

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 March 2014

**Public Authority:** Merseytravel  
**Address:** 1 Mann Island  
Mann Island  
Liverpool  
L3 1BP

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Merseytravel relating to the number of fixed penalty notices issued by a specific sergeant and by the Mersey Tunnel Police for a specified period. The Commissioner's decision is that Merseytravel has corrected applied the exemption for personal data at section 40(2) of the FOIA. He does not require any steps to be taken.

#### **Request and response**

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2. On 11 July 2013, the complainant wrote to Merseytravel and requested information in the following terms:
  - "1. In relation to [sergeant details redacted], how many fixed penalty notices has he issued for 6 months prior to the 25<sup>th</sup> May 2013 and for which offences?
  2. How many fixed penalty notices have been issued by Mersey Tunnel Police for the same period and for which offences?"
3. Merseytravel responded on 15 August 2013 and provided the full breakdown of the information requested at point 2 of the request but refused to provide the information in relation to point 1 citing the exemption at section 40(2) of FOIA.

4. The complainant requested an internal review on 21 August 2013. Merseytravel responded on 11 September 2013 and maintained its original position.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 26 September 2013 to complain about the way his request for information had been handled. He stated that should the matter ever come before the Magistrates Court, Mersey Tunnels Police would be obliged to furnish the information requested.
6. The Commissioner has considered the application of the exemption for personal data at section 40(2) of the FOIA to the information held by the Merseytravel within the scope of point 1 of the request.
7. The Commissioner notes the complainants point regarding information that may be disclosable in court. However, he does not consider that a decision he makes under section 50 of the FOIA has any affect on court disclosure rules which are a separate regime from the FOIA.

### **Reasons for decision**

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#### **Section 40 - personal information**

8. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

#### **Is the withheld information personal data?**

9. Personal data is defined by the DPA as any information relating to a living and identifiable individual. 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. The withheld information in this case comprises of how many fixed penalty notices the sergeant has issued and for what offences. The Commissioner is satisfied that information relating to the sergeants performance in his role is personal data as defined in the DPA.

### **Would disclosure breach the Data Protection Principles?**

10. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

### **Nature of the information and reasonable expectations**

11. The information relates to a sergeants performance as to how many fixed penalty notices ha has issued during a defined period. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible employer and data controller, will not disclose certain information. He considers that information relating to an individuals' employment performance will attract a strong general expectation of privacy.
12. On the other hand, the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the FOIA. He believes that a distinction can be drawn about the levels of information which junior staff should expect to have disclosed about them compared to what information senior staff should expect to have disclosed about them. This is because the greater the seniority of a member of staff, the greater the likelihood that they will have responsibility for influencing or making policy decisions and/or decisions which involve the expenditure of public funds.
13. In this case, Merseytravel have explained that although the role of sergeant is a 'frontline' role, the officer does not have any responsibility for explaining the actions or policies of the organisation and that the particular sergeant did not consider that his role would be subjected to this level of external scrutiny.
14. Taking the above into consideration, the Commissioner considers that the sergeant would have had a reasonable expectation that the specific details of his employment performance would not enter the public domain.

### **Consequences of disclosure**

15. Merseytravel has said that this sergeant should not face public scrutiny as to his day to day performance. It said that release of the requested data could have an adverse effect on the individuals employment if public scrutiny deemed the individual to be 'too officious' or 'too lenient' when compared to peers in the same force and beyond. It also said that disclosure of the requested information could have unjustified effects on the work of the wider force because if officers are aware that their individual performances are subject to public scrutiny, it may impact upon the number of notices issued in that the officers could become too focused on meeting public expectation rather than issuing notices when necessary.
16. The Commissioner considers that disclosure would amount to an infringement into the privacy of the sergeant which has the potential to cause damage and distress, particularly as he has found that disclosure of the information requested would not have been within the sergeants reasonable expectations.

**Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

17. There is always some legitimate public interest in the disclosure of information held by public authorities. This promotes the general aims of improving transparency and accountability. This in turn helps the public to understand more about the decisions made by public authorities.
18. In this case, the Commissioner recognises that there is a legitimate public interest in knowing the amount of fixed penalty notices issued by a particular sergeant.
19. Merseytravel has said that the interest in disclosure in this case is the private interest of the requester and not the interest of the world at large. The Commissioner is aware that the requester disputed a fixed penalty notice issued to him and notes that he has said that the refusal to provide the information in this case restricts the preparation of his defence should the case ever come to court.
20. The Commissioner's guidance on the personal data exemption<sup>1</sup> states that;

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf)

"The private interests of the requester, or even of a small group of people, are not relevant in this context. Section 40(3) refers to "the disclosure of the information to a member of the public", not disclosure to the requester specifically. Furthermore, as disclosure under FOIA is considered to be disclosure to the public at large and not to the individual applicant, it is the legitimate interests of the public in disclosure that must be balanced against the interests of the data subject."

21. Although the Commissioner can appreciate why the information is of particular interest to the complainant, there is no evidence available to the Commissioner indicating that there is sufficient wider legitimate public interest which would outweigh the rights and freedoms of the individual sergeant. The complainant's wish to access this information is a personal need.
22. The Commissioner has also taken into account Merseytravel's submission that any public interest is satisfied with the disclosure of the force-wide information that it provided in response to point 2 of the request.

### **Conclusion on the analysis of fairness**

23. Taking all of the above into account, the Commissioner concludes that it would be unfair to the sergeant concerned to release the requested information. Disclosure would not have been within the sergeant's reasonable expectations and the loss of privacy could cause unwarranted distress and interference with the individual's rights, freedoms and legitimate interests. He acknowledges that there is a legitimate interest in knowing the amount of fixed penalty notices issued by a particular sergeant but does not consider that this outweighs the individual's strong expectations of, and rights to, privacy.
24. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that Merseytravel was entitled to withhold the information under the exemption at section 40(2).

## Right of appeal

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25. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**