

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 16 December 2010**

**Public Authority:** Norfolk Constabulary  
**Address:** Jubilee House  
Falconers Chase  
Wymondham  
Norfolk  
NR18 0WW

### Summary

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The complainant asked Norfolk Constabulary (the “public authority”) to provide information relating to complaints about a specified vehicle. The public authority refused to confirm or deny whether it held the information falling within the scope of the request, citing the exemption provided by section 40(5)(b)(i) of the Freedom of Information Act 2000 (the “Act”). The Commissioner finds that confirmation or denial would disclose personal data and that the disclosure of this personal data would be in breach of the first data protection principle. The exemption provided by section 40(5)(b)(i) is therefore engaged and the public authority is not required to take any steps. The complaint is not upheld.

### The Commissioner’s role

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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.

## Background

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2. The request concerns an unadopted road in the Great Yarmouth area. The Commissioner has been advised by the public authority that:

*"In terms of police obligations regarding unadopted roads, police will always respond to a complaint about a vehicle located on an unadopted road for the following reasons:*

- To check if the vehicle is stolen or of interest in relation to a crime*
- If it is damaged and thus incapable of being moved*
- If it is dumped i.e. no registered owner, no tax/SORN [statutory off road notification], condition of the vehicle and length of time it has been there (and thus should be referred to the local authority)*
- If it presents a public safety issue, e.g. would be the target for vandals/arson or is leaking petrol etc*
- Is causing an obstruction where the unadopted road is accessible to and used by the public or the owner of the land*

*These enquiries can be made even if the unadopted road is privately owned. If the vehicle is causing an obstruction the local authority can remove it subject to providing all owners of the land with 28 days notice."*

## The request

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3. On 27 March 2010 the complainant made the following information request:

*"Subject: reports of dumped digger in [location removed] road, GY [Great Yarmouth] over the past 5 years*

*I require the reported dates of all complaints regarding the above dumped digger, [registration mark removed] in the last 5 years as reported to you by [name removed] of the car clear scheme, or by any other bodies or persons (please specify), inc the present one. If you cannot give this information by this request then i wish it to be forwarded as being made under the freedom of information act. I would appreciate a prompt reply to my email address above".*

4. On 29 March 2010 the public authority acknowledged receipt of the request.
5. On 27 April 2010 the public authority provided its response. It advised the complainant as follows:

*"It is important to understand that the Freedom of Information Act gives any member of the public the right to request that recorded information held by the Norfolk Constabulary is to be published and made available to the general public.*

*Under this Act, any disclosure of recorded information is a disclosure to the world and cannot be a disclosure to any single individual. This means that once information has been released under the Freedom of Information Act it becomes a matter of public record and we have a policy of publishing information released under this Act on our Force web-site.*

*As information that is released under the Freedom of Information Act is available to the general public, there is an exemption from publication which allows the Norfolk Constabulary to waive our duty to confirm if information is held, and to waive our duty to disclose any such information if it is necessary to protect the privacy of any individual.*

*Section 40 of the Act covers information that may be considered to be 'personal information'.*

*Members of the public have a right to privacy and no information can be released under the Freedom of Information Act if to do so would then place the Norfolk Constabulary in breach of the Data Protection Act.*

*In this case, you have provided a vehicle index number that can be linked with a named individual. If any recorded information that may be connected with that vehicle index number was held by the Norfolk Constabulary, then this information would be considered to be the personal data of the individual who is recorded as being the owner of the vehicle.*

*To confirm if any information is or is not held, would therefore be a disclosure of personal information as by confirming to the general public whether information is or is not held, we would be confirming whether the Norfolk Constabulary has or has not received complaints concerning an individual who can be identified through a specified vehicle index number.*

*In view of the advice provided in the paragraphs shown above, under the terms of the Freedom of Information Act and by virtue of the exemption provided at Section 40(5), which relates to personal information, the Norfolk Constabulary will publically neither confirm nor deny that any recorded information relevant to your request is held and this letter serves as a refusal notice in accordance with Section 17 of the Freedom of Information Act.*

*This response **should not** be taken as an indication that any information you have requested to be made public either does or does not exist".*

6. The public authority also provided the complainant with details of his right to request any of his own personal information, should any exist, under the terms of the Data Protection Act (the "DPA").
7. On 29 April 2010 the complainant submitted the following email to the public authority:

*"UNDER THE TERMS OF THE ABOVE ACT I WISH YOU TO ACCESS YOUR RECORDS AND INFORM ME IF AT ANY TIME IN THE LAST 5 YEARS YOU HAVE RECEIVED REPORTS OF A DUMPED DIGGER/TRACTOR AND OR A DERELICT CARAVAN ATTACHED TO ABOVE PLUS A TRAILER ALSO ATTACHED, LOCATED IN [location removed] ROAD JUST NORTH OF [name removed] ROAD. I ALSO WISH TO KNOW FROM WHOM ANY OR ALL OF THESE REPORTS WERE REFERRED TO THE POLICE AUTHORITY. I DO NOT WISH TO KNOW ANY SPECIFIC NAMES OF MEMBERS OF THE PUBLIC WHO MAY HAVE DONE SO, ONLY NAMES OF PUBLIC ORGANISATIONS, LOCAL OR COUNTY COUNCILS, POLICE AUTHORITIES ETC. I FURTHER WISH TO KNOW FROM WHICH DEPARTMENT WITHIN ANY SUCH PUBLIC BODY ANY SUCH REPORT WAS LODGED, AND IF POSSIBLE THE NAME OF THE PUBLIC BODY EMPLOYEE FROM WHOM THE REPORT ORIGINATED. PLEASE INCLUDE THE DATES ON WHICH ANY SUCH REPORTS WERE RECORDED. PLEASE ACKNOWLEDGE RECEIPT OF ABOVE REQUEST... PS THE ABOVE LOCATION IS [location removed] ROAD, GREAT YARMOUTH, NORFOLK".*

8. In its response of the 6 May 2010 the public authority advised the complainant:

*"Thank you for your email of the 29th of April requesting information relating to complaints received by the Norfolk Constabulary. On the 28th of March 2010 you submitted a virtually identical request relating to complaints received by the*

*Norfolk Constabulary, which was responded to on the 29th of April 2010.*

*In view of the fact that your latest request is substantially similar to you [sic] previous request, your email of the 29th of April will be dealt with as a request for an internal review of the way in which your original request was handled.*

*Your request will now be forwarded to a member of the Constabulary's management team for a review to be conducted. The Constabulary will aim to provide you with a response to your request in as short a timescale as possible, and by the 27th of May at the latest".*

9. On the same date the complainant responded as follows;

*"Thank you for your email, however please note the request of which you mention is to be considered as a new and totally different request under the FOI act. Having received your reply to my first request which was refused i was advised by my solicitor to put in a new request in a new format that would circumvent the reason for refusal of the first. this second request is therefore not to be associated with the first and not just to be treated as an appeal of refusal of the first. Pleasae [sic] acknowledge that you will now be treating this request as a totally different request as is my right under the FOI act. I await your reply".*

10. The public authority responded to the second request on the same date. The response resulted in a second complaint being made which the Commissioner has considered under a separate reference number – case number FS50355291.
11. The complainant contacted the Commissioner about both of his requests and, on 23 July 2010, the Commissioner advised him that he would need to request internal reviews prior to him taking any further action.
12. On 24 July 2010 the complainant advised the Commissioner that he had done so but had received no response. He advised that he had hand-delivered a letter to Norwich Police Station.
13. The Commissioner contacted the public authority on 3 August 2010 and on 4 August 2010 it advised him that it had not received any request for an internal review. The Commissioner therefore requested that it undertake these.

14. On 12 August 2010 the complainant also emailed the public authority as follows:

*"Please note that following your refusals of my applications under the FOI act i followed your directions for a review by writing to the address given and leaving the letter at Norwich police station for forwarding by internal mail. You never replied, hence my contact to the ICO. However i now find there was no requirement to write to you for this purpose an email would suffice, so please accept this for that purpose. I request a full internal review of your refusal of all the refused applications, taking each application as separate from the other. As the 2nd contains no reference specifically to any particular vehicle there is no reason to refuse it for display on your website under the DP act ,as you stated".*

15. On 25 August 2010 the public authority provided its internal reviews. It maintained that this request was exempt by virtue of section 40(5).

## **The investigation**

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### **Scope of the case**

16. The Commissioner commenced his investigation on 30 September 2010. He asked the complainant to outline his complaints in respect of each request and for details of the hand-delivered request for internal reviews.
17. On the same date the complainant confirmed that he did not keep a copy of the letter nor did he know on what date he took it to the police station, but that it was shortly after the public authority's email to him of 13 May 2010. He advised that it was: *"hand delivered to Norwich police station and given to a non police clerk behind the desk"* and that he believed it had been *"deliberately lost"*. He also confirmed that he wished for the Commissioner to *"adjudicate"* as to whether or not the public authority was correct to refuse to supply the requested information.
18. On 19 October 2010 the Commissioner advised the complainant that he would deal with the two complaints by way of separate decisions.

## **Chronology**

19. On 11 October 2010 the Commissioner raised initial queries with the public authority. On 13 October 2010 he received its full response.
20. Having considered the information supplied by both the complainant and the public authority the Commissioner decided to deal with the complainant's two requests under separate Decision Notices. He advised both parties accordingly on 19 October 2010.

## **Findings of fact**

21. The Vehicle Registration Mark number (VRM) is the number on the number plate of a car.
22. The VRM number is a distinguishing number through which the registered keeper can be located if the car is involved in an accident or violates the law.
23. The VRM number also acts as the pivot to enable access to further information through the Driver and Vehicle Licensing Agency (DVLA). The DVLA provides information about registered keepers, under Regulation 27 of the Road Vehicles (Registration and Licensing) Regulations 2002. This requires it to release the information from the vehicle register to the police, to Local Authorities which require it for purposes connected with the investigation of an offence and to anyone else who can demonstrate 'reasonable cause' to have it. VRM details are therefore accessible to a large and wide-ranging group of organisations and individuals.

## **Analysis**

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### **Exemption**

#### **Section 40(5)(b)(i)**

24. Section 40(5)(b)(i) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
  - constitute a disclosure of personal data, and
  - this disclosure would breach any of the data protection principles or section 10 of the DPA.

25. The Commissioner's analysis of whether the above criteria would be satisfied follows.

***Would confirming or denying that the requested information is held constitute a disclosure of personal data?***

26. The DPA defines personal information 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 data controller or any person in respect of the individual."*

27. In his guidance on the section 40 exemption<sup>1</sup>, the Commissioner expanded on what constituted personal data:

*"The two main elements of personal data are that information must 'relate to' a living person, and that 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, has them as its main focus or impacts on them in any way."*

28. The public authority has argued that the way in which the request is worded clearly indicates that the complainant is seeking information which may or may not show that it has received complaints about an identified vehicle, which can, in turn, be linked with a named individual. Therefore, to comply with section 1(1)(a) of the Act would inevitably disclose information that would relate to that individual (the relevant wording of the public authority's response is included at paragraph 4 above).

29. The Commissioner has already considered whether or not a VRM is personal data in a previous decision<sup>2</sup>. Where it is linked to an individual he has determined that it is that individual's 'personal data'. Therefore, the Commissioner is in agreement with the public authority's analysis

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<sup>1</sup>[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/personal\\_information.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf)

<sup>2</sup>[http://www.ico.gov.uk/~/media/documents/decisionnotices/2009/FS\\_50186\\_040.ashx](http://www.ico.gov.uk/~/media/documents/decisionnotices/2009/FS_50186_040.ashx)



that confirming or denying whether the requested information is held would constitute a disclosure of personal data.

***Would disclosure of this personal data breach a data protection principle?***

30. In refusing the request, the public authority has claimed that to confirm or deny whether the requested information was held would breach the first data protection principle. This requires that personal data is processed fairly and lawfully and that:
- at least one of the conditions in Schedule 2 is met, and
  - in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.
31. The Commissioner's considerations here focus on the general issue of whether disclosure would be fair to the individual who, as the registered owner of the vehicle in question, would be the subject of any complaints which the public authority may hold.

*Fairness*

32. In establishing whether disclosure is fair, the Commissioner will look to balance the consequences of any release of personal data and the reasonable expectation of the data subject, with general principles of accountability and transparency.
33. The personal data that would potentially be disclosed here would relate to the individual in a private capacity. This is significant in that previous decisions issued by the Commissioner have been guided by the principle that information about an individual's private life will deserve more protection than information about someone acting in an official or work capacity.
34. The Commissioner believes that a member of the public would not ordinarily expect information about an essentially 'private' matter to be made public. In the event that information were held, then the Commissioner considers that a member of the public could be distressed if such information, where it has not previously been made public, is put into the public domain via the Act. The Commissioner is of the opinion that any private individual would have a legitimate expectation that information which may or may not confirm whether they had been the subject of complaints would not be released to the public at large. To disclose this information would be an unwarranted intrusion into the rights and freedoms of that person.

35. The Commissioner supports the general principles of transparency and accountability. However, he does not believe that disclosure of a known individual's 'personal data' in this case would serve the public interest. He does not consider that it would be disclosure of information about a significant issue which would, for example, further public debate, rather it is an issue which is 'personal' to the complainant.

### ***Conclusion***

36. As indicated, the Commissioner has taken a clear line that disclosure of personal data relating to an individual in a private capacity should be afforded a high degree of protection. This is based on the Commissioner's understanding that individuals would have a reasonable expectation that information of this kind would not be disclosed.
37. Leading on from these considerations, the Commissioner has determined that to confirm or deny whether the requested information is held would be unfair to the data subject. As disclosure would therefore breach the first data protection principle, section 40(5)(b)(i) is engaged and the public authority was correct to neither confirm nor deny holding the requested information.
38. As the Commissioner has concluded that confirmation or denial would be unfair he has not found it necessary to consider the conditions in schedule 2 of the DPA.

### **The Decision**

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39. The Commissioner's decision is that the public authority correctly refused the request for information under section 40(5)(b)(i) of the Act.

### **Steps Required**

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40. The Commissioner requires no steps to be taken.

## Other matters

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41. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following.

### *Personal data of the complainant*

42. The complainant advised the Commissioner that: "*This whole business follows a complaint to [the public authority] about getting the mentioned dumped vehicles removed and on this also they have been very obstructive...*". This implies that the complainant himself may have already raised complaints with the public authority. If this is the case, then the public authority is likely to hold some of his 'personal information', and, if the complainant requires copies of this, he must make a request under the terms of the DPA as such information is absolutely exempt under the Act. The Commissioner notes that the public authority has already apprised the complainant of this process and has supplied him with the means to make such a request.

### *Request for internal review*

43. The Commissioner notes that there has been some disagreement over the delivery and receipt of the complainant's (alleged) first request for internal reviews. The complainant states that these were requested in a letter which was hand-delivered to a police station; unfortunately he did not retain a copy nor does he recollect on what date the delivery was made. The complainant also states that his request was addressed as suggested in the refusal notices and that it was hand-delivered as he did not realise that email was an option. The Commissioner does not know why it was hand-delivered rather than posted.
44. The public authority denies having received any such request. It has stated to the Commissioner that it has checked with the Norwich police station but that such a letter would not be 'booked in'. It accepts that it might have gone astray in the internal mail system but advises that this is the first time that such a problem has occurred. As a consequence, it has informed the Commissioner that it would amend its correspondence to make it clear that a request for internal review could be made by email.
45. The Commissioner notes that the public authority has acknowledged receipt of all correspondence with the complainant other than the hand-delivered letter. He also notes that when he asked the public authority to undertake internal reviews these were conducted within his recommended timeframe. In the absence of any 'proof' of non-

compliance with the apparent first request for internal review the Commissioner is unable to draw any further definite conclusion regarding any possible delay.

## Right of Appeal

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46. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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

**Dated the 16<sup>th</sup> day of December 2010**

**Signed .....**

**Jon Manners  
Group Manager**

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

## Legal annex

### Freedom of Information Act 2000

#### Section 40

Section 40(5) provides that –

*“The duty to confirm or deny-*

*(a) 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), and*

*(b) does not arise in relation to other information if or to the extent that either-*

*(i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or*

*(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”*

#### Data Protection Act 1998

Section 1(1) provides that –

*“‘personal data’ means 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 intentions of the data controller or any other person in respect of the individual.”*

The first data protection principle provides that –

*“Personal data shall be processed fairly and lawfully...”*