

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 December 2016

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about herself from the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny holding any information by virtue of sections 40(5)(a) and 40(5)(b)(i) (personal information) of the FOIA. The Commissioner's decision is that the MPS was entitled to rely on section 40(5)(a) as any information which may be held would relate to the complainant personally. No steps are required.

Request and response

2. On 8 April 2016 the complainant wrote to the MPS and requested information in the following terms:

"How much has been spent in man hours and money by the CPS and the police since 2010 on actions that have been NFA'd by the CPS or at court against me

These include

BEXLEY MAGISTRATES - false allegations of harassment

KINGSTON CROWN - false allegations of fraud

HOLBORN POLICE STN - false allegations of child neglect

CAMDEN POLICE STN - false allegations of stealing my own furniture

CHARING CROSS POLICE STATION - false allegations of harassment

And any and all others.

I also require the charging sheet and decision to charge documentation as well as all time sheets and itemised hours and payment against all these and any other charges.

I also require a full list of costs and time spent by the CPS and other barristers from 2013 to date on the matters currently at the Crown Court at [location removed] and before that in these same matters at [location removed] Magistrates. In particular An itemised bill of costs of all CPS prosecutors and barristers including the junior barrister currently "helping" the main CPS barrister, [name removed] since this matter began, all actions concerning the vacating of the guilty plea in August 2013 and all matters concerning the matter now with the Court of Appeal. I require this information and a full subject access request from the police for the purposes of my trial".

3. On 11 April 2016 the MPS wrote to the complainant acknowledging the request and advising her of her rights to request her personal data under the subject access provisions of the Data Protection Act 1998 (the "DPA"). It included details of the appropriate application form needed for making such requests.
4. On 13 April 2016 the MPS responded to the FOIA request. It would neither confirm nor deny holding any information and cited section 40(5) of the FOIA. It again advised her that:

"Where an individual is requesting his or her own personal data the information is always exempt. Such information can be requested under other legislation, namely the Data Protection Act, 1998".

5. The complainant requested an internal review stating:

"This is not acceptable. I require the information requested as part of a case against the police to evidence vexatious allegations and malicious prosecutions. These are required also as part of an ongoing case at the Crown Court at [location removed] where the OIC is attempting to bring in my complaints against the MPS as part of a bad character application although many of the complaints have been upheld. I don't agree with the reasons for non disclosure. This is information pertaining to me. I want it".

6. Following an internal review the MPS wrote to the complainant on 26 April 2016. It maintained its position, citing sections 40(5)(a) and

40(5)(b)(i), and again drew the complainant's attention to her rights under the DPA.

Scope of the case

7. The complainant contacted the Commissioner on 30 September 2016 to complain about the way her request for information had been handled. The Commissioner required further information from the complainant which was received on 23 November 2016.
8. The Commissioner will consider the application of section 40(5) below.

Reasons for decision

9. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.

Section 40(5) – personal information

10. The exemption at section 40(5) of the FOIA provides that a public authority does not have to confirm or deny whether requested information is held if to do so would constitute a disclosure of personal data.
11. Section 40(5)(a) provides that the duty to confirm or deny does not arise in relation to information that falls, or would fall if it were held, within the scope of section 40(1) of the FOIA. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because individuals may request their personal data under a separate legislative access regime, namely the right of subject access under section 7 of the Data Protection Act 1998 (DPA).
12. Section 40(1) is an absolute exemption, meaning that if it applies there is no requirement to go on to consider whether disclosure would nevertheless be in the public interest.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

13. Section 1(1) of 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 likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual".

14. In her guidance on section 40¹ of the FOIA, the Commissioner expanded on what constitutes personal data:

"For data to constitute personal data, it must relate to a living individual, and that individual must be identifiable. In considering whether information requested under FOIA is personal data, the public authority must decide whether the information satisfies both parts of the definition."

15. The complainant's request is clearly for information about herself as evidenced when she requests an internal review by stating: *"This is information pertaining to me. I want it"*. The Commissioner therefore considers that this is an approach for information which can be linked to a named, living individual - the complainant herself. It is therefore her personal data, and falls within the scope of section 40(1).
16. It follows from this that to comply with section 1(1)(a) of FOIA (that is, to either confirm or deny holding the requested information) would put into the public domain information about the existence or otherwise of various criminal cases and costs which may be linked to the complainant; this would constitute a disclosure of personal data that would relate to the complainant.
17. In considering whether the MPS should have applied section 40(5)(a), the Commissioner has taken into account that the FOIA is applicant blind and that any disclosure would be to the world at large. If the information were to be disclosed, it would be available to any member of the public, not just the complainant. Confirmation or denial in the circumstances of this case would reveal to the general public information

¹ https://ico.org.uk/media/for-organisations/documents/1206/neither_confirm_nor_deny_in_relation_to_personal_data_and_regulation_foi_eir.pdf

about the complainant which is not already in the public domain and which is not reasonably accessible to it. The Commissioner therefore considers that the exemption was correctly relied upon by the MPS in this case.

18. The Commissioner further notes the citing of section 40(5)(b)(i) by the MPS in relation to other parties, specifically a named barrister. However, as she has already determined that the whole request is covered by section 40(5)(a) she has not found it necessary to consider this exemption.

Other matters

19. The Commissioner notes that the MPS has previously advised the complainant of her access rights under the DPA and has provided access to the necessary form for requesting such information, albeit that the complainant did not act on this (it has also re-sent a copy during this investigation). The Commissioner considers this to be best practice by a public authority.
20. The Commissioner also notes that much of the request seems to relate specifically to the CPS, including any information which may relate to the barrister named by the complainant. She would therefore suggest to the complainant that, if she has not already done so, she should make a subject access request under the terms of the DPA to the CPS for any information that it may hold about her.

Right of appeal

21. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Carolyn Howes
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