

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 22nd August 2006

**Public Authority:** The Chief Officer of Police  
Thames Valley Police

**Address:** TVP HQ  
Oxford Road  
Kidlington  
OX5 2NX

#### Summary Decision

The complainant asked Thames Valley Police for the numbers of sex offender orders applied for and granted since April 2003, for details of the applications for orders to the courts and for the reason why some hearings had been moved from the Banbury Area. The request was initially refused on the basis of the exemptions provided by section 31 (law enforcement), section 38 (health and safety) and section 40 (personal information.) The TVP also initially misunderstood the request to be for orders granted rather than orders applied for. As a result of the Commissioner's intervention, the TVP supplied information as to the number of orders applied for and granted on a local police area basis. The Commissioner agreed, however, that insofar as the requested information would allow the identification of particular offenders, it was exempt by virtue of the exemptions cited. Section 31 and 38 are subject to the public interest test and the Commissioner also agreed that the public interest required the maintenance of these exemptions.

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#### The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

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#### The Request

2. The Information Commissioner (the "Commissioner") has received a complaint from the Editor of the Banbury Guardian (the "complainant") which states that on January 17<sup>th</sup> 2005 the following information was requested from Thames Valley Police ("TVP") under section 1 of the Freedom of Information Act 2000 (the "Act"):

*"1. Details of how many sex offender orders (Crime and Disorder Act 1998) Thames Valley Police chief constable has applied for relating to people from the Banbury Guardian area since April 2003. (The complainant supplied a list of the 37 places comprising the Banbury Guardian's distribution area.)*

*"2. Details of at which courts the hearings were held and when, details of those subject to the orders as supplied to the court and the outcome of the hearings as agreed by the subject and bench.*

*"3. For any such hearings not held in Banbury or one of the courts acting for Banbury during its temporary closure (i.e. Bicester and Witney) could you please supply me with copies of any documents containing information as to the reasons / decisions for the hearings being moved out of the Banbury area."*

3. TVP took the complainant's request to include Sex Offender Orders and Sexual Offences Prevention Orders.)
4. TVP gave the complainant a refusal notice as required by section 17 of the Act on 2 February 2005. It cited the exemptions provided by s.31 (Law Enforcement), s.38 (Health and Safety) and s.40 (Personal Information) and gave a brief account of why it considered that the public interest required the maintenance of these exemptions.
5. The Complainant first contacted the Commissioner on 17 February 2005 to complain about the length of time TVP proposed to take to carry out an internal review of its initial refusal of her request. As a consequence, the Commissioner wrote to TVP on 21 March 2005 regarding the delay and asking whether it could expedite the internal review of its refusal requested by the complainant.
5. The complainant contacted the Commissioner again on the same date, 21 March 2005, to explain that the review had in fact been completed on 4 March 2005. TVP informed the complainant that the total number of registered sex offenders in the Thames Valley Police area was 826. It declined to give the figures for any smaller areas, citing the exemptions previously mentioned. In addition to the exemptions previously cited, TVP also referred to the exemption relating to court records at s.32 of the Act in respect of the court hearings referred to in parts 2 and 3 of the information request. Reference was also made to s.30 (Investigations) and s.41 (Information Provided in confidence). The complainant asked the Commissioner to make a decision as to whether TVP should have provided her with the information requested.

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## The Investigation

### a) Scope of the investigation

6. The Commissioner's first approach to TVP on 21 March 2005 was in relation to the complainant's concerns about the delay in carrying out an internal review of the initial refusal of the request. The Act does not specify a time period for conduct of internal reviews. The Commissioner's consideration of this matter does not, therefore form a part of his decision. It is however a matter of general concern and it therefore commented upon in the section headed "Other issues" (below).
7. Following the further letter from the Complainant of 21 March 2005, the focus of the Commissioner's attention thus shifted from the issue of the alleged delay in the carrying out an internal review to the substantive grounds for refusal given in its refusal notice and at the conclusion of the internal review.

## b) Chronology

8. As indicated above, the complainant's request fell into different parts. The first was for details of how many Sex Offender Orders the Chief Constable had applied for under the Crime and Disorder Act 1998 relating to people from the Banbury Guardian's distribution area since April 2003. The complainant supplied a list of the 37 places comprising the Banbury Guardian's distribution area. The public authority took the complainant's request to include Sex Offender Orders issued under the Crime and Disorder Act 1998 and Sexual Offences Prevention Orders issued under the Sexual Offences Act 2003.
9. On 5 April 2005 the Commissioner wrote to the public authority to ask for further information about its handling of the Complainant's request. Among other things, the Commissioner pointed out to the public authority that it had misunderstood the first part of the Complainant's request. It had interpreted it as relating to the number of Orders *granted* rather than *applied for*. The Commissioner also queried the extent to which it would be possible to link the statistical information requested with particular offenders and therefore whether the exemptions cited in relation to law enforcement, health and safety and personal information were, in fact relevant.
10. The Commissioner also queried whether TVP was correct to make reference to the exemption at s.32 the Act relating to court records since it did not seem to him that that information was solely held by virtue of it being part of such records. The Commissioner accepted that information relating to particular offenders was personal information. He also requested background information as to the protection typically provided by the courts in respect of sex offenders and for an account of why it considered that the public interest required the maintenance of the exemption at s.30
11. TVP provided its substantive response to this letter on 31 May 2005. It acknowledged that it has misinterpreted the complainant's request for information and stated that it would have advised her that TVP had "applied for 14 orders Force-wide. We can confirm that some of those orders were in the area covered by the Banbury Guardian." It also explained that it had taken the complainant's request to include Sex Offender Orders and Sexual Offences Prevention Orders.

12. The TVP made clear that in its view the release of statistics at below the Force-area level might allow the identification of individual offenders and thus engage s.31 (Law Enforcement) because of the risk of offenders being attacked or the risk that fear of attack might “drive them underground”; s.38 (Health and Safety) because of the risk of attack including the risk of attack in cases of mistaken identity; and section 40 (Personal Information).
13. TVP withdrew its reliance on s. 30 and, to a large extent, s.32, although it maintained that information contained in an application made by it to the courts was exempt by virtue of the latter exemption. It also provided the general information requested concerning the approach by the courts to the identity of offenders. TVP provided some general information demonstrating the risk to offenders whose addresses had been placed in the public domain.
14. There then followed correspondence between the Commissioner and TVP regarding the extent to which disclosure of information regarding the numbers of applications for sex offender orders would allow the identification of the individuals concerned. The outcome of this correspondence was that on 1 September 2005 TVP provided the complainant with information about for which it had applied for the West Oxfordshire and Cherwell Local Police Areas.
15. The focus of the Commissioner’s investigation then shifted to the other elements of the complainant’s request. In a letter of 20 September, it was conceded that the personal information of those subject to orders should not be released. However, TVP had not apparently provided any response to the request for information regarding a decision to move court hearings from the Banbury area. In response TVP advised the Commissioner on 27 September that this information was not held by it.

### **c) Findings of fact**

16. The Commissioner’s investigation has established that the following information requested by the complainant is held by TVP:
  - The number of sex offender orders applied for and granted since April 2003;
  - Details of the courts at which the hearings were held and information as to the outcome of the hearings.
17. The correspondence between the Commissioner and TVP also dealt with the extent to which the figures held by TVP map onto the circulation area of the Banbury Guardian. Although it is not surprising that the TVP do not record information according to newspaper circulation areas, it was established that it was able to roughly correlate the information which it holds according to police areas with the towns and villages included in the newspaper circulation area.
18. The Commissioner has been advised by TVP that no information is held regarding the decision to move some court hearings from the Banbury Area.

Although the Commissioner has no means of testing this assertion he is content to accept it.

19. The investigation has also established the facts regarding the handling of the request submitted by the complainant. In summary these are:
- **17 January 2005:** request submitted
  - **2 February 2005:** request refused
  - **4 March 2005:** internal review of refusal completed

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## Analysis

20. The first part of the complainant's request was for numbers of sex offenders orders applied for. This was initially handled as a request for orders that had been obtained. Although the public authority acknowledged its mistake, it is clear that initially it failed to respond properly to the complainant's request and that it neither confirmed or denied holding the information requested nor communicated that information to the complainant.
21. The correspondence between the Commissioner and TVP dealt with the issue of the form in which it holds the requested information, in particular the question of how closely the figures held by TVP map onto the circulation area of the Banbury Guardian. The Commissioner is satisfied that although TVP does not hold information in precisely the form requested (i.e. number of offenders in the "Banbury Guardian's distribution area"), it holds information which resembles that requested (i.e. offenders at a local police area level"). The Commissioner notes that TVP did not seek to argue that the requested information was not held because it was not held in precisely the same form. The Commissioner agrees with the approach taken.

## Exemptions

### Section 31 (Law enforcement)

22. Section 31 provides an exemption for information the disclosure of which would or would be likely to prejudice law enforcement. The term "law enforcement" is further explained to include matters such as "the prevention and detection of crime" and "the apprehension or prosecution of offenders."
23. Two risks are identified by TVP: first that offenders might be attacked by "vigilantes" and second that offenders might be "driven underground" by fear of such attacks. The complainant provided copies of press reports which indicated that this was a real risk and that there had been examples both of attacks on offenders and of offenders leaving their registered addresses. Although no evidence was submitted to demonstrate that any of these things had occurred as a result of disclosures of information under the Act or of reports carried by the

Banbury Guardian, the Commissioner accepts that the risks identified by TVP are real and that information which would identify particular offenders is exempt. Insofar as the requested information would not allow the identification of any individuals, the Commissioner does not consider that the exemption applies.

24. Section 31 is a qualified exemption and information to which it applies must be disclosed if there is an equal or stronger public interest in doing so. The Commissioner accepts that there is a considerable public interest in crime prevention. He is also aware that there has been considerable public debate about the creation of registers of offenders and the right of access to those registers. He understands the argument that knowledge of the whereabouts of offenders may allow potential victims to protect themselves. At the same time the Commissioner is conscious of the fact that in creating registers of sex offenders, the Government and Parliament stopped short of specifying that registers should be public. In the Commissioner's view, the disclosure of information which would allow the identification of registered offenders would undermine existing public policy and would not, therefore be in the public interest. In reaching this view, the Commissioner notes that in this case public policy has been consciously arrived at and is not simply a "de facto" position.

#### Section 38 (Health and Safety)

25. Section 38 provides an exemption for information whose disclosure would or would be likely to endanger the physical or mental health of any individual.
26. The Commissioner accepts that, in this particular case, insofar as the requested information is exempt by virtue of s.31 it must also be exempt by virtue of section 38. The public interest considerations all seem to the Commissioner to be identical.

#### Section 40 (Personal Information)

27. Section 40 provides an absolute exemption for personal information whose disclosure would constitute a contravention of one or more of the data protection principles. These are contained in Schedule 2 of the Data Protection Act 1998.
28. The personal information in this case is that relating to those individuals in relation to whom TVP sought sex offender orders. The Commissioner considers that the relevant data protection principle is Principle 1 which requires that personal data are processed fairly and lawfully. In the Commissioner's view, in the absence of any statutory requirement to publish the details of those in relation to whom an order has been sought, it would be unfair to disclose information facilitating identification.
29. The Commissioner also notes that the request for some of the requested details may constitute sensitive personal data such as information as the sexual life of data subjects, criminal convictions and criminal intelligence. Schedule 3 of the Data Protection Act creates a number of special conditions, at least one of which must be satisfied, in order to ensure that the processing of such data is lawful.

The Commissioner does not consider that any condition for the processing of such data exists in this case.

Other: Granularity of information

30. In order for any of the exemptions discussed above to be engaged it would be necessary for individual offenders to be identified from the information which was disclosed. The Commissioner accepts that were information about offenders to be disclosed on, say, a village by village basis, using the list provided by the complainant when describing the distribution area of the Banbury Guardian, there would be a risk that some individuals would be identified (or indeed that some innocent individuals might be misidentified). This is an issue which arises quite commonly. For instance when researchers are contemplating disclosing statistical information about those suffering from particular diseases, they are generally careful not to disclose information relating to geographically small areas such as would allow particular individuals to be identified. From time to time small area statistics may even be deliberately distorted to prevent identification.
31. The Commissioner supports this general approach where there is a risk of unfairly identifying individuals. In this particular case, he considers that the approach taken by TVP after the intervention of his office, namely to release information on a Force-area basis was the correct one.

Other exemptions

32. During the course of the investigation of this case, TVP referred to the exemptions at s.30 (investigations), s.32 (court records) and s. 41 (information provided in confidence). The Commissioner understands the public authority no longer to seek to rely upon these. They have not, therefore been considered in the preparation of this notice.

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**The Decision**

33. The Commissioner's decision is that the public authority failed to deal properly with the request since it had misunderstood its scope. However, TVP accepted that it had made a mistake and took the necessary steps to rectify it.
34. The public authority also failed to inform the complainant that it held no information in relation to the third part of her request, namely information as to why court hearings had been moved from the Banbury area.
35. The Commissioner is also of the view that the local police area information described above should have been released on receipt of the request.
36. The Commissioner agrees, however, that some of the requested information would allow the identification of particular individuals and that this information was exempt by virtue of sections, 31, 38 and 40 of the Act. He also agrees in respect of the first two of these exemptions (s.40 being an absolute exemption) that the public interest required the maintenance of those exemptions.

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## Steps Required

37. In the light of the above considerations, the commissioner requires no steps to be taken by the public authority.

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## Other matters of concern to the Commissioner

38. The complainant first contacted the Commissioner because she considered that the length of time the public authority proposed to take to conduct a review of its refusal of her request to be excessive.
39. In the event the review was completed in approximately 1 month. Although the Commissioner has some general concerns about the length of time which it takes some public authorities to conduct internal reviews and some sympathy with complainants who believe that internal review is being used as a mechanism to delay the disclosure of information, he does not believe that these concerns are raised in this particular case. On the contrary, it seems to him that TVP have attempted to provide a timely review of a refusal which raised a number of significant issues relatively early in the lifetime of the Act.

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## Right of Appeal

40. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 22<sup>nd</sup> day of August 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

**Section 1** provides that

1. — (1) Any person making a request for information to a public authority is entitled –
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case, to have that information communicated to him.”

**Section 31** provides that

31. — (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
- (a) the prevention or detection of crime,
  - (b) the apprehension or prosecution of offenders,
  - (c) the administration of justice,
  - (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
  - (e) the operation of the immigration controls,
  - (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
  - (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
  - (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
  - (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.
- (2) The purposes referred to in subsection (1)(g) to (i) are-
- (a) the purpose of ascertaining whether any person has failed to comply with the law,
  - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
  - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
  - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
  - (e) the purpose of ascertaining the cause of an accident,

- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

**Section 38** provides that

38. — (1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

**Section 40** provides that

40. - (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles, or

- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).
- (5) The duty to confirm or deny-
  - (a) 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), and
  - (b) does not arise in relation to other information if or to the extent that either-
    - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
    - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).
- (6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (7) In this section-
  - "the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
  - "data subject" has the same meaning as in section 1(1) of that Act;
  - "personal data" has the same meaning as in section 1(1) of that Act.