

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2012

Public Authority: The Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant asked the Metropolitan Police Service (MPS) to provide information about whether there were any records of complaints about anti-social behaviour at a named address during a specified time period. The MPS 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 'FOIA').
2. The Information 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. His decision therefore is that the MPS correctly refused the request for information under section 40(5)(b)(i) of the FOIA. The complaint is not upheld and the MPS is not required to take any steps.

Request and response

3. On 14 February 2011, the complainant wrote to the Metropolitan Police Service ('MPS') and requested information in the following terms:

"I would like to know whether there are records of complaints about anti-social behaviour by the resident(s) of [address redacted]. I would like to know when complaints were made and whether the complaints were made by residents of [address redacted]. I would also like details of the alleged anti-social behaviour. I am particularly interested in the period before April 2006. I understand that you cannot provide details of

complainants as this is prohibited under section 40 of the Act. I don't wish to know these details. I should explain that I am considering legal action against a third party who sold me my flat. This evidence is crucial to my case."

4. MPS responded on 22 February 2011. It stated that if any information was held, then it would be the personal data of the individuals who live at the specified address. It therefore applied the exemption contained in section 40(5)(b)(i) and refused to confirm or deny whether the requested data was held.
5. Following an internal review MPS wrote to the complainant on 22 March 2011 upholding its original decision and provided a more in-depth rationale for its decision.

Scope of the case

6. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
7. The complainant asked the Information Commissioner to consider that he only required a "Yes/No" response and was not interested in knowing the identity of any individual(s) involved.
8. The Information Commissioner has considered whether MPS properly applied the 'neither confirm nor deny' exemption to the request.

Reasons for decision

9. 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 Data Protection Act (DPA).
10. The Information 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?

11. 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."*

12. The Information Commissioner's guidance on his website expands on what constitutes 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."

13. MPS has argued that the way in which the request is worded clearly indicates that the complainant is seeking information which can be linked with a named individual(s). Although confirmation as to whether or not information is held about anti-social behaviour complaints would not itself disclose the names of those being complained about, it would still be possible for other members of the public living in the flats to identify those being complained about. Therefore, to comply with section 1(1)(a) of the FOIA would inevitably disclose information that would relate to named individual(s).
14. The Information Commissioner has determined that, if this information is linked to an individual, it will be that individual's 'personal data'. Therefore, the Information Commissioner is in agreement with the MPS view 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?

15. 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.

16. The Information Commissioner's considerations here focus on the issue of whether disclosure of the confirmation or denial would in general be fair to the relevant individuals.

Fairness

17. In establishing whether disclosure is fair, the Information Commissioner will look to balance the consequences of any release of personal data and the reasonable expectation of the data subject(s), with general principles of accountability and transparency.
18. The personal data that would potentially be disclosed here would relate to the subject(s) in a private capacity. This is significant in that previous decisions issued by the Information 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.
19. The Information Commissioner has considered whether the data subject(s) would have a legitimate expectation about whether information which may or may not confirm whether they had been the subject of complaints made to the police would be released. The view of the Commissioner on this point is that in general individuals would not expect information concerning whether complaints had been made about them to the police to be disclosed. Whilst similar information may become available at a later stage, during court proceedings for example, this would not be the case at the point that a complaint is made to the police. Given the distress that the release of this type of information could potentially cause, the view of the Commissioner is that the data subject(s) would hold a legitimate expectation that this would be held in confidence.
20. In considering whether the exemption contained within section 40(5)(b)(i) should have been applied to the request, the Information Commissioner has taken into account that FOIA is designed to be applicant blind and that disclosure should be considered in its widest sense – which is to the public at large. If information were to be disclosed it would, in principle, be available to any member of the public. A confirmation or denial in the circumstances of this case would reveal to the public information which is not already in the public domain and is not reasonably accessible to the general public, about whether the police had received complaints relating to the property specified in the request.
21. As indicated, the Information Commissioner has previously 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. In this case this concern is combined with the Information Commissioner's view that

individuals would have a reasonable expectation that information of this kind would not be disclosed.

Conclusion

22. On the basis of the above considerations, the Information Commissioner has determined that to confirm or deny whether the requested information is held would be unfair to the data subject(s). 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.

Right of appeal

23. 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

24. 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.
25. 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
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