

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 11 May 2010

Public Authority: South Gloucestershire Council
Address: The Council Offices
Castle Street
Thornbury
South Gloucestershire
BS35 1HF

Summary

The complainant requested details of a specific telephone call made to him by an official working in the Council's taxi licensing department on a specified date. The complainant asked for a transcript of the call or a telephone bill showing the length and time of the call. South Gloucestershire Council stated that it did not make recordings of telephone calls made from or received by its taxi licensing department and it had no record of such a telephone call being made. The Commissioner has considered the matter and his view is that, if it were held, the requested information would constitute the personal data of the applicant. As such, the Commissioner's decision is that the requested information is exempt by virtue of section 40(1) of the Act and that the request should have been considered as a request for personal data under section 7 of the Data Protection Act 1998.

The Commissioner's Role

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.

Background

2. The Commissioner understands that at some point in early 2009 there was a court case involving the complainant and South Gloucestershire Council ('the Council'). The court case appears to have resulted from a dispute regarding taxi licensing.
3. Following the court case, it was alleged by the complainant and the complainant's solicitor that a Council official had committed perjury by testifying that a telephone call (the call at the centre of this complaint) had been made to the complainant.
4. The Commissioner understands that this matter was investigated by the police and that no further action was taken. The Commissioner also understands that the complainant and his solicitor continue to correspond with the Council in an attempt to obtain more information about this matter.

The Request

5. The complainant stated that he submitted an "Information Access Form" to the Council on 20 April 2009 and he provided a copy of that form to the Commissioner. The form appears to be a standard form that members of the public can use to request information from the Council. The complainant's request was set out as follows:

"Please may I have a copy of the transcript or the bill clearly indicating which telephone no. [name of official] telephoned [name of complainant] on, on the 11th Oct 2007 & the length of time of the call to include the time the call was made. [name of Council official] swore under oath this call was made."

6. During the Commissioner's investigation the Council stated that it did not hold a record of a request submitted by the complainant on 20 April 2009 but that it had received a very similar request from him on 20 March 2009. In response to that request the Council wrote to the complainant on 16 April 2009 and informed him that it held no record of a call being made from its taxi licensing department to the complainant's telephone numbers on 11 October 2007.

The Investigation

Scope of the case

7. The Commissioner has investigated a previous complaint from the complainant under reference FS50217207 that related to, amongst other things, the numbers and types of vehicles licensed by the Council to carry eight passengers, the dimensions of those vehicles, the Council's taxi licensing policy and its policy on recording telephone calls. The case was closed informally when some information was disclosed by the Council and the complainant agreed to accept the Commissioner's view that the Council did not hold other requested information. During the Commissioner's investigation under reference FS50217207, the complainant and his solicitor raised a complaint about the request to which this Notice relates (see paragraph 5, above) and stated that he had received no response from the Council. The Commissioner therefore set up a new case reference and informed the complainant that the complaint would be dealt with separately.

Chronology

8. During a telephone conversation on 22 October 2009, the complainant clarified with the Commissioner's investigating officer that he was seeking either an electronic record detailing the time and date that a telephone call was made by a specified Council official to one of his telephone numbers, or confirmation that the information was not held by the Council. On 26 October 2009, the Commissioner wrote to the Council and asked it to clarify whether it had received the request and for its view on whether the information could be considered the personal data of the complainant. He also asked the Council whether it held the requested information.
9. On 3 November 2009, the Council responded to the Commissioner and stated that while it had no record of the request that the complainant said was submitted on 20 April 2009, it had responded to a very similar request that it had received on 20 March 2009. The Council stated that the information was not held and the Commissioner put this view to the complainant's solicitor, who had been corresponding with the Commissioner on this matter. The Council stated that it did not consider the request to be for the complainant's own personal data. It stated that, in its view, the complainant would not "be identifiable from the information held unless you knew his telephone numbers".
10. On 5 November 2009, the complainant's solicitor emailed the Commissioner and stated that in his view the Electronic Communications Directive applied to the phone call and stated that the

Council should “go to their provider and request the details of which telephone number of [complainant’s name] that conversation was made to and the time.” The Commissioner responded to the complainant’s solicitor on the same date and clarified that the Commissioner’s role in relation to the Directive, to which he referred, was in respect of the security of the data that telecommunications providers were required to retain. As the Council is not a telecommunications provider the Commissioner explained that he could take no further steps in relation to this matter.

11. There followed further emails and telephone conversations between the Commissioner, the complainant and his solicitor during which it became clear that, despite the complainant’s comments set out in paragraph 8, above, neither the complainant nor his solicitor would accept that the information was not held by the Council.

Analysis

Section 40(1) – Personal data of which the applicant is the data subject

12. The Legal Annex to this Notice provides full detail of the relevant sections of the legislation.
13. In this case the position of the public authority is that the requested information is not held. However, the Commissioner has a duty to consider whether the relevant access regime has been considered.
14. Information is exempt from disclosure under the Act if it constitutes personal data, as defined by section 1(1) of the Data Protection Act 1998 (the “DPA”). Section 40(1) of the Act creates an absolute exemption in relation to information of which the applicant is the data subject. The effect of this is to remove all of the individual’s personal information entirely from the regime of the Act, leaving them subject instead to the regime of the DPA. Section 7 of the DPA gives individuals the right to request access to personal data held about them by data controllers. This is referred to as the right of subject access.
15. Whilst the Council did not apply the exemption at section 40(1) of the Act to any of the information, the Commissioner considered that it was appropriate for him to consider its application in this case. For section 40(1) to be engaged the information requested must be the personal information of the data subject.

16. Personal information is defined as any information relating to a living individual. Section 1(1) of the DPA provides that

"personal data means 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 intentions of the data controller or any other person in respect of the individual."

17. The Commissioner considers that the requested information, if it were held, would be considered the personal data of the complainant. It is clear that any transcript of a telephone conversation would contain information that would identify the complainant. With regard to the request for a telephone bill detailing the complainant's telephone number, the complainant might not be so readily identifiable from that information. However, given that the Council would have held other information that would have allowed it to identify the telephone number or numbers as belonging to the complainant, the definition of personal data in section 1(1)(b) of the DPA (above) is applicable. As such, the Commissioner finds that the requested information is the personal data of the complainant and is therefore exempt by virtue of section 40(1) of the Act.
18. In order to assess whether the Council has complied with the provisions of the DPA, the Commissioner has established a separate complaint case in line with the provisions of section 42 of that Act.

Procedural Requirements

19. As there is some confusion regarding the date the request was submitted to the Council the Commissioner makes no comment on procedural matters (see paragraph 6 above).

The Decision

20. The Commissioner has concluded that, if held, the information requested would be exempt from disclosure under section 40(1) of the Act and the public authority should have identified this as a request that needed to be considered under the DPA.

Steps Required

21. The Commissioner requires no steps to be taken.

Right of Appeal

22. 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@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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 11th day of May 2010

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act 2000

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(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."

Data Protection Act 1998

Section 1(1) provides that -

"'personal data' means 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 intentions of the data controller or any other person in respect of the individual."