

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 September 2013

Public Authority: The Chief Constable of Thames Valley Police

Address: Thames Valley Police HQ

Oxford Road

Kidlington, Oxon

OX5 2NX

Decision (including any steps ordered)

1. The complainant has requested information, from the public authority, generated by a telephone call he had made to it. It refused to confirm or deny whether it held the requested information relying on section 40(5) of FOIA.
2. The Commissioner's decision is that the public authority correctly relied on section 40(5) to neither confirm nor deny it held the requested information.

Request and response

3. On 9 November 2012 the complainant requested information of the following description:
 - "Copies of emails, faxes, etc" regarding the logging of the complainant's telephone call to a ... (name redacted)... on the 9 November 2012.
4. On 8 January 2013, Thames Valley Police ("TVP") substantively responded by refusing (by reference to FOIA) to confirm or deny that it held the requested information.
5. The complainant requested an internal review on 20 January 2013. TVP sent him the outcome of its internal review on 11 March 2013. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 13 March 2013 to complain about the way his request for information had been handled. He specifically mentioned the delay for TVP to conduct the internal review. The Commissioner addresses this in the Other Matters section at the end of this decision notice.

Reasons for decision

7. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities. These are:
 - the duty to inform the applicant whether or not requested information is held and, if so,
 - the duty to communicate that information to the applicant.
8. Section 40 of FOIA states:
 - (1) 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.
 - (5) The duty to confirm or deny 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)...
9. Accordingly where data subjects request information that is their personal data, albeit it comprises personal data of other data subjects as well, the public authority does not have to confirm or deny under FOIA that it holds the information. This means that such a request can properly be refused under section 40(5) as the public authority has no obligation to confirm or deny that the information is held. (Disclosures under FOIA constitute disclosures into the 'public domain'; the appropriate route of access to one's own personal data is via the subject access provision at section 7 of the Data Protection Act 1998.)
10. Personal data is defined by the DPA 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 intention of the data controller or any other person in respect of the individual.'

11. The Commissioner's guidance on 'Access to information held in complaints files'¹ notes that a complaint file may hold a mixture of personal data and information that is not personal data, for example a policy statement.
12. The Commissioner is satisfied that at least some of the information requested by the complainant, if held by TVP, would constitute his own personal data. This is because the complainant would be identifiable from the information that has been requested, containing as it presumably would his name and contact details.
13. The Commissioner accepts that the parts of the requested information, if held, which would be the complainant's own personal data would be exempt from disclosure on the basis of section 40(1) of FOIA because it comprises the complainant's own personal data. Furthermore, as section 40(1) of FOIA applies to such information, TVP was correct to neither confirm nor deny whether it held any of the requested information under FOIA by virtue of section 40(5)(a).

Other matters

14. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
15. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Practical_application/access_to_information_held_in_complaint_files.ashx

take longer but in no case should the time taken exceed 40 working days.

16. The Commissioner does not consider this case to be 'exceptional', so he expresses his concern that it took over 20 working days for the internal review to be completed.

Right of appeal

17. 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

18. 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.
19. 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

Alexander Ganotis
Group Manager – Complaints Resolution
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