

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 April 2014

**Public Authority:** Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

#### Decision (including any steps ordered)

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1. The complainant requested information from the Metropolitan Police Service (MPS) relating to a complaint he had made. The MPS refused to either confirm or deny holding information within the scope of the requests citing section 40(5) of FOIA (personal information).
2. The Commissioner's decision is that the MPS was correct to neither confirm nor deny holding information within the scope of the requests.
3. The Commissioner requires no steps to be taken.

#### Request and response

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4. On 4 November 2013 the complainant wrote to the MPS and requested information in the following terms:

*"Could I please have copies of the Police Officers comments to my complaint".*

5. On 26 November 2013 he made a further request for information:

*"Can I have a full copy of the unedited version of the two Police Officers comments to my complaint.*

*Could you also sent [sic] me a copy of the Met Police Policy for*

*dealing with complaints and a copy of the Met's Professional Standard for Pcs".*

6. The complainant asked the MPS to review its handling of his two requests for information on 28 November 2013.
7. The MPS provided a single response to both requests on 30 December 2013. It refused to confirm or deny whether it held information within the scope of the requests about comments made by officers in relation to a complaint. It cited section 40(5) (personal information) as its basis for refusing to confirm or deny holding that information. It told the complainant that, if relevant information were held, it would be considered personal information. It explained how to make a subject access request in accordance with the Data Protection Act 1998 (DPA).
8. With regard to that part of his request for information about its policy and standards, MPS provided the complainant with a redacted copy of the MPS Policy for dealing with complaints. It refused to provide him with a copy of the MPS's Professional Standards for PCs on the basis that section 21 of FOIA (information accessible by other means) is engaged. However, it directed him to where that the information is publically available.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 3 January 2014 to complain about the way his requests for information had been handled, specifically MPS's refusal to confirm or deny whether it holds relevant information.
10. The Commissioner considers the scope of his investigation to be with respect to the MPS's application of section 40(5).

### **Reasons for decision**

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#### *Section 40 personal information*

11. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.

12. Section 40(1) of FOIA states that:

*"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".*

13. The DPA defines personal data 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."*

14. The two main elements of personal data are that the information must 'relate' to a living person and that the 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 or has them as its main focus.

15. Having considered the wording of the requests in this case the Commissioner is satisfied that the complainant is, or would be, the subject of this requested information. This is because the information he has requested is, by its own definition, about or connected to the complainant.

16. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.

17. In relation to such information, the provisions of section 40(5) mean that the public authority is not required to comply with the duty to confirm or deny that the information is held, as 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).

18. In correspondence with the complainant, the MPS told him:

*"... (FOIA) is designed to place information into the public domain, that is, once access to information is granted to one person under the Act, it is then considered public information and must be communicated to any individual should a request be received. Any information is also placed on the MPS FoIA Disclosure Log..."*

19. Explaining the principle of neither confirming nor denying whether personal information is held, the MPS told the complainant:

*"This principle would also be appropriate to requests seeking confirmation of whether individuals have been subject to any incident in the circumstances you describe, as to indicate as such whether they had or had not, would similarly breach their rights to privacy".*

20. The Commissioner is satisfied that even confirming whether it holds any information under the terms of the FOIA means that the MPS would be confirming, to the world at large, whether it holds a complaint raised by this complainant. He therefore considers that the section 40(5) exemption was relied upon correctly by the MPS in this case.

### **Other matters**

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21. In the Commissioner's view, this decision will not disadvantage the applicant. He considers that an applicant wishing to access their own personal data will still be able to pursue this right under the DPA. Furthermore, he considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act. In this respect, he is satisfied that the MPS explained clearly to the complainant what information it required from him in order to proceed with a subject access request.

## Right of appeal

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22. 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)

23. 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.
24. 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**