



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Information Rights**

**Tribunal Reference:** EA/2013/0076  
**Appellant:** Gilbert Goddard  
**Respondent:** The Information Commissioner  
**Judge:** NJ Warren  
**Member:** J Nelson  
**Member:** P Taylor  
**Hearing Date:** 17 July 2013  
**Decision Date:** 30 August 2013

**DECISION NOTICE**

1. On 8 February 2012 Mr Goddard made a request under the Freedom of Information Act (FOIA) of Derbyshire Police. He said:-

“Could you please supply me with details of any criminal convictions recorded on your records for the following police officers ... including the offence descriptions and dates of convictions and in each case their description(s), date(s) and conviction(s).”

The request named three police officers.

2. Derbyshire Police refused the request and refused to say even whether they held the information. Mr Goddard complained to the Information Commissioner (ICO) unsuccessfully and he now appeals to the Tribunal against the ICO decision.
3. It is convenient to deal first with a small factual issue. In the course of the ICO investigation Derbyshire Police claimed for the first time that they had no knowledge of one of the three named officers. The ICO accepted this on the ground that he had seen no evidence to corroborate Mr Goddard’s statement to the

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contrary. It seems to us that the ICO fell into error when relying on the lack of corroboration for disbelieving Mr Goddard. This is because it does not appear that Mr Goddard was ever told about this new assertion from Derbyshire Police, let alone asked to produce some corroboration of his own statement.

4. Mr Goddard has produced corroboration to the Tribunal and we would proceed on the basis that all three named persons were police officers. The error in the ICO's procedure or reasoning is not however material because it simply means that the third case is indistinguishable from the other two.
5. Usually public authorities have to at least confirm or deny that they hold information. A request such as the one made by Mr Goddard, however, presents difficulties. If the public authority denies holding the information then that is to answer the request, perhaps revealing personal data which should be protected from disclosure. If the public authority confirms that such information is held then that itself may also be a disclosure which breaches one of its employee's rights to privacy under the Data Protection Act (DPA). The ICO therefore held that in these circumstances Derbyshire Police were entitled to rely on Section 40(5)(b)(i) FOIA. The effect of this section is that the duty "to confirm or deny" does not arise if the confirmation or the denial would contravene any of the data protection principles in the DPA.
6. A certain artificiality therefore arises in the resolution of the case. For example, the ICO refers to the "reasonable expectations of the data subjects", something which surely depends on the actual content of the data, but this is unavoidable.
7. We have not ourselves asked Derbyshire Police to confirm or deny that they hold the information; nor have we asked them for a copy of any information held. This is because we are satisfied that we can decide this case without receiving "closed material".
8. Personal data consisting of information as to someone having committed an offence, any proceedings for any offence and the sentence of any court in such proceedings are "sensitive personal data" within s2 DPA. Sensitive personal data must not be disclosed (a form of processing) unless at least one of the conditions of

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Schedule 3 of the Act is met. We have carefully checked those conditions and we are satisfied that none of them is met in this case. In particular it would not be necessary to disclose the information for the purpose of criminal proceedings in which Mr Goddard is involved because he already has rights within those proceedings which he can exercise.

9. It is also necessary for at least one condition in schedule 2 to be satisfied. On this, we agree with the reasoning given by the ICO in the decision notice. It follows that Mr Goddard's appeal must fail.
10. Both parties consented to us deciding this case without a hearing and we are satisfied that we have been able to determine the issues properly without one.

**NJ Warren**

**Chamber President**

**Dated 30 August 2013**