

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 March 2011

Public Authority: Chief Constable of Gwent Police
Address: Gwent Police Headquarters
Croesyceiliog
Cwmbrân
NP44 2XJ

Summary

The Complainant requested information relating to training provided to chief officers. Gwent Police refused the request by virtue of section 40(2) of the Act. The Commissioner has investigated and decided that section 40(2) is not engaged and accordingly has ordered the release of the information. The Commissioner has also identified a number of procedural shortcomings in the way Gwent Police handled the complainant's request.

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. On 23 July 2010, the complainant contacted Gwent Police and made the following request:

"Under the Freedom of Information Act 2000 please could you tell me the names and roles of any chief officers (both warranted and civilian staff) who have received either coaching or mentoring from a private company or private individual over the past three financial years (ie 2007/08 – 2009/10).

For each chief officer or staff equivalent who has received either coaching or mentoring, please could you tell me:

- The duration of said coaching/mentoring?
 - The purpose of the coaching/mentoring?
 - The total cost of the coaching/mentoring?
 - Which person or company provided the coaching/mentoring?
 - And, if applicable, how many coaching/mentoring sessions the individual received?"
3. Gwent Police responded on 20 August 2010 and provided some information relevant to the request. Gwent Police confirmed that one of its ACPO officers had received either coaching or mentoring during the period but withheld the name of the officer and the purpose of the training. Whilst Gwent Police treated the request under the provisions of the Act, no exemptions were cited in the refusal notice.
 4. The complainant requested an internal review of Gwent Police's decision on 24 August 2010.
 5. Gwent Police provided the outcome of its internal review on 13 September 2010 and upheld its decision not to release any additional information relating to the request. In its internal review, Gwent Police stated that the information was exempt under section 40(2) of the Act.

The Investigation

Scope of the case

6. On 23 September 2010 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 whether the information which Gwent Police had withheld relevant to his request should be disclosed.
7. The Commissioner's investigation has focussed on the withheld information relating to questions 1 and 3 of the request, which comprises of the name of the officer who received coaching/mentoring and the purpose of the coaching/mentoring.

Chronology

8. On 21 October 2010, the Commissioner wrote to the Gwent Police to confirm that the complaint had been deemed eligible for formal consideration and to ask for a copy of the withheld information.

9. Gwent Police responded to the Commissioner on 23 November 2010 stating that, having consulted with its Chief Constable, it would not provide the withheld information to the Commissioner.
10. The Commissioner telephoned Gwent Police on 13 December 2010 to clarify its position regarding provision of the withheld information. The Commissioner assured Gwent Police that the withheld information would be stored securely and was required solely to allow him to determine whether the request had been dealt with in accordance with the requirements of Act. Gwent Police confirmed that it would not provide the Commissioner with copies of the withheld information.
11. In accordance with section 51 of the Act, on 15 December 2010, the Commissioner served an Information Notice on Gwent Police, requiring it to provide him with copies of the withheld information falling within the scope of the request. On the same day, the Commissioner also wrote to Gwent Police asking for its further representations in relation to its application of section 40(2) of the Act.
12. Gwent Police responded to the Commissioner's letter and provided the withheld information on 13 January 2011.

Analysis

Section 40

13. Section 40(2) of the Act provides an exemption for information that is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied. In this particular case the condition in question is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles, as set out in Schedule 1 to the Data Protection Act 1998 ('the DPA').
14. Gwent Police considers that the withheld information constitutes the personal data of the chief officer who received the coaching or mentoring, that disclosure would be unfair and would therefore breach the first data protection principle. The Commissioner agrees that the relevant principle here is the first principle; the requirement that any processing should be fair and lawful.

Is the information personal data?

15. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by

section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:

- from that data,
- or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

16. In considering whether the information requested is “personal data”, the Commissioner has also taken into account his own guidance on the issue¹. The two main elements of personal data are that the 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 them in any way.
17. The withheld information in this case comprises the name of the chief officer who received coaching/mentoring and the purpose of the coaching/mentoring. The Commissioner is satisfied that a living individual (the chief officer) can be identified from the withheld information and that the information relates to the individual. The Commissioner therefore accepts that the information in the context of this request is personal data as defined by the DPA.

Would disclosure contravene any of the principles of the DPA?

18. As the Commissioner is satisfied that the information requested constitutes the personal data of the chief officer, he has gone on to consider whether disclosure would breach any of the data protection principles. As stated in paragraph 13 above, Gwent Police claimed that disclosure of the withheld information in this case would breach the first data protection principle.

The first data protection principle

19. The first data protection principle has two main components. They are:
- the requirement to process all personal data fairly and lawfully; and
 - the requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

20. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data protection principle. The Commissioner's general approach to cases involving personal data is to consider the fairness element first. Only if he believes that disclosure would be fair would he move on to consider the other elements of the first data protection principle.

Would disclosure of the information be fair?

21. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced these against the general principles of accountability, transparency and legitimate public interest.

a) Expectations of the individuals concerned

22. An individual's expectations are likely in part to be shaped by generally accepted principles of everyday interaction and social norms, for example, privacy. It is accepted that every individual has the right to some degree of privacy and this right is so important that it is enshrined in Article 8 of the European Convention on Human Rights.
23. However, expectations are also shaped by a society where transparency and the Freedom of Information Act's presumption in favour of disclosure of information form part of its culture. This was recognised by the Tribunal in the case of *The Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP* (EA/2006/0015 & 0016) where it was said that:
- "...The existence of the FOIA [Freedom of Information Act] in itself modifies the expectations that individuals can reasonably maintain in relation to the disclosure of information by public authorities, especially where the information relates to the performance of public duties or the expenditure of public money." (para 43).
24. Gwent Police believes that disclosure would breach the confidential nature of the employment relationship between the individual and their line manager and that the chief officer concerned would have had a reasonable expectation that the withheld information would not be released into the public domain. Gwent Police has not confirmed whether or not it has sought consent to disclosure from the individual concerned.

25. The Commissioner's Awareness Guidance on section 40² suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life. Although the guidance acknowledges that there are no hard and fast rules it states that:

'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'

26. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (ie their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).

27. The Commissioner considers that employees of public authorities should be open to scrutiny and accountability and should expect to have some personal data about them released because their jobs are funded by the public purse. In his guidance on the section 40 exemption, the Commissioner suggests 'if the information requested consists of names of officials, their grades, jobs or functions or decisions made in their official capacities, then disclosure would normally be made'. However, the Commissioner also considers that information which might be deemed 'HR information' (for example details of pension contributions, tax codes, etc) should remain private, even though such information relates to an employee's professional life, and not their personal life.

28. The Commissioner considers that an individual's participation in any coaching or mentoring does have an impact on their private lives. It refers to training and experience of an individual, is likely to appear on their curriculum vitae in the future and may have an effect on their future employment prospects and opportunities. In this case, any coaching or mentoring that was provided to the chief officer was carried out primarily because of the individual's role within Gwent Police. The training was also paid for out of public funds. As such, the Commissioner considers that in this case, the information also relates to the individual's public life.

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http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf

29. The Commissioner's guidance also states that the seniority of the individual acting in a public or official capacity should be taken into account when personal data about that person is being considered for disclosure under the Act. This is because the more senior a member of staff is, the more likely it is that they will be responsible for making influential policy decisions and/or decisions relating to the expenditure of public funds. In previous decision notices the Commissioner has stated that he considers that occupants of senior public posts are more likely to be exposed to greater levels of scrutiny and accountability and there should therefore be a greater expectation that some personal data may need to be disclosed in order to meet that need.
30. The Commissioner notes that, in this case, the individual is a senior member of staff within Gwent Police and a member of the Association of Chief Police Officers ('ACPO'). ACPO is an independent, professionally led strategic body and comprises chief officers who hold a substantive rank or appointment at the rank of Assistant Chief Constable level (Commander in the Metropolitan Police Service and City of London Police) or above, as well as senior police staff equivalents. The Commissioner is satisfied that, due to the seniority of the data subject in this case, it is reasonable to conclude that they may have had some expectation that this level of personal data may be disclosed.

b) Consequences of disclosure to the individual

31. Gwent Police have submitted limited arguments in relation to the consequences of disclosure to the individual concerned. If the information were disclosed, the Commissioner understands that the intention was to have published it in a policing magazine. Gwent Police consider it unfair that an individual's need for coaching "should be disclosed in a national publication, particularly one which is specifically targeted at serving police officers including some serving in the force in which [the individual] holds a very senior command position". Gwent Police are of the view that "the confidential relationship between employee and employer should take precedence over the desire of a commercial publication to disclose information which adds little in terms of public value or interest".
32. In the view of Gwent Police, disclosure of the information requested could also have a negative impact on the individual's future employment prospects. The Commissioner does not consider this to be a particularly strong argument. He considers it unreasonable to suggest that the fact that an individual has received coaching or mentoring means that they are less capable of doing their job. The counter argument is that any training or development is likely to enhance an individual's skills, knowledge and/or experience and, in turn, improve their future job prospects.

33. Gwent Police did not address the issue of distress to the individual resulting from disclosure. While the Commissioner appreciates that disclosure of any personal data might lead to some level of distress, he has been unable to identify any specific reasons why disclosure would cause significant distress or damage to the individual in this case.

c) General principles of accountability and transparency

34. Gwent Police is of the view that, as it has only withheld the purpose of the coaching or mentoring and the name of the individual who received it, the central core of the information requested has been disclosed. It believes that to disclose the remaining withheld information would add very little in terms of public interest or value. Gwent Police believes that:

“Disclosing such information, where it serves little purpose and adds little value in the context of public disclosure, appears to be gratuitous and contrary to the principle on which the whole ethos of professional development is based.”

35. The Commissioner acknowledges that the public interest has, to an extent, been satisfied through information which Gwent Police has already released. However, he does not consider that disclosure of this information alone satisfies the legitimate interests of the public.
36. The Commissioner believes there is a legitimate public interest in disclosure of information which would promote accountability and transparency, particularly in relation to expenditure of public funds. Disclosure of the information requested will help to promote accountability in relation to the amount of money which Gwent Police spends on such training. The Commissioner also considers that the public has a strong legitimate interest in being able to reassure itself that senior public servants taking decisions which affect their community have the necessary skills and experience to carry out their role effectively.
37. In considering how the factors balance, the Commissioner has weighed the nature of the expectations and the consequences of disclosure in this case against the legitimate public interest in disclosure and considers that releasing the information requested would not be unfair.
38. As the Commissioner has concluded that disclosure would not breach the fairness requirement of the first data protection principle in this instance, he has gone on to consider whether a condition from schedule 2 can be met.

Schedule 2 Condition 6 of the DPA

39. There are six conditions in Schedule 2 of the DPA, but only condition 1 (consent) or condition 6 (legitimate interests) would usually be relevant to disclosures under the Act. The Commissioner considers that the relevant condition in Schedule 2 in this particular case is the sixth condition. This condition states that:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject”.

40. The Commissioner’s awareness guidance on section 40 states that following the Information Tribunal decision in *Corporate Officer of the House of Commons v Information Commissioner and Leapman, Brooke and Thomas (EA/2007/0060 etc.; 26 February 2008)* public authorities should approach condition 6 as a three-part test:

1. there must be a legitimate public interest in disclosure;
2. the disclosure must be necessary to meet that public interest; and
3. the disclosure must not cause unwarranted harm to the interests of the individual.

41. The legitimate interests of the public are noted in paragraph 36 above; primarily disclosure would allow the public to scrutinise more closely Gwent Police’s use of public money on such training and provide assurance that such training is appropriate for the individual to carry out their job.

42. Having established that there is a legitimate interest in disclosure, the Commissioner has gone on to consider whether disclosure of the withheld information is necessary to meet the legitimate interests identified above. The Commissioner has also considered whether there are any alternative, less intrusive means of satisfying the legitimate interest.

43. The Commissioner notes that Gwent Police has disclosed details relating to the duration, cost, number of days of coaching or mentoring and the name of company who provided it. He accepts that this disclosure does go some way to account for the expenditure on the training. Whilst Gwent Police have confirmed that one ACPO officer within its Chief Officer Group has received coaching or mentoring, the name of the officer concerned has been withheld as well as the purpose of the coaching or mentoring.

44. The Commissioner believes that disclosure of the withheld information would provide additional accountability and is necessary to address the legitimate interests of the public. The Commissioner has considered whether those interests could be satisfied through the less intrusive way of releasing the information about the role undertaken by the individual. In this case, he is satisfied that the individual would be likely to be identifiable from their role and as such this would be no less intrusive. The Commissioner therefore considers that disclosure of the information requested is necessary to satisfy the legitimate interests of the public.
45. The Commissioner has considered the collective weight of the necessary legitimate interests and whether disclosure would have caused unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject at the time that the request was received. Given the fact that the information relates to the individual's public life (i.e. their role as a public employee), the Commissioner does not consider that any significant prejudice would arise for the individual concerned.
46. On balance, the Commissioner accepts that disclosure of the information requested would be necessary for a legitimate interest of the public and considers that this outweighs any unwarranted prejudice that might be caused to the individuals' own rights, freedoms and legitimate interests. The Commissioner has therefore concluded that condition 6 of Schedule 2 of the DPA is met in this case.

Lawfulness

47. In the context of freedom of information requests, the Commissioner considers it is likely that it will be unlawful to disclose personal information where it can be established that the disclosure would be a breach of a statutory bar, a contract or a confidence. In the current case he has seen no evidence that any of these breaches would occur, and as a consequence he has concluded that disclosure would not be unlawful.
48. For the above reasons, the Commissioner is satisfied that disclosure of the withheld information would be neither unfair nor unlawful and would not breach the first data protection principle. As such, the Commissioner is not satisfied that the information requested was correctly withheld by Gwent Police under section 40(2) of the Act.

Procedural Requirements

Section 10

49. As the Commissioner has decided that the withheld information is not exempt from disclosure under section 40(2), he believes the information should have been provided to the complainant in line with the duty at

Section 17

50. Section 17(1) of the Act requires a public authority to provide an applicant with a refusal notice stating the basis upon which it has refused the information and to issue this notice within the time for complying with section 1(1) of the Act.
51. Although the refusal notice dated 20 August 2010 was issued within 20 working days of receipt of the request, it did not specify any exemptions on which Gwent Police was relying to withhold the information, nor any reasoning why the exemptions applied. As such, Gwent Police breached sections 17(1)(b) and 17(1)(c) of the Act.

The Decision

52. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:
- It incorrectly applied section 40(2) to withhold the information requested.
 - It breached section 1(1)(b) for failing to provide information that the Commissioner has concluded should have been released, and section 10(1) for failing to provide the information requested within 20 working days of the request.
 - It breached sections 17(1)(b) and (c) in failing to state in its refusal notice which exemption it sought to rely on to withhold the information requested and why it applied.

Steps Required

53. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- To disclose the information previously withheld under section 40(2); namely the name and role of the chief officer who received coaching/mentoring and the purpose of the coaching/mentoring.
54. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

55. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

56. 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.

Website: www.informationtribunal.gov.uk

57. 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.

58. 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 29th day of March 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides that -

"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."

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

Personal information.

Section 40(1) provides that –

"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."

Section 40(2) provides that:

"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."

Section 40(3) provides that –

"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."

Section 40(4) provides that –

"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)."

Data Protection Act 1998

Section 1 - Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires—
"data" means information which—
 - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
 - (b) is recorded with the intention that it should be processed by means of such equipment,
 - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
 - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

“data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

“data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

“data subject” means an individual who is the subject of personal data;

“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;

“processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

(a) organisation, adaptation or alteration of the information or data,

(b) retrieval, consultation or use of the information or data,

(c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d) alignment, combination, blocking, erasure or destruction of the information or data

Schedule 1

The first data protection principle

“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.”

Schedule 2

Conditions relevant for purposes of the first principle: processing of any personal data:

- "1. The data subject has given his consent to the processing. 2. The processing is necessary-
- (a) for the performance of a contract to which the data subject is a party, or
 - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary-
- (a) for the administration of justice,
 - (b) for the exercise of any functions conferred on any person by or under any enactment,
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. - (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
- (2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied."