

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 August 2014

Public Authority: Chief Constable of Northamptonshire Police
Address: Force Headquarters
Wooton Hall
Northampton
NN4 0JQ

Decision (including any steps ordered)

1. The complainant requested information from Northamptonshire Police (Northants Police) relating to allegations of theft by deception she had asked it to investigate. Northants Police provided some relevant information but refused to either confirm or deny holding information within the scope of the remainder of the request, citing section 40(5) of FOIA (personal information).
2. The Commissioner's decision is that Northants Police was correct to neither confirm nor deny holding information within the scope of that part of the request. He did however find procedural irregularities.
3. The Commissioner requires no steps to be taken as a result of this decision.

Request and response

4. The complainant wrote to Northants Police on 23 March 2014 clarifying an earlier request for information:

"Re your Email of the 21st March, my request under the FOI Act 2000 requires you, as the Investigating Officer, to furnish me with a copy of the report filed by the Policewoman who detained my

father on [date redacted]. You do not need to reveal the Officer's name.

In addition, if you cannot, by law, give to me, the names of the doctors you say you spoke to during your recent reinvestigation of the case, you are required under the Act to inform me of the location of the NHS premises and the date of your visit. You must also supply me with a copy of the statement by the doctor(s), again you can omit their name(s). The same applies to your visit to [address redacted] you are required, under my request, to furnish me with the statements by the Care Home Manager and also [name redacted] the Carer who supposedly witnessed my father signing [name redacted] illegal General Power of Attorney document on the [date redacted], some fifteen months after he was committed (not admitted) on the [date redacted] into Emergency Respite Care by the NHS, whose doctors then diagnosed him with severe dementia and having no mental capacity.

Detective Constable [name redacted], in an Email to me dated the 15th of June 2013, informed me he had travelled to [name redacted]'s home at Dorking to question her under caution and that she had signed a statement denying the theft. Without a copy of her statement and his dated report to me it is merely hearsay, as was his statement to me, in a further Email dated the 3rd of September 2013, that he did not interview [name redacted] ([name redacted]'s solicitors in Dorking) at the same time, as "he had been forthcoming with information". What information? and if it was given over the telephone you must have a recording of the call. I note no effort was made on your part to question [name redacted] as to why he is still illegally holding the [amount of money redacted] NCC returned to him in 2011, instead of to my father's estate, as was [name redacted]'s stated intention".

5. The Commissioner understands that Northants Police summarised that request as follows:

"1) All information held by Northants Police regarding an incident involving [name redacted] on [dated redacted] when officers attended and found him confused in the street in Corby and returned him home and called a doctor to provide medical support.

2) All information held by Northants Police regarding communication and visits to any NHS premises made by officers/staff in connection to the initial investigation of theft/fraud.

This includes all documentation provided to the officers by medical staff.

3) All information held by Northants police regarding any communication and visits to [name redacted] Residential Care Home, [address redacted] Corby made by officers/staff in connection to the initial investigation of theft/fraud. This includes all documentation provided to the officers especially statements obtained from the care home manager and [name redacted], who allegedly witnessed [name redacted] signing the General Powers of Attorney Document [date redacted].

4) All information held by Northants police regarding an interview conducted with [name redacted] by DC [name redacted] in connection to the initial investigation of theft/fraud.

5) All information held by Northants police regarding any communication with [name redacted] of [name redacted] Solicitors of Dorking, Surrey in connection to the initial investigation of theft/fraud.

6) All information held by Northants police regarding any communication with Northants County Council in connection to the initial investigation of theft/fraud”.

6. Northants Police responded on 1 May 2014. It neither confirmed nor denied holding information within the scope of the request, citing section 40(5) of FOIA (personal information).
7. In requesting a review of its decision, the complainant wrote to Northants Police on 13 May 2014. She disputed the way in which Northants Police summarised some parts of the request, providing clarification where she considered it was necessary.
8. Following an internal review Northants Police wrote to the complainant on 18 July 2014 upholding its application of section 40(5) in relation to points 2-6 of the request. It provided her with information relating to point 1 of the request.

Scope of the case

9. Following earlier related correspondence, the complainant contacted the Commissioner on 20 July 2014 to complain about the way her request for information had been handled.

10. She told the Commissioner:

"apart from answering the first item of my amended request... you may note the Force have yet again refused to answer the remaining five requests concerning the Reinvestigation I put to them".

11. In the course of her correspondence with the Commissioner the complainant raised a number of issues which are outside the scope of the Commissioner's remit. 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 (FOIA).
12. In light of the above, the Commissioner considers the scope of his request to be Northants Police's application of section 40(5) to points 2-6 of the request. He has also considered the timeliness with which they responded.

Reasons for decision

Section 40 personal information

13. 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 requested information is held and, if so,
- the duty to communicate that information to the applicant.

14. Section 40(5)(a) of FOIA excludes a public authority from complying with the duty imposed by section 1(1)(a) of FOIA - confirming whether or not the requested information is held - in relation to information which, if held by the public authority, would be exempt information by virtue of subsection (1). In other words, if someone requests their own personal data, there is an exemption from the duty to confirm or deny under FOIA.

15. Section 40(1) of FOIA states that:

"Any information to which a request relates is exempt information if it constitutes personal data of which the applicant is the data subject".

16. The Data Protection Act 1998 (DPA) defines personal data as:

"...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 intention of the data controller or any other person in respect of the individual."

17. The two main elements of personal data are that the information must 'relate' to a living person and that the 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 or has them as its main focus.

18. The Commissioner notes that, in requesting an internal review, the complainant variously wrote:

"... and I asked the Police (who were supposedly investigating my allegations of the theft by deception of funds)"

and

"I asked the Police to investigate Northants County Council (NCC) over my allegations concerning"

19. Having considered the wording of the request in this case, the Commissioner is satisfied that the complainant is, or would be, the subject of this requested information. This is because the information she has requested is, by its own definition, about or connected to her.

20. It follows that the Commissioner considers that the complainant is the data subject within the meaning of the section 40(1) exemption.

21. In relation to such information, the provisions of section 40(5) mean that the public authority is not required to comply with the duty to confirm or deny whether it holds the information, as the duty to confirm or deny 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).

22. In correspondence with the complainant, Northants Police told her:

"By way of an explanation, even if you know such information exists, if I were to confirm that the police holds such personal information to you as the requestor under the Freedom of Information Act 2000, I would in effect, be releasing that information to the world as a whole and would be in breach of the Data Protection Act 1998".

23. The Commissioner is satisfied that confirming or denying whether it holds any information under the terms of the FOIA means that Northants Police would be confirming, to the world at large, whether it holds information relating to allegations of theft by deception raised by this complainant. He therefore considers that the section 40(5) exemption was relied upon correctly by Northants Police in this case.

Section 10 time for compliance

24. Section 10(1) of FOIA states that a public authority must comply with section 1(1) promptly and no later than 20 working days following receipt of the request.
25. In this case, Northants Police took more than twenty working days to respond to the complainant. The Commissioner therefore finds that it breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period.

Other matters

26. The Commissioner has some sympathy with the complainant whose position is confused by the different access regimes set up by Parliament in relation to personal data and public information.
27. The Commissioner notes that an applicant wishing to access their own personal data is free to pursue this right under the DPA. Furthermore, he considers that it is appropriate that any decision as to whether or not a data subject is entitled to be told whether personal data about them is being processed should be made in accordance with the scheme of that Act.

Time taken to conduct internal review

28. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 40 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of appeal

29. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF