

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

### **Decision notice**

**Date:** 7 August 2014

**Public Authority:** Chief Constable of the Police Service of Northern Ireland

**Address:** 65 Knock Road  
Belfast  
BT5 6LE

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

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1. The complainant requested information relating to an employee of the Police Service of Northern Ireland (PSNI). PSNI refused to confirm or deny whether it held this information and cited the exemption provided by section 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that PSNI cited this exemption correctly and so it was not obliged to confirm or deny whether it held the requested information.

### **Request and response**

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3. On 6 October 2013 the complainant wrote to PSNI and requested information in the following terms:

*"I request the following information in relation to a complaint I made regarding Temporary Chief Inspector Derek Martin's staff officer regarding a contested letter typed (created) onto TRIM on 23 February 2012 and back dated to 19 January 2012.*

*i. When requested by Chief Superintendent Grimshaw for a copy of the contested letter on 23 February 2012 which was then created onto TRIM did the staff officer inform any other police or civilian staff of her actions [and] if so who and on what date?*

*ii. Did the staff officer declare back dating the contested letter dated 19 January 2012 to the Police Ombudsman during his first interview with her in April / May / June 2012 [and] if not why not?*

*iii. When did the staff officer inform the Police Ombudsman of her actions on 23 February 2012?*

*iv. The staff officer alleges that she telephoned me regarding notes / minutes of a meeting that took place on 2 April 2012. Can the staff office provide the date of this call and the telephone number used to contact me?*

*v. A letter to me from Chief Superintendent dated 25 July 2013 states that 'I have this date referred the papers to the staff member's current Head of Human Resources in order to finalise any residual action considered necessary'. What action has been taken regarding the staff officer's actions of creating a letter dated 23 February 2012 and back dating it to 19 January 2012?*

*vi. Is this action relating to official public records an offence?"*

4. The PSNI responded on 31 October 2013. PSNI refused to confirm or deny whether it held this information and cited the exemptions provided by sections 30(3) (information held for the purposes of an investigation) and 40(5) (personal information) of the FOIA.
5. The complainant responded during November 2013 and requested an internal review of the refusal of his request. After a very lengthy delay, PSNI responded with the outcome of the internal review on 15 May 2014. The conclusion of this was that the refusal to confirm or deny under sections 30(3) and 40(5) was upheld.

## **Scope of the case**

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6. The complainant contacted the Commissioner initially on 16 March 2014 to complain at that stage about the failure by PSNI to complete the internal review within a reasonable timescale. The ICO contacted PSNI at that stage to ensure that the internal review was completed.
  7. Following receipt of the internal review outcome, the complainant contacted the Commissioner again on 19 May 2014. At that stage the complainant confirmed that he wished the Commissioner to investigate the refusal to confirm or deny under sections 30(3) and 40(5).
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## Reasons for decision

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### Section 40(5)

8. PSNI has cited section 40(5), which provides an exemption from the duty to confirm or deny whether requested information is held if to do so would involve the disclosure of personal data and the disclosure of that personal data would be in breach of any of the data protection principles. Consideration of this exemption has two steps: first, confirmation or denial must involve the disclosure of personal data. Secondly, that disclosure of personal data must be in breach of at least one of the data protection principles.
9. Covering first whether first whether confirmation or denial in response to the complainant's requests would involve the disclosure of personal data, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

*"personal data' means 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".*
10. The Commissioner considers it clear that the wording of the complainant's request means that confirmation or denial would relate to the PSNI staff member to whom the requests refer.
11. As to whether that individual would be identifiable through confirmation or denial, this is less clear. This individual is not directly identifiable through the wording of the request, so the question here is whether there would be any information available to any other person that could lead to them being able to identify to whom the confirmation or denial relates.
12. From the materials available to the Commissioner, it is not clear whether the complainant is aware of the identity of the PSNI staff member specified in the request. The Commissioner is of the view, however, that other individuals would be able to identify the relevant PSNI staff member, such as PSNI colleagues of that individual. On that basis, the Commissioner accepts that providing a confirmation or denial in response to the complainant's requests would involve the disclosure of personal data.

13. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which provides that personal data shall be processed fairly and lawfully, and in particular on whether disclosure would be in general fair to the data subject.
14. Consideration was given to the question of whether the personal data disclosed through the confirmation or denial would be sensitive according to the definition given in section 2 of the DPA. This definition includes personal data relating to the alleged commission of an offence. PSNI did not raise the issue of sensitive personal data in its representations to the ICO and it provided only a very brief reasoning as to why it believed that section 30(3) was engaged, which did not address whether, if PSNI did hold any information falling within the scope of the request, this would relate to the alleged commission of an offence. As a result, the Commissioner has taken the approach that the personal data in question would not be sensitive according to the definition in section 2 of the DPA
15. The personal data that would be disclosed here would most likely relate to the data subject in a professional capacity. This is significant in that the Commissioner has made a clear distinction when issuing decisions about requests for information relating solely to professional matters and information relating to an individual outside their professional capacity. The Commissioner's position has been that he considers it far less likely that disclosure of personal data relating to professional matters would be unfair than disclosure of information relating to an individual in a non-professional capacity.
16. It is important to consider what expectation of disclosure the individual would hold. The Commissioner considers it reasonable that employees of a public authority would have an expectation that information about complaints made against them individually, including whether or not any complaints have been made, would not be disclosed, even without any specific notification of this.
17. The potential for detriment to the named individual through disclosure of information relating to complaints made against them is a significant issue here. The Commissioner's previous Decision Notice FS50086498 includes this argument about the issue of detriment:

*"To release the fact that a complaint has been made against an employee may lead to assumptions being made about that employee's competence. However, the complaint may be unsubstantiated or malicious, or certain employees may be involved more frequently with difficult decisions that are more likely to result in dissatisfaction.*

*Therefore, releasing this information does not aid transparency or accountability but could be misleading and unfair to particular employees."*

18. This argument also applies in this case. A counter argument can be made that an employee of a public authority should have an expectation of accountability. However, PSNI has demonstrated its commitment to openness and accountability through publishing information on its website concerning complaints made about it and how these were addressed. The Commissioner considers this significant as it demonstrates that PSNI has attempted to be open and accountable about the issue of complaints made about its service and any disciplinary action within the restriction of not wishing to disclose details of complaints made about individual employees. The Commissioner also notes that the accountability of PSNI is enforced by the Police Ombudsman for Northern Ireland.
19. As mentioned previously, the Commissioner has taken a clear line that disclosure of personal information relating solely to an individual in a professional capacity would be less likely to be considered unfair than disclosing information about an individual's private life. However, the Commissioner has also concluded in previous cases that disclosure of information about complaints made against individual employees would be unfair, as the employees would have a reasonable expectation that such information would not be disclosed, and because of the potential detriment that could result from disclosure of information of this kind. It is also of significance that PSNI has demonstrated transparency on its website through publishing details about complaints and discipline.
20. For these reasons, the conclusion of the Commissioner is that disclosure of the confirmation or denial would be unfair and in breach of the first data protection principle. His overall conclusion is, therefore, that the exemption provided by section 40(5) of the FOIA is engaged and PSNI was not obliged to disclose the confirmation or denial. Given this conclusion, it was not necessary to go on to also consider section 30(3).

## **Other matters**

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21. As recorded above, there was a severe delay to the completion of the internal review. PSNI must ensure that there is no repetition of this delay in relation to any other information requests. A record has been made of this delay and this issue may be revisited should evidence from other cases suggest that this is necessary.

## 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: <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**  
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