

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 3 October 2006

Public Authority: Chief Constable Northumbria Police
Address: Northumbria Police Headquarters
North Road
Ponteland, Newcastle upon Tyne
Tyne and Wear
NE20 0BL

Summary

The complainant requested access to information on the files relating to another individual, [name redacted] held by the Northumbria Police. Following an investigation of the complaint, the Commissioner has decided that the information requested by the complainant constitutes the personal data of [name redacted] in accordance with Section 1(1) of the Data Protection Act 1998 and consequently, the information is exempt under Section 40(2) of the Act. The Commissioner is satisfied that the information should not be released and that the public authority therefore dealt with the complainants request in accordance with part 1 of the Act.

The Commissioner's Role

- 1 The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

- 2 The complainant has advised that on 20 July 2005 the following information was requested from the Chief Constable of Northumbria Police ("NP") in accordance with Section 1(1) of the Act:
- 3 *"I am a resident dwelling on North Tyneside; I recently made a complaint regarding a white collar fraud. This case was handled by {police officer's name redacted} and on Friday 20 December 2004 I was interviewed. I recently received a letter from a [police officer's name redacted] who states that after advice from the Crown Prosecution Service a formal caution was issued to the officer in charge. I am writing now as required under the Freedom of Information Act 200 (sic) to request access to the files relating to this case".*

- 4 On 16 August 2005, NP responded to the complainant's request. NP had interpreted the request to be *"for information relating to a white collar fraud investigated by Northumbria Police Economic Crime Unit (Police officer's name redacted)"*.
- 5 In accordance with section 17 of the Act, NP advised the complainant it was withholding the information under the following exemptions:
 - Section 30(a)(i)(ii) – investigations and proceedings conducted by public authorities;
 - Section 31(a)(b)(c) – law enforcement;
 - Section 38(a)(b) – health and safety;
 - Section 40 – personal data;
 - Section 41 – information provided in confidence;
 - Section 42 – legal professional privilege.
- 6 The complainant found the response of NP unacceptable and requested an internal review on the 16 August 2005.
- 7 On 12 September 2005 NP responded. It advised that it upheld the decision previously reached for the reasons stated at that time.

The Investigation

Scope of the case

- 8 In a letter dated 4 October 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - (i) NP's failure to provide him with the information he had requested and
 - (ii) NP's failure to comply with the time limits within the Act.

At the time, the complainant did not provide the Commissioner with a copy of his request for information dated 20 July 2005 (the "original request") but advised the Commissioner that on 20 July 2005 he had requested *"access to the files on [name redacted], former Contracts Manager of North Tyneside and who was formally cautioned for an offence which included falsifying a contract for a stock condition survey."*

9. After reviewing the views of both NP and the complainant in the exchange of correspondence, the Commissioner wrote to the complainant on 31 May 2006. The Commissioner explained to the complainant that the section 17 Refusal Notice had been provided to the complainant within 20 working days of receipt of his request for information in accordance with the Act. Further, the Internal

Review was also completed in a timely manner. The Commissioner therefore advised the complainant that the part of his complaint stating that NP had not complied with the time limits provided for by the Act would not be considered further and that investigations would be limited to the lawful withholding or otherwise of the requested information.

10. The Commissioner based his decision in paragraph 9 on the following information:
 - Information requested : 20 July 2005
 - Date of Section 17 Refusal Notice : 16 August 2005 (19 working days)
 - Request for Review: 16 August 2005
 - Date of Internal Review: 12 September 2005 (19 working days)
11. In respect of the original request itself, clarification of the precise information sought by the complainant was clearly required as the information has been described in different ways as detailed in paragraphs 3, 4 and 8 above.
12. Consequently, the Commissioner contacted the complainant on 31 August 2006 seeking his clarification of the information sought in his original request. On 31 August 2006, the complainant confirmed to the Commissioner that whilst his request was so long ago he had forgotten the original wording, the information he actually required was for files relating to *"the white collar fraud which involved [name redacted]"*.
13. It is therefore the Commissioner's view that the only information required by the complainant is that involving [name redacted].

Chronology

14. In his investigation of the complaint, on 24 April 2006, the Commissioner contacted NP as a result of which NP agreed that it would contact the complainant in an attempt to resolve the issues between them. That was on the basis that it might be possible to narrow the information in dispute.
15. As the complainant's request involved accessing the files the police held on an individual, the Commissioner decided to seek the advice of his Data Protection Unit (the "DPU") in relation to that aspect of the information.
16. The Commissioner advised NP of the complainant's clarification of his request on 1 September 2006. On 14 September 2006, NP provided the Commissioner with a detailed list of the relevant information it held which consisted of 47 items/documents all of which are the personal data of [name redacted].

Analysis

Procedural matters

17. The Commissioner has advised the complainant that NP has complied with the time limits provided for by the Act. Consequently, that aspect of his complaint will not be considered further.

Exemption

Section 40(2)

18. Personal data relating to a third party is exempt from disclosure under the Act where the conditions referred to in section 40(3) are satisfied.
19. The conditions in Section 40(3) are satisfied where disclosure of the information requested would result in breaches of any of the 'data protection principles' set out in Schedule 1 Part I of the DPA.
20. The First Data Protection Principle ("FDPP") requires that personal data shall be processed fairly and lawfully, and in particular, shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met, and in the case of sensitive personal data ("SPD"), at least one of the conditions in Schedule 3 is also met.
21. SPD is defined in section 2 of the DPA. The Commissioner finds that the requested information is SPD as it consists of the personal information of [name redacted] held by NP relating to "the commission or alleged commission by him of any offence" as provided for at section 2 (g) of the DPA.
22. When considering compliance with the FDPP it is necessary to consider what the reasonable expectations of a person would be in relation to how their information would be used and to whom it may be disclosed.
23. It is long established public policy that the release of information held by the police concerning its criminal investigations of an individual would be unfair. The criminal records of individuals are not available to the public and are protected except in extremely limited circumstances such as to protect vulnerable members of society or to assist the police in criminal investigations.
24. Consequently, to release personal data about [name redacted] would contravene the FDPP on the basis that it would be both unfair and unlawful as no condition set out in Schedule 2 or Schedule 3 of the DPA is satisfied.
25. The Commissioner considers therefore that the exemption at section 40(2) is engaged in respect of the whole of the information as it all involves [name redacted] and all of which is his SPD.

Public Interest Test

26. The Commissioner considers that the exemption at section 30 of the Act is also engaged in respect of the information as it is information held by a public authority is for the purposes of an investigation which the public authority has a duty to

conduct with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty of it. That exemption is subject to the public interest test but as section 40 of the Act provides an absolute exemption, there is therefore no need to consider the public interest test in respect of the requested information.

The Decision

27. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

28. The Commissioner requires no steps to be taken.

Right of Appeal

29. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the 3rd day of October 2006

Signed

**Graham Smith
Deputy Commissioner**

Reference: FS50090750



Information Commissioner's Office

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

Legal Annex

Section 40 of the Act provides -

- “(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 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).”

The first data protection principle provides:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-
- (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

Section 2 of the DPA provides:

2. In this Act "sensitive personal data" means personal data consisting of information as to-
- (a) the racial or ethnic origin of the data subject,
 - (b) his political opinions,
 - (c) his religious beliefs or other beliefs of a similar nature,
 - (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),

- (e) his physical or mental health or condition,
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

Schedule 3 of the DPA provides:

1. The data subject has given his explicit consent to the processing of the personal data.

2. - (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.

(2) The Secretary of State may by order-
 - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
 - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

3. The processing is necessary-
 - (a) in order to protect the vital interests of the data subject or another person, in a case where-
 - (i) consent cannot be given by or on behalf of the data subject, or
 - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
 - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.

4. The processing-
 - (a) is carried out in the course of its legitimate activities by any body or association which-
 - (i) is not established or conducted for profit, and
 - (ii) exists for political, philosophical, religious or trade-union purposes,
 - (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,

(c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and

(d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

6. The processing-

(a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),

(b) is necessary for the purpose of obtaining legal advice, or

(c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7. - (1) The processing is necessary-

(a) for the administration of justice,

(b) for the exercise of any functions conferred on any person by or under an enactment, or

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

(2) The Secretary of State may by order-

(a) exclude the application of sub-paragraph (1) in such cases as may be specified, or

(b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

8. - (1) The processing is necessary for medical purposes and is undertaken by-

(a) a health professional, or

(b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph "medical purposes" includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

9. - (1) The processing-

(a) is of sensitive personal data consisting of information as to racial or ethnic origin,

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and

(c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Secretary of State may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

10. The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.