

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 May 2012

Public Authority: The Chief Constable of Durham Constabulary
Address: Police Headquarters
Aykley Heads
Durham
DH1 5TT

Decision (including any steps)

1. The complainant has requested information about how the public authority dealt with one of his previous requests made under the FOIA. The public authority initially found this request to be "vexatious" under section 14 of the FOIA; however, during the Information Commissioner's investigation it advised that it now wished to rely on section 40(5) of the FOIA. The Information Commissioner agrees that the information, if held, would constitute the complainant's personal data and that the public authority should have cited section 40(5). The Information Commissioner does not require the public authority to take any steps.

Background

2. The complainant has made several related requests to various police forces. The Information Commissioner is considering four complaints in relation to these requests, the other case reference numbers being: FS50426097, FS50441123 and FS50426106.

Request and response

3. As a follow up to an earlier request made on 9 May 2011 (see decision notice FS50426106), on 2 July 2011 the complainant wrote to the public authority and requested information in the following terms:

"... please ... provide to me any documentation in relation to communication with any third party in respect of the questions contained in my original FOIA request".

4. On 19 July 2011 the public authority advised the complainant that it was treating his request as 'vexatious'. On the same day he asked for an internal review.
5. On 18 August 2011 the public authority advised that it was maintaining its position that the request was 'vexatious'.
6. During the course of the Information Commissioner's investigation the public authority advised that it wished to change its position. Having reconsidered it now found that it should have relied on the exemption in section 40(5) of the FOIA.

Scope of the case

7. On 17 November 2011 the complainant initially contacted the Information Commissioner to complain about various issues surrounding a number of information requests and the handling of his personal data.
8. The complainant has raised various issues which the Information Commissioner is not able to consider by way of a decision notice, many concerning the processing of his personal data and the way he believes the public authority has handled his requests under FOIA. The Information Commissioner has further elaborated on some of these issues in "*Other matters*" at the end of this notice.
9. The complainant asked the Information Commissioner to consider the public authority's application of section 14 to the request, which ordinarily he would do. However, as indicated above, the public authority has advised the Information Commissioner that it now wishes to rely on section 40(5) of the FOIA; this is therefore what the Information Commissioner will consider.

Reasons for decision

10. The Information Commissioner has a dual role of being regulator of the both the FOIA and the DPA. Therefore, if he considers that requests which have been dealt with under the remit of the FOIA should

properly have been dealt with under the terms of the DPA then he will use his discretion and deal with such issues appropriately.

Section 40 – personal information

11. 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 confirm or deny whether they hold the requested information, by virtue of section 40(5).
12. 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. The information would identify him, be linked to him and would relate to issues involving his interaction with the public authority and any other bodies. The Information Commissioner considers that he is a 'data subject' within the meaning of the section 40(1) exemption and therefore any information would be his 'personal data'. Further, as section 40(1) would apply the public authority was not required to comply with the obligation to confirm or deny whether it holds the information, since this would itself involve the disclosure of personal data about the complainant.

Other matters

13. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.

The handling of the request / internal review

14. The complainant has expressed dissatisfaction at the way he believes the public authority has handled his request at both refusal stage and internal review stage, stating: "... *as independent organisations the forces should be handling their own request, responses and internal reviews*". However, how a public authority chooses to deal with its responsibilities under FOIA is not something which the Information Commissioner can consider in a decision notice under section 50.
15. Additionally, the Information Commissioner notes the complainant's concerns about the handling of his personal data. However, such concerns fall within the Information Commissioner's role as regulator of the DPA and, where raised, he will write to the complainant about these separately.

Dealing with requests for personal data

16. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as the right of subject access.
17. When dealing with a request which consists of the applicant's own 'personal data' the Information Commissioner would expect a public authority to advise the applicant accordingly and apprise them of their rights under the DPA. Unfortunately this has not happened on this occasion as the public authority initially chose to rely on the exclusion at section 14. Such an exclusion does not supersede an applicant's rights under the DPA and the Information Commissioner would expect a public authority to advise an applicant accordingly. However, the Information Commissioner does note that the public authority has since dealt with a request made by the complainant under the DPA.

Right of appeal

18. 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

19. 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.
20. 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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