

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 18 December 2012

Public Authority: Police Service of Northern Ireland

Address: PSNI Headquarters
65 Knock Road
Belfast
BT5 6LE

Decision (including any steps ordered)

1. The complainant requested information relating to a previous information request he made to the Police Service of Northern Ireland (the PSNI). The PSNI provided all of the requested information except for the names of some PSNI staff, which were withheld under section 40(2) of the FOIA. The Commissioner's decision is that the PSNI was entitled to withhold this information.

Request and response

2. On 25 October 2011 the complainant requested the following information from the PSNI:

"Please supply me with all documents and other information concerning above ie all correspondence, written notes and records to and from the PSNI's Central FOI Unit including copy of their final response."
3. The Commissioner considers this to be a "meta-request", ie, a request about the handling of a previous request. In this case the request was for information about the handling of a request made by the complainant to the PSNI on 3 August 2011.
4. The PSNI responded to the request of 25 October 2011 on 2 December 2011 and advised the complainant that he could make a subject access request under the Data Protection Act 1998 (the DPA) for his personal data, as this was exempt from disclosure under the FOIA by virtue of section 40(1). The PSNI advised that the remainder of the requested

information was personal data relating to other individuals, and therefore exempt under section 40(2) of the FOIA.

5. The complainant requested an internal review of this decision on 5 December 2011, but it was not completed until 8 May 2012. At this stage the PSNI provided the complainant with all the information previously withheld under section 40(1) – ie the information the complainant would have been entitled to receive under the DPA. The PSNI withheld the names and job titles of some PSNI staff under section 40(2) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 11 May 2012 to complain about the way a number of requests for information had been handled. Having considered the correspondence the Commissioner was of the view that the complainant had only provided sufficient relevant information in respect of one request, ie that of 25 October 2011. Therefore the Commissioner explained to the complainant that he could only investigate the PSNI's handling of this request.
7. During the course of the Commissioner's investigation the PSNI agreed to disclose the previously withheld job titles to the complainant. Therefore the Commissioner's decision in this case relates only to the remaining withheld information: the names of various PSNI staff (except the two names which were disclosed on 8 May 2012).

Reasons for decision

Section 40(1)

8. Under section 40(1) of the FOIA, an applicant's personal data is absolutely exempt from disclosure into the public domain. This is because individuals have a right to request their personal data under section 7 of the DPA. In this case the Commissioner is satisfied that section 40(1) was correctly applied to the complainant's personal data, although he notes that all the complainant's personal data has been provided to the complainant by the PSNI.

Section 40(2)

9. The PSNI provided all the job titles and the names of two post holders to the complainant. These names were disclosed because they are both in the public domain, and on this basis the individuals provided their

consent to disclosure. The PSNI maintained that the remainder of the withheld information, ie the names of the other staff, was exempt under section 40(2) of the FOIA.

10. Section 40(2) of the FOIA states that a public authority is not obliged to disclose information if to do so would:
- constitute a disclosure of personal data, and
 - this disclosure would breach any of the data protection principles or section 10 of the DPA.

Would disclosure of the requested information constitute a disclosure of personal data?

11. The DPA defines personal information 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 of the data controller or any person in respect of the individual."

12. The Commissioner is satisfied that the withheld information in this case constitute personal data relating to PSNI staff. The individuals can be identified by their names, and in the context of the requested information the names further identify the individuals as working for the PSNI at the time of the request.

Would disclosure of the withheld information breach any of the data protection principles?

13. The PSNI argued that disclosure of the withheld information would contravene the first data protection principle, as disclosure into the public domain would be unfair on the individuals in question.

The first data protection principle

14. The first data protection principle has two main components. They are:
- the requirement to process all personal data fairly and lawfully; and
 - the requirement to satisfy at least one DPA Schedule 2 condition for the processing of all personal data.

Would disclosure of the information be fair?

15. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. He has then balanced these against the general principles of accountability, transparency and legitimate public interest in disclosure.
16. The Commissioner has also considered his own guidance for public authorities when considering requests for personal information of their employees¹. The Commissioner's guidance states that the seniority of the individual acting in a public or official capacity should be taken into account when personal data about that person is being considered for disclosure under the FOIA. This is because the more senior a member of staff is, the more likely it is that they will be responsible for making influential policy decisions and/or decisions relating to the expenditure of public funds. The Commissioner is generally of the view that senior staff are more likely to be exposed to greater levels of scrutiny and accountability and there should therefore be a greater expectation that some personal data may need to be disclosed in order to meet that need.

Expectations of the individuals concerned

17. The PSNI advised the Commissioner that it does not routinely disclose the names of its staff unless they are in public facing roles or are at a senior rank (equivalent to civil service grade 5 and above). Therefore the PSNI argued that junior staff would have no expectation that their names would be disclosed into the public domain. Having inspected the withheld names the Commissioner is satisfied that the individuals are neither senior nor do they occupy public facing roles. The PSNI also advised the Commissioner that the individuals whose names were withheld were not responsible for making decisions in relation to the complainant.
18. In light of the above the Commissioner is satisfied that the individuals whose names were withheld would have no expectation that their personal information would be disclosed into the public domain. The Commissioner notes however that this does not in itself mean that the information should not be disclosed.

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http://www.ico.gov.uk/for_organisations/freedom_of_information/guide/~media/documents/library/Freedom_of_Information/Practical_application/INTERPRETING_A_REQUEST.ashx

Consequences of disclosure to the individuals

19. The PSNI advised the Commissioner that it did not consider it necessary to consult the individuals whose names were ultimately withheld. The PSNI was already of the view that this information should not be disclosed because to do so would wrongly identify individuals as being accountable or responsible for decisions made, when in fact they had no such responsibility.
20. The PSNI also reminded the Commissioner that PSNI staff were constantly being advised to be vigilant with personal security, given the higher threat level in Northern Ireland as compared with England, Scotland and Wales. The PSNI understood that individuals had genuine concerns about disclosing information which identified them as PSNI staff.

General principles of accountability, transparency and legitimate public interest in disclosure

21. The Commissioner is of the view that "meta-requests" do not differ in status or importance from any other type of request. Requesters will often have a legitimate interest in knowing how their request has been handled by a public authority. In this case the Commissioner understands that the complainant has made a large number of requests to the PSNI and has complained about many of the responses. Therefore the Commissioner understands that the complainant may have reasons for wanting to know how the PSNI deals with the requests he makes. The Commissioner is however mindful that he must consider the legitimate public interest in disclosure, rather than merely the complainant's personal interest.
22. In this case the Commissioner notes that the PSNI has disclosed the substantive content of the requested information to the complainant under the FOIA, and has also provided him with his personal information under the DPA. Therefore the Commissioner is of the view that the PSNI has provided the complainant with information to inform him as to how his request was handled.
23. However the Commissioner makes a distinction between the information provided to the complainant, and the information that has been withheld. The Commissioner is not satisfied that disclosure of the names of PSNI staff is necessary to meet the legitimate public interest, particularly given that all the job titles, which indicates the level and seniority of staff, have been disclosed. The Commissioner also considers it relevant that none of the individuals in question played an active role in making decisions affecting the complainant. This also limits

considerably the public interest in disclosing these names into the public domain.

24. In addition, given that the complainant's name is exempt under section 40(1) and cannot be disclosed, disclosure of the withheld names would only inform the public that the individuals were involved in dealing with an information request. It would not provide any public insight into the PSNI's attitude towards the complainant.
25. The Commissioner has concluded that there is a very limited public interest in disclosure. Nevertheless this public interest must be considered against any unwarranted prejudice to the rights and freedoms or legitimate interests of the individuals. In this case the Commissioner is mindful of the genuine concerns of PSNI staff about disclosure of their personal information into the public domain. Given that any public interest in disclosure is so limited, the Commissioner concludes that disclosure would clearly be unnecessary as well as unfair to the individuals in question.
26. The Commissioner therefore finds that section 40(2) is engaged in relation to the withheld names of PSNI staff.

Procedural requirements

Section 10: Time for compliance

Section 17(1): Refusal notice

27. Section 1(1)(a) of the FOIA requires a public authority to inform the applicant in writing whether or not it holds the requested information. Section 1(1)(b) requires the authority to communicate the requested information to the applicant. Section 10(1) states that the authority must comply with section 1 within 20 working days.
28. Section 17(1) provides that, where a public authority seeks to rely on an exemption, it is required to issue a refusal notice to the complainant within 20 working days. In this case the PSNI failed to respond to the complainant's request within the statutory timescale. The refusal notice was issued 29 working days after the request was received, which is the equivalent of two working weeks over the time for compliance. Therefore the Commissioner finds that the PSNI failed to comply with section 10(1) in relation to the time taken to comply with section 1(1)(a) and failed to comply with section 17(1) in relation to the delayed refusal notice.

Other matters

29. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern:

The internal review

30. The Commissioner has considered the time taken by the PSNI to conduct an internal review. Paragraph 39 of the code of practice issued under section 45 of the FOIA advises that a complaints procedure should be designed to allow prompt determination of complaints. In addition, the Commissioner's published guidance sets out his view that that a reasonable time for completing an internal review is 20 working days from the date of the request for review². There may be a small number of cases which involve exceptional circumstances where it may be reasonable to take longer, but in no case should the total time taken exceed 40 working days.
31. In this case the complainant requested an internal review on 5 December 2011, but it was not completed until 8 May 2012. This clearly exceeds the timescale recommended above. The PSNI explained to the Commissioner that it had been reorganising its request handling functions at the time of the request for internal review, and this had led to delays. The Commissioner notes that the PSNI did apologise to the complainant, but is of the view that this level of delay is unacceptable, and expects the PSNI to take steps to avoid it recurring.

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http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/TIME_LIMITS_INTERNAL_REVIEWS.ashx

Right of appeal

32. 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:

33.

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

34. 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.

35. 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
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