualified by a public interest test under section 2(2).
- 4.14 Following careful consideration of the nature of the information and possible effect a disclosure would have the Commissioner is of the view that there is a clear public interest in maintaining the exemption under section 30. In particular, the Commissioner recognises that there is a strong public interest in establishing and maintaining the correct conditions under which members of the public feel able to come forward and provide the police with evidence. The Commissioner accepts that the disclosure of the identity of an informant under this Act would be likely to have a significant deterrent affect on other potential witnesses and thus hamper the police's ability to fulfill its primary function of detecting and preventing crime. Each case must be considered on its merits and the Commissioner would accept that different considerations would potentially arise in other cases.
- 4.15 Arguments in favour of disclosure do present themselves, and were advanced by the complainant. For example a disclosure here may help an individual understand action taken by a Public Authority, enable an injustice to be righted, or help the public understand the way in which public money is spent. However these arguments do not outweigh the public interest in maintaining the exemption.

b) Section 40 – Personal information

- 4.16 The Commissioner has also considered the application of section 40.
- 4.17 The Public Authority has applied section 40(1) to the identity of the informant. This application of section 40(1) is incorrect as this absolute exemption applies only to the personal data of the applicant. The identity of the informant is not personal data relating to the applicant because it relates to a third party.
- 4.18 However, it is the view of the Commissioner that section 40(2) would apply to information which could identify the confidential informant as the Commissioner is satisfied there is no Schedule 2 ground for processing the identity of the informant (i.e. disclosure) under the Data Protection Act 1998, therefore it would constitute a breach of the first data protection principle to disclose the information.
- 4.19 Furthermore the informant made it clear to the Public Authority that they did not wish their identity to be disclosed and it would not therefore be in the reasonable expectations of the data subject that their identity would be disclosed to the applicant and any such disclosure would therefore be unfair. Again this would constitute a breach of the first data protection principle
- 4.18 The Commissioner is satisfied that information which would identify the informant is exempt by virtue of section 30(2(b)) and section 40(2). He has not made any further consideration of the exemptions invoked by the Public Authority.

5. The Commissioner's Decision

- 5.1 The Commissioner's decision in this matter is that the Public Authority has not dealt with the complainant's request in accordance with the requirements of Part I of the Act as the request was incorrectly deemed vexatious. However the Commissioner is satisfied that the information is exempt from disclosure under this Act and on this basis there are no steps for Staffordshire Police to take.

6. Right of Appeal

- 6.1 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

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@dca.gsi.gov.uk

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

Reference: FS50086598

Dated the 6th day of April 2006

Signed

**Graham Smith
Deputy Commissioner**

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