

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 5 December 2007**

**Public Authority:** Chief Constable of Avon and Somerset Constabulary  
**Address:** PO Box 37  
Valley Road  
Portishead  
Bristol  
BS20 8QJ

### Summary

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The complainant requested information concerning an investigation about the conduct of police officers, information about the officers themselves and information concerning a public authority investigation about him. The Commissioner finds that the majority of this information is personal data relating to the complainant and, therefore, exempt by virtue of section 40(1). The Commissioner finds that the remainder of the information requested is personal data relating to third parties and that it is exempt by virtue of section 40(2) as the disclosure of it would breach the first data protection principle, or is not held by the public authority.

### The Commissioner's Role

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1. The Commissioner's duty 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.

### The Request

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2. The complainant and the public authority conducted a long running correspondence. During this lengthy correspondence, the complainant asked various questions of the public authority and made a number of information requests. Following consideration of how best to progress this case, it was agreed with the public authority that the complainant's correspondence of 11 February 2006, in which the complainant first used the form of wording cited in his complaint to the Commissioner, would act as the starting point for this case.

3. The wording of the information request given in the complainant's correspondence of 11 February 2006 is as follows:

*"i. The 'Complaint Investigation File': Complaint against DC Crooke and DC Jenkinson recorded by Inspector Power on 6<sup>th</sup> December, 2001. Our ref. HC/1163/01/vjb/PCA ref. COM2001/101/8384.*

*ii. The identity of the witness alleged to have made a complaint of sexual harassment against me.*

*iii. The full text of the witness statement purporting to constitute a complaint of 'sexual harassment' arising from the letter or letters which I sent to your potential witness*

*iv. The letter or letters which I sent to your potential witness.*

*v. Please let me know on which day the complaint was made.*

*vi. Please let me know who recorded the complaint.*

*vii. The identity of the police officer who allegedly saw me at Mole's night-club on the night **[name redacted]** is believed to have 'disappeared' from Cadillac's night-club.*

*viii. The disciplinary and medical records of PC 2433 Hope.*

*ix. A disclosure as to why PC 2433 Hope informed me, **[name redacted]**, and her next of kin in October, 1996, that (i) he was 'frightened' that I was 'going to rape her' and (ii) he didn't want me 'getting her involved in drugs'."*

4. During the handling of the case, parts iv, v and vii of the request were resolved. These parts of the request are not considered further in this notice.

5. In relation to the remaining parts of the request, the stance of the public authority is as follows:

- i. Exempt under sections 30(1) and 40(2).
- ii. Exempt under sections 30(1) and 40(2).
- iii. These witness statements have been destroyed in line with the standard retention period of the public authority.
- vi. Exempt under sections 30(1) and 40(2).
- viii. No disciplinary record is held and the medical record is exempt under section 40(2).
- ix. The officer in question has denied ever making such a comment, therefore this information is not held.

## The Investigation

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### Scope of the case

6. The scope of this case has evolved throughout the case handling process. The complainant initially contacted the Commissioner on 3 July 2005 to complain about the handling of his information request.
7. During the case handling process, the Commissioner attempted to clarify when the complainant had made the various requests that he cited in his complaints. The complainant had repeatedly cited the form of words given above, without being clear as to when he had made these requests.
8. Attempting to discern from the complainant's correspondence when he had made his various information requests proved difficult. This was not aided by the complainant's tendency to include within the body of e mails what he asserted was the text of his various communications with the public authority, with no evidence of when these communications had been sent or received. The complainant was requested to provide copies of original documentation, or e mails with evidence of their sent and received dates, but failed to do so.
9. In order to ensure that the scope of the case would be entirely clear, the Commissioner contacted both the public authority and the complainant to inform them that the complainant's correspondence of 11 February 2006 would act as the starting point for this case.
10. The complainant does not agree with the exemptions cited by the public authority.

### Chronology

11. The Commissioner initially contacted the public authority on 23 November 2006. In this letter, the Commissioner explained that the 9 requests above fell within the scope of the case. The public authority was asked to provide to the Commissioner copies of the information withheld from the complainant in response to these requests.
12. The documentation withheld from the complainant was provided to the Commissioner's office on 8 January 2007.
13. The Commissioner contacted the public authority again on 14 March 2007 and asked that it respond with the following:
  - Confirmation of which exemption has been applied to each item of withheld information, and
  - in relation to section 30(1), detail as to why the public interest is believed to favour the withholding of this information.
14. The public authority responded, clarifying its stance in relation to each part of the request, which is as given above at paragraph 5. The public authority also gave its arguments in relation to each stance.

15. Although the public authority cited various exemptions and advanced arguments in support of these, the Commissioner believed it likely that the information requested at parts i, ii, iii, vi and ix of the request would constitute personal data relating to the complainant and considered that the relevant exemption in connection with these parts of the request was section 40(1). This is covered in more detail in the 'Analysis' section of this notice.
16. In relation to part viii of the request, the public authority stated that, having searched for this information, no disciplinary record for the officer named in the request could be located. In relation to the medical file, the public authority believed that this information was exempt under section 40(2). The public authority stated that this information was considered to be sensitive personal data under section 2 of the Data Protection 1998 (the "DPA") and that the data subject had not consented to the disclosure of this information.
17. The public authority provided to the Commissioner a description of the information held within a police officer's medical file, stating that the minimum that would be held would be a self declaration form of injuries, illness and disabilities completed as part of the recruitment process. The public authority provided to the Commissioner a blank copy of this form in order that the Commissioner could have a clear impression of the information that would be disclosed in a completed copy of this form. Further to this, the medical file would also detail any other medical treatment received by the police officer and medical issues related to the police officer.
18. In relation to part ix of the request, the public authority stated that the officer in question had denied ever making the comments referred to in the complainant's request. Information related to these comments was not, therefore, created by the public authority.

## **Findings of fact**

19. The information requested at parts iv and v of the request has been disclosed.
20. The complainant has advised the Commissioner that part vii of the request is resolved.

## **Analysis**

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### **Procedural matters**

#### **Section 1**

21. In response to part viii of the request, the public authority has stated that there are no disciplinary records held that relate to the officer named in the request. The public authority has provided to the Commissioner a description of the efforts made to locate disciplinary records relating to the officer in question. The complainant has not provided any credible argument as to why the public

authority would hold disciplinary records on the officer in question and the Commissioner accepts the representations of the public authority in this regard and, therefore, finds that the public authority has complied with the requirements of section 1(1) of the Act in that it stated accurately that this information is not held.

## Exemption

### Section 40(1)

22. It is apparent that much of the information requested by the complainant is his own personal data. In relation to each part of the request that appears to be for personal data relating to the requester, the Commissioner's considerations are as follows:
23.
  - i. In relation to this information, the Commissioner considered 2 main arguments. Firstly, this information is personal data relating to the complainant as it relates to his complaints to the public authority about its treatment of him. Secondly, this information is not personal data as, although the complainant was the originator of the complaints, this information is primarily concerned with the actions of the officers named and the outcome of the complaints made against them.
24. It is clear that the information within the complaint files would constitute personal data relating to the officers about whom the complaint was made. However, this does not necessarily mean that this information is not also personal data relating to the complainant. For the purposes of section 40(1), it is not relevant if this information is also personal data relating to any third party; if it is personal data relating to the complainant, section 40(1) applies and this information is exempt.
25. The view of the Commissioner here is that this information is personal data relating to the complainant. It records the progress of the investigation into a complaint which relates to the treatment of the complainant by the public authority. In this sense, it can be said to be of biographical significance to the complainant. As stated above, that this information is also personal data relating to third parties is not a relevant issue when considering section 40(1).
26.
  - ii. On the surface, it would appear that the information requested here is very clearly personal data relating to a third party. The public authority has cited section 40(2) in response to this request. However, it is important to take into account the context of this request for information.
27. The witness in question here has made a statement to assist the public authority in carrying out an investigation of the activities of the complainant. The Commissioner would consider it likely that all information relating to an investigation about the complainant would be personal data relating to the complainant. Clearly, the complainant could be identified from this information and it has biographical significance to him.
28. In relation to this request, the Commissioner finds that this information is personal data relating to the complainant. Whilst this is very clearly also personal data

relating to a third party, as stated above this is not relevant when considering whether the exemption provided by section 40(1) applies.

29. **iii.** The arguments given in relation to i and ii above are applicable here. This information here is highly likely to be personal data relating to a third party, in this case the witness. However, it is also clear that the complainant could be identified from this information and that, as it is a description of the alleged activities of the complainant, this is of biographical significance to the complainant. The Commissioner considers that the information requested here is personal data relating to the complainant and that the exemption provided by section 40(1) is engaged.
30. **vi.** The Commissioner considers that identical arguments apply here as given above in relation to part ii of the request and is satisfied that the information requested here is personal data relating to the complainant and that the exemption provided by section 40(1) is engaged.
31. In relation to all those parts of the request that the Commissioner considers to be for personal data relating to the complainant, the Commissioner would stress that this outcome should not be taken to indicate that this information should be disclosed to the complainant. Instead, this outcome determines that consideration should be given to whether this information should be disclosed under section 7 of the DPA 1998, with the exemptions from this right taken into account.
32. **ix.** The complainant asserts that the comment in this part of the request was made. The Commissioner considers it likely that, judging from the wording of the request, were information falling within the scope of this request held, it would be personal data relating to the complainant and be exempt by virtue of section 40(1). Further, where section 40(1) applies, section 40(5) provides that the public authority is not obliged to confirm or deny whether this information is held.

### **Section 40(2)**

33. This exemption has been applied in relation to the information requested at part viii of the request; the medical record of a police officer. As stated above at paragraph 17, the public authority provided to the Commissioner a blank copy of a form that is completed by all applicants for employment at the public authority as a police officer. It is clear to the Commissioner that a completed copy of this form would provide a comprehensive medical history for the individual to whom it relates. The public authority has confirmed that a completed copy of this form is held on the medical file requested by the complainant.
34. The focus of the Commissioner's considerations in relation to this exemption is on whether disclosure could be considered fair and in compliance with the first data protection principle, which requires that personal data shall be processed fairly and lawfully. Firstly, it is necessary for the Commissioner to consider whether the assertion of the public authority that the information requested here would be sensitive personal data under section 2 of the DPA is correct.

35. Section 2(e) of the DPA provides that personal data relating to an individual's physical or mental health or condition would be sensitive personal data. In this case, the Commissioner considers that it is clear that a medical record would contain personal data falling within the category of section 2(e) of the DPA and, therefore, considers that this information would be sensitive personal data.
36. Turning to the general issue of fairness, as noted above the withheld information in this case provides a comprehensive medical history of the third party named in the request. There is a widely held expectation of privacy in relation to medical records. The Commissioner considers this expectation to be legitimate and is only likely to conclude that such information should be disclosed where there is a compelling argument in favour of such a disclosure being fair and in compliance with the first data protection principle.
37. The withheld information constitutes sensitive personal data and it is clear that the data subject would have no expectation that this information would be disclosed. On the contrary, as noted above there is a strong expectation of privacy associated with information of this kind. In this case, the Commissioner does not consider there to be any argument, such as accountability or transparency regarding the ability of the officer to carry out his duties, which would be compelling, particularly given the substantial invasion of privacy that would result from disclosure.
38. In order for the processing of sensitive personal data to be compliant with the first data protection principle, it must fulfil at least one of the conditions for processing set out in Schedule 3 of the DPA. Further to the arguments outlined above about the general issue of fairness, the Commissioner does not believe that any of the conditions from Schedule 3 of the DPA would be fulfilled here. In coming to this conclusion, the Commissioner has given specific regard to the representations of the public authority that the data subject has explicitly objected to the disclosure of his personal data to the complainant.
39. The conclusion of the Commissioner is that the disclosure of the withheld information here would be unfair and in breach of the first data protection principle. This information is therefore exempt by virtue of section 40(2).

## The Decision

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40. The Commissioner's decision in relation to each part of this request is as follows:

The information requested at parts i, ii, iii and vi of the request is exempt by virtue of section 40(1). The information requested at part ix of the request would be exempt by virtue of section 40(1) if it were held, therefore the public authority was not obliged to comply with section 1(1)(a) in relation to this information by virtue of section 40(5).
41. The information requested at part viii of the request is, in part, not held by the public authority and the public authority has complied with section 1(1) of the Act



in denying that this information is held. The information that is held by the public authority that falls within the scope of the request is exempt by virtue of section 40(2).

## Steps Required

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42. The Commissioner requires no steps to be taken.

## Other matters

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43. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

44. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as the right of Subject Access. Therefore, the Commissioner will go on to make an assessment under section 42 of the DPA in relation to parts i, vi and ix of the request as to whether the information in question in this case should be disclosed to the complainant under this access right. However, this assessment will be dealt with separately and will not form part of this Decision Notice, because an assessment under section 42 of the DPA is a separate legal process from the consideration of a complaint under section 50 of the FOI Act. The Commissioner has previously carried out an assessment under section 42 of the DPA in connection with parts ii and iii of the request.



## Right of Appeal

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45. 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)

46. 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 5<sup>th</sup> day of December 2007**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

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

## **Legal Annex**

### **Section 1**

Section 1(1) provides that -

“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 40**

Section 40(1) provides that –

“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.”

Section 40(2) provides that –

“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.”

Section 40(5) provides that –

“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).”