

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 September 2012

Public Authority: Crown Prosecution Service
Address: Rose Court
2 Southwark Bridge
London
SE1 9HS

Decision (including any steps ordered)

1. The complainant has requested information, including a report, about four named police officers. The Crown Prosecution Service applied section 40(5), which it changed to section 40(2) at internal review.
2. The Information Commissioner's decision is that the Crown Prosecution Service's original application of section 40(5) appropriately.

Request and response

3. On 26 September 2011, the complainant wrote to the Crown Prosecution Service (the CPS) and requested information in the following terms:

'I request all of the material detailed in my letter to you dated 26 August 2011.'

4. The letter of the 26 August 2011 contained the following:

'I would be most grateful if you will provide me with the particulars of the documents that you sent to [a named individual] and if possible copies of all of the documents that you hold relating to the prosecution of [four named] police officers.'

5. On 6 October 2011 the complainant made an additional request:

'In addition to the documents requested in my letter to you dated 26 August 2011, can you please supply me with a copy of the Dorset Police Enquiry – Operation Maple which led to the prosecution of the four officers?'

6. The CPS responded on 25 October 2011. It stated that in relation to the information regarding the four named officers, it was applying section 40(5).
7. Following an internal review the CPS wrote to the complainant on 24 February 2012. It stated that the requested police report in relation to the four officers was not held by the CPS and advised the complainant to request it from Dorset Police.
8. In relation to the rest of the information, the CPS explained that it was going to apply section 40(2) rather than section 40(5). It went on to explain that it considered the information to be sensitive personal data and that it should not be disclosed as none of the conditions in Schedule 3 of the Data Protection Act 1998 (the DPA) are met.

Scope of the request

9. The complainant contacted the Information Commissioner (the Commissioner) to complain about the way his request for information had been handled. He complained:
 - that although the CPS had acknowledged his request for an internal review, it did not respond within the 20 working days it had stated was the normal time it takes to conduct an internal review;
 - that the CPS had initially applied section 40(5) and then changed it to section 40(2);
 - about the application of section 40(2) to the withheld information;
 - that it was not clear whether the CPS actually held a copy of the *"Dorset Police Enquiry – Operation Maple"* report.
10. The Commissioner notes that the CPS applied section 40(5) initially. Whilst he will not proactively seek to consider exemptions in all cases before him, in cases where personal data is involved, the Commissioner believes he has a duty to consider the rights of data subjects. These rights, set out in the DPA, are closely linked to Article 8 of the Human Rights Act 1998 (the HRA) and the Commissioner would be in breach of his obligations under the HRA if he ordered disclosure of information or confirmation/denial without having considered these rights. Therefore although the CPS initially cited section 40(5) and subsequently applied section 40(2), the Commissioner believes he should first consider section 40(5)(b)(i) in this particular case.

Reasons for decision

11. Section 1 of FOIA provides two distinct but related rights of access to information that impose corresponding duties on public authorities.

These are:

- the duty to inform the applicant whether or not information is held by the authority, and, if so,
- the duty to communicate that information to the applicant.

12. The Act refers to the first duty as the duty to confirm or deny.

13. In addition, section 40(5) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:

- constitute a disclosure of personal data, and
- this disclosure would breach any of the data protection principles or section 10 of the DPA.

Section 40 – personal data

14. Personal data is defined in section 1(1) of the DPA as:

“... data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or 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 person in respect of the individual.”

15. The Commissioner's guidance (on his website) expands on what constitutes personal data:

“The two main elements of personal data are that information must 'relate to' a living person, and that person must be identifiable. Information will 'relate to' a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.”

16. The Commissioner considers that information about whether the four police officers had been prosecuted is personal data as it identifies the four individuals concerned.

17. The Commissioner further accepts that the requested information relates to matters concerning the four individuals. This is therefore data which

relates to an identifiable living individual - in this case each of the four police officers.

18. The Commissioner also considers that the requested information, if held, would constitute sensitive personal data because it would relate to *'the commission or alleged commission...of any offence'*, as laid down in section 2(g) of the Data Protection Act. The Commissioner does not consider that any of the conditions in Schedule 3 of the Data Protection Act 1998 would be met, and therefore such sensitive personal data may not be disclosed.
19. Since confirming or denying that the requested information is held would disclose the four police officers' sensitive personal data, the CPS was entitled to rely on the exclusion at section 40(5).

Other matters

20. Although there is no statutory time limit when conducting an internal review the Commissioner considers that it should take no longer than 20 working days to conduct one. He notes that the complainant requested an internal review on 9 November 2011 and the CPS did not confirm it had carried out an internal review until 24 February 2012.
21. The complainant also complained that the CPS initially applied section 40(5) but then changed it to section 40(2) during its internal review. The Commissioner considers that a public authority can change exemptions during an internal review and he notes that the CPS informed the complainant of the change.

Right of appeal

22. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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