

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 March 2012

Public Authority: The Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps)

1. The complainant has requested information about a crime of which he was allegedly the victim. The public authority refused to confirm or deny holding any information by virtue of section 40(5)(b). Following internal review it also added the exemption at section 30(3). The Information Commissioner considers that any information, if held, would be the complainant's 'personal data' as it would all relate to an alleged crime against him. If held, it would therefore be absolutely exempt under the Act by virtue of the exemption at section 40(1). The exemption provided by section 40(5)(b)(i) means that the public authority is not required to confirm or deny whether it holds any information under the Act. As the Information Commissioner finds that this has been correctly cited he has not considered 30(3). The Information Commissioner does not require the public authority to take any steps.

Request and response

2. On 1 September 2011, the complainant wrote to the public authority and requested information in the following terms:

"I have received an unsigned letter dated 23 August 2011 from [name removed] Borough Crime Management Unit. It bears reference number [number removed]. That is an incorrect number, it should be [number removed]."

The letter tells me that "all enquiries (about the crime against myself) have been exhausted" and also states that "It can be confirmed that at the point the blog was discovered, it was removed from the original server".

This cannot be true, the blog address www.[name removed].blogspot.com is still valid and is present on Google's server now. The content has been removed but the page that was registered by the criminal blogger still exists.

Please advise me under the terms of the Freedom of Information Act the date on which you contacted Google and their response when you asked them who their registered blogger was?

The letter also says "All [name removed] Council Computers have been subject to a vigorous audit". Please provide to me the schedule of all the [name removed] council's computers (desktop machines, laptops and mobile devices) belonging to staff, councillors and in libraries that were audited, including date of each audit and the nature of each audit.

Please confirm under the terms of the Freedom of Information Act the date on which you took a copy of [name removed] council's Apache or Windows server logs, the dates those logs spanned and the rank and qualifications of the Data Specialist to whom you sent it for analysis.

The obscene and hateful blog content was removed immediately after council Leader [name removed] and Chief Executive [name removed] were advised of its existence. Please advise under the Terms of the Freedom of Information Act if you interviewed either of them and if so the date of the interview, the rank of the police officer and whether a connection was admitted".

3. The public authority responded on 6 September 2011. It neither confirmed nor denied holding any information by virtue of the exemption in section 40(5) of the Act.
4. The complainant did not agree that the requested information was personal data and asked for an internal review.
5. Following its internal review the public authority wrote to the complainant on 27 October 2011. It maintained its position that it did not need to confirm or deny holding any information by virtue of section 40(5). It added the exemption at 30(3).

Scope of the case

6. On 2 November 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled.

Reasons for decision

Section 40 – personal information

7. Under section 40(1) information that is requested that constitutes the applicant's 'personal data' is exempt information. This exemption is absolute and requires no public interest test to be conducted. In addition, in relation to such information public authorities are not obliged to comply with section 1(1)(a) by virtue of section 40(5)(a).
8. Personal data is defined in the Data Protection Act 1998 (the "DPA") as information about a living individual who can be identified from that information, or from that information and other information in the possession of, or likely to come into the possession of, the data controller.
9. After careful consideration of the wording of the request, the Information Commissioner is satisfied that the complainant is, or would be, the subject of all of the information requested. This is because he has requested information about allegations made by him and the material requested would record details of his allegations. Therefore the information would identify him, be linked to him and would relate to issues involving his interaction with the police. The Information Commissioner considers that he is a 'data subject' within the meaning of the section 40(1) exemption and therefore it would be his personal data. Further, as section 40(1) would apply the public authority was not required to comply with section 1(1)(a) because section 40(5)(a) would apply.
10. The Information Commissioner further notes that the information requested, if held, would contain information about third parties, ie those who are the subject of any complaints that may have been raised. However, as he considers that the information is properly exempt by virtue of the absolute exemption at section 40(1) he has not gone on to consider whether section 40(2) – or indeed section 40(5)(b) – would be properly cited in respect of this information.

Other matters

11. The Information Commissioner notes that, in its initial refusal notice, the public authority advised the complainant of his right to request his 'personal data' under the terms of the DPA. The Information Commissioner considers that this was an appropriate step for it to take.

Right of appeal

12. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

13. 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.
14. Any notice of appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF