

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 September 2010

Public Authority: Commissioner of the Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant requested information concerning reports of anti-social behaviour directed at her address. The public authority refused to confirm or deny if it held information falling within the scope of the request and cited the exemption provided by section 40(5)(a) (personal information) on the basis that, if it did hold information falling within the scope of the request, this information would constitute the personal data of the complainant. (The complainant has also made a subject access request under section 7 of the Data Protection Act 1998.) The Commissioner finds that any information held by the public authority falling within the scope of the request would constitute the personal data of the complainant and so the exemption provided by section 40(5)(a) is engaged. The public authority is not, therefore, required to take any steps in relation to the complainant's information request.

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.

The Request

2. The request in question was received by the public authority on 6 September 2009 and was worded as follows:

"...I am writing to request that you send details regarding:

- *The types of anti-social behaviour that has been directed at [the complainant's address] and why.*
- *How long it has been going on for.*
- *The types of things that have been done to tackle the problem.*
- *Whether or not the council are aware of the situation."*

3. The public authority responded to this request on 8 September 2009 and refused to confirm or deny whether it held information falling within the scope of the request. The public authority cited the exemption provided by section 40(5)(a) (personal information) as its reasoning for the refusal of the request. The complainant was also at that stage advised that she could make a subject access request under section 7 of the Data Protection Act 1998 (the "DPA") for her personal data, suggesting that the public authority believed that, if it did hold any information falling within the scope of the complainant's request, this information would constitute the personal data of the complainant.
4. The complainant responded on 7 October 2009 and asked the public authority to carry out an internal review. The public authority responded on 23 November 2009 and confirmed that the refusal to confirm or deny under section 40(5)(a) was upheld.

The Investigation

Scope of the case

5. The complainant initially contacted the Commissioner to complain about the response she had received to a subject access request she had made for the same information as that specified in the request above. The response of the public authority to this request was that there was no personal data which it was required to supply to the complainant.
6. An assessment under section 42 of the DPA was carried out. The conclusion of this assessment was that it appeared likely that the

public authority had complied with the DPA in its response to the subject access request. Following the completion of that case, the investigation leading to this Notice was commenced with a view to establishing if the complainant's request had been handled in accordance with the Freedom of Information Act.

7. The complainant has stated that she considers that the information in question should be disclosed as she believed that anti-social behaviour directed at her address was occurring. The complainant believed that disclosure of the requested information would assist her in resolving this issue.

Chronology

8. The Commissioner contacted the public authority in connection with this case on 22 June 2010. The public authority was asked to respond with further explanation of its reasoning for citing section 40(5).
9. The public authority responded on 20 July 2010. In this response, the public authority confirmed that its basis for citing the exemption provided by section 40(5) was that the information requested by the complainant would, if held, constitute her own personal data and explained its position on this point.

Analysis

Exemptions

Section 40

10. The public authority has cited the exemption provided by section 40(5)(a). This provides that the duty to confirm or deny does not arise in relation to information that does, or would if it were held, fall within the scope of section 40(1). Section 40(1) provides that information which is the personal data of the requester is exempt. The task for the Commissioner is, therefore, to consider whether, if any information was held by the public authority that fell within the scope of the request, this information would constitute the personal data of the complainant.
11. The grounds advanced by the public authority as to why any information falling within the scope of his request would constitute the personal data of the complainant were that the complainant had requested information relating to a specific address, which she had

identified as her own elsewhere in her correspondence with the public authority. The public authority believed that it was significant that information had been requested about this specific address rather than, for example, the whole of the complainant's road. The public authority further believed that anti-social behaviour directed at this address could also be regarded as having been directed at the complainant. Information about any such anti-social behaviour would, therefore, constitute personal data of the complainant.

12. Turning to whether the Commissioner agrees that any information held by the public authority that falls within the scope of the request would constitute the personal data of the complainant, section 1(1) of the DPA provides the following definition of personal data:

“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”.*

13. In order to reach a conclusion as to whether any information held by the public authority that falls within the scope of the request would constitute the personal data of the complainant, the Commissioner has referred to his published guidance note *“Determining what is personal data”*¹. The following questions are suggested in this guidance note as an aid to determining what is personal data.

- i. Can a living individual be identified from the data, or from the data and other information in the possession of, or likely to come into the possession of, the data controller?

14. The question in this case is whether the complainant could be identified from any information held by the public authority that falls within the scope of the request. The view of the Commissioner on this point is that it is possible that the complainant would not be identifiable from information falling within the scope of the request were this information to be considered in isolation. Given this, it is necessary to go on to consider whether this information could be combined with any other information to enable identification of the complainant.

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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

15. Part (b) of the DPA quote above refers to the data controller. In this case the effect of the information being disclosed via the Freedom of Information Act would be that this information would become publicly available. The question is, therefore, whether information available to any person could be combined with information relevant to the request to enable identification of the complainant.

16. The conclusion of the Commissioner on this point is that there are a number of means by which the complainant's address could readily be associated with her. This could be through, for example, pre-existing knowledge that the complainant resides at this address, or through the complainant's listing in a telephone directory. The Commissioner finds, therefore, that the complainant could be identified through information falling within the scope of the request, either directly, or through this information combined with other readily available information.

ii. Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?

17. The relevance of this question here is whether the information in question relates to the complainant. In general, the Commissioner accepts that the address of a property in the possession of an individual is personal data relating to that individual. This is in line with the following approach taken by the Information Tribunal in *England & London Borough of Bexley v the Information Commissioner*:

"...knowing the address of a property makes it likely that the identity of the owner will be found." (paragraph 94)

"The address alone, in our view, also amounts to personal data because of the likelihood of identification of the owner.... In our view this information amounts to personal data because it says various things about the owner. It says that they are the owner of the property and therefore have a substantial asset. ...The key point is that it says something about somebody's private life and is biographically significant." (paragraph 98)

18. The Commissioner is unaware of whether the complainant is the owner of the address at which she resides, but believes that this approach taken by the Tribunal can be extended to cover the resident of an address. The basis for this is that whatever the residential arrangements of an individual are, whether home ownership and occupancy or an alternative arrangement, knowledge of these arrangements says various things about that individual.

19. In this case, revealing whether anti-social behaviour has been directed at the address would also provide at least a suggestion as to whether anti-social behaviour had been directed at an individual associated with it. The Commissioner finds, therefore, that it is accurate to state that any information that is held by the public authority and that falls within the scope of the request in this case would relate to the complainant.
20. The Commissioner concludes that the information requested by the complainant would, if it were held, relate to the complainant and that the complainant would be identifiable from this. Any such information would, therefore, constitute the personal data of the complainant according to the definition in section 1(1) of the DPA and so would be subject to the exemption provided by section 40(1) of the FOI Act. As a result, the overall conclusion of the Commissioner is that the exemption provided by section 40(5)(a) is engaged.

The Decision

21. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied the exemption provided by section 40(5)(a) correctly, meaning that it was not obliged to comply with section 1(1)(a).

Other matters

22. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
23. The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome of the review within 20 working days. The public authority should ensure that internal reviews are carried out promptly in future.
24. The complainant also made a subject access request under section 7 of the DPA for the information in question here. The response of the public authority to this was that there was no information which it was required by the DPA to supply to the complainant. The complainant raised this response with the Commissioner's office and an assessment

under section 42 of the DPA was carried out. The conclusion of this assessment was that it was likely that the public authority had complied with the DPA in its handling of the complainant's subject access request.

25. The complainant may feel that the conclusion of this Notice is not consistent with the outcome of the earlier DPA assessment. In response, the Commissioner would note that, given the requirements imposed by section 7 of the DPA for responding to subject access requests, the finding of this Notice that any information falling within the scope of the request would be the personal data of the complainant is not necessarily contradictory to the conclusion of the DPA assessment that the public authority complied with the DPA in its response to the complainant's subject access request.

Right of Appeal

26. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

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.

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

Dated the 20th day of September 2010

Signed

**David Smith
Deputy 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(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)."