

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 28 January 2008

Public Authority: Chief Constable of Hampshire Constabulary
Address: Police Headquarters
West Hill
Romsey Rd
Winchester
Hampshire
SO22 5DB

Summary

The complainant requested information concerning procedures in place within the public authority and how they had been applied to an investigation to which she was subject. The public authority initially cited various exemptions from Part II of the Act, but, following the intervention of the Commissioner, altered its stance and refused the request on cost grounds. The Commissioner accepts the cost estimate of the public authority in relation to some parts of the information request, but finds that it failed to comply with the procedural requirements of the Act when initially refusing the request. In relation to the remaining parts of the information request, the Commissioner finds that these are for information constituting personal data of which the complainant is the data subject and that the exemptions provided by sections 40(1) and (5) apply.

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 complainant made the following information requests on 18 May 2005:
 - i. "...how may a victim or a defendant request that your officers seek the assistance of people with expertise in AS [**Aspergers Syndrome**], either via an

inter-agency partnership approach or perhaps less formal means?"

ii. *"...please confirm that there is no disability policy relating to dealing with the public whether as complainants/offenders etc."*

iii. *"Do you have such a policy [relating to mentally disordered suspects] and if so may I please have a copy asap?"*

iv. *"Why has the force not followed the advice in the circulars in dealing with [name redacted]?"*

v. *"Please provide copies of [the PSD (Professional Standards Department) and Inspector John Heath] reports?"*

vi. *"Please advise whether PSD made a decision on the basis of phone conversations....Please advise whether anyone has investigated these issues"*

vii. *"...if officers conduct has been investigated, please advise details of allegations made."*

viii. *"Please confirm whether PSD claim to have investigated [name redacted] false statement or my counter complaints of harassment to decide whether the warning was unjust & should be retracted"*

ix. *"Please identify what written information from me was read by PSD before a decision was reached. Please advise whether PSD read my letters to Sergeant Sahota up to & including 23/3/05, & Inspector Smith of 25/2/05. Please advise whether PSD received the audio & videotapes."*

3. The public authority responded to these requests on 19 May 2005. These responses were as follows:

i. *"The standard custody form will be completed and any requests made by the detainee are noted on this form."*

ii. *"The force policy on disability appears in the Policy 23900. This has already been forwarded to you and is the over arching policy that includes a Statement of Policy relating to disability."*

iii. The complainant was provided with a list of policy documents that were available on the website of the public authority. The public authority also referred to Policy 14800 which was intended for future publication. This was withheld under section 22. A copy of this policy document was later disclosed to the complainant on 11 January 2006, following its publication.

iv. The public authority cited sections 30(1) and 40(2).

v. The public authority cited sections 30(1), 40(1) and 40(2).

vi. The public authority cited sections 30(1) and 40(1).

- vii. The public authority cited sections 30(1) and 40(2).
 - viii. The public authority cited sections 30(1) and 40(2).
 - ix. The public authority cited sections 30(1) and 40(1).
4. The public authority briefly explained its reasoning for applying sections 40(1) and (2). In connection with section 40(1), the public authority stated that the information requested was personal data relating to the complainant and that she should make a subject access request under section 7 of the Data Protection Act 1998 if she wished to access this information. In connection with section 40(2), the public authority stated that this information constituted personal data relating to third parties and that it would constitute a breach of the data protection principles to disclose this information to the complainant.
 5. The public authority also went on to describe why section 30(1) was considered to apply, stating that the information requested here had been recorded in connection with a police investigation. The public authority recognised a public interest in disclosure to enhance the accountability of the public authority. Against disclosure, the public authority argued that ACPO guidance on this issue, the fact that the information related to a criminal investigation and third party interests meant that the public interest favoured the maintenance of the exemption. The public authority concluded that the balance of the public interest favoured the maintenance of the exemption.
 6. On 30 December 2005, the complainant made the following information request:
 - x. *"Please let me know whether I King was entitled to pass the file to CID & disclose such information about me to progress a 'rape' investigation without my knowledge or formal allegations."*

The public authority responded on 11 January 2006, stating that it did not consider this request to be valid for the purposes of the Act.
 7. Following further exchanges of correspondence between the complainant and the public authority, in a letter dated 26 January 2006, the public authority advised the complainant of its internal review procedure. The public authority gave the outcome of the review by letter dated 7 March 2006, stating that its initial response to the requests was upheld.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner on 24 March 2006. An exchange of correspondence between the complainant and the Commissioner followed, during which the Commissioner attempted to clarify the precise scope of the

complainant's request.

9. Several of the complainant's lengthy items of correspondence to the public authority included information requests and the process of identifying which of these constituted the focus of the complaint was complicated. Following several attempts to agree the scope of the investigation, the Commissioner informed the complainant that the investigation would focus on the requests identified above.

Chronology

10. The Commissioner contacted the public authority initially on 15 March 2007. The public authority was asked to clarify its stance in regard to each part of the request, including arguments as to why the exemptions cited were considered to apply and, where appropriate, why the public interest was believed to favour the maintenance of the exemptions cited. Where the public authority had cited section 22, it was asked to confirm whether the information withheld under this provision had since been published.
11. The public authority responded to this on 16 April 2007 and 24 May 2007. In relation to each part of the request, the stance of the public authority was as follows:
 - i. All the information held that falls within the scope of this request has been supplied to the complainant.
 - ii. All the information held that falls within the scope of this request has been supplied to the complainant.
 - iii. All information held relating to policy documents that have been published has been disclosed to the complainant. The public authority went on to refer to policy documents 07400 and 07401 and stated that these were withheld under section 22 and that a decision had later been taken not to publish these documents. The public authority also stated that the complainant had previously been provided with a prior version of 07400 and that no prior version of 07401 had existed.
 - iv. The public authority referred to the explanation given in its refusal notice of 19 May 2005.
 - v. The public authority referred to the explanation given in its refusal notice of 19 May 2005.
 - vi. The public authority referred to the explanation given in its refusal notice of 19 May 2005.
 - vii. The public authority referred to the explanation given in its refusal notice of 19 May 2005.
 - viii. The public authority referred to the explanation given in its refusal notice of 19 May 2005.
 - ix. The public authority indicated that it would exceed the cost limit for it to confirm or deny whether information falling within the scope of this request is held.
 - x. The public authority stated that it had considered it appropriate to deal with this request as 'business as usual' as it did not appear to be a request for recorded information. The public authority also stated that it would be likely to exceed the cost limit to verify if information falling within the scope of

this request was held.

12. The Commissioner contacted the public authority again on 30 May 2007. Firstly, the Commissioner noted that the response to part i of the request did not appear to be an adequate response for the purposes of the Act. The public authority was asked to revert to the complainant and provide a comprehensive response to this part of the request. The public authority was advised that this response should confirm or deny whether recorded information falling within the scope of this request was held and information that was held should be disclosed to the complainant, subject to possible exemption.
13. Secondly, in connection with parts v and vi of the request, the Commissioner noted that the public authority had cited section 40(1), indicating that it believed that the information requested here was personal data relating to the requester. In connection with these parts of the request, the public authority was asked to respond to the Commissioner confirming whether these parts of the request had been handled as subject access requests and, if so, whether the complainant had been provided with all personal data held by the public authority that fell within the scope of these requests.
14. Thirdly, in connection with part ix of the request, the Commissioner noted that the public authority had indicated in its letter of 24 May 2007 that this part of the request would exceed the cost limit. However, the public authority had also cited sections 30(1) and 40(1) when initially refusing this part of the request on 19 May 2005. The public authority was asked to indicate if it believed that the cost limit would be exceeded through compliance with this request, or whether it believed that the information requested was exempt under sections 30(1) and 40(1).
15. The public authority responded to this on 11 June 2007. Firstly, the public authority stated that it did not intend to provide a further response to part i of the request as it believed that the complainant had received everything held by it that fell within the scope of this request.
16. Secondly, the public authority stated that the complainant had previously made a subject access request and had been provided with her own personal data in response to this. The public authority also stated that the PSD report would contain a 'vast quantity' of personal data relating to the complainant.
17. Thirdly, the public authority stated that its stance was that compliance with part ix of the request would exceed the cost limit.
18. At this stage, the Commissioner was concerned about the lack of clarity from the public authority in relation to each part of the request. The Commissioner was particularly concerned that the public authority was referring to the cost limit provided by section 12 in relation to parts of the request in connection with which it had previously cited exemptions.
19. After discussing these concerns with the public authority, the Commissioner contacted the public authority again on 10 July 2007. In this correspondence, the Commissioner set out his understanding of the stance of the public authority in

relation to each part of the request. The public authority was asked to respond to this, confirming its stance in relation to each part of the request.

20. The public authority responded to this on 30 July 2007, giving its stance in regard to each part of the request as follows:
- i. All the information held that falls within the scope of this request has been supplied to the complainant.
 - ii. All the information held that falls within the scope of this request has been supplied to the complainant.
 - iii. All the information held that falls within the scope of this request has been supplied to the complainant.
 - iv – x. To comply with these parts of the request would exceed the cost limit of £450.

With its response, the public authority also provided some explanation of its calculations of cost.

21. The Commissioner contacted the public authority again on 6 August 2007. The public authority was asked to respond with more detail as to how it had calculated the cost limit and to confirm whether it was citing the cost limit in relation to the duty to confirm or deny, or whether this was cited in relation to the provision of a copy of the information.
22. The public authority responded on 16 August 2007 and confirmed that it was citing the cost limit in relation to the duty to confirm or deny. It went on to state that it was not possible for it to give further detail about its cost estimate and that the details given in its previous response applied equally to all parts of the request in connection with which section 12 had been cited.
23. The public authority stated that to confirm or deny whether the information was held would involve a manual search of several sources of information. The public authority referred specifically to the PSD file (the PSD '*report*' referred to in request v), which consists of approximately 500 pages. The public authority stated that to review this would require 5 minutes per page, with a total of 41 hours required to review the entire file.
24. The public authority also referred to its Records Management System and to 'detailed working sheets'. The public authority stated that it considered that it was unlikely that information falling within the scope of the requests would be held in these areas, but that it would be necessary to search these areas to verify this. The public authority believed that to search these areas would take a substantial period of time.

Findings of fact

25. The public authority confirms that it holds information that falls within the scope of parts i, ii, and iii of the request and states that all this information has been disclosed to the complainant.

26. The public authority states that it is unable to confirm or deny whether it holds recorded information that falls within the scope of parts iv – x of the request as to do so would exceed the cost limit of £450.

Analysis

Section 1

27. Section 1(1) of the Act requires that a public authority should confirm whether it holds recorded information falling within the scope of the request. The Commissioner finds that the public authority met this requirement when responding to parts ii and iii of the request. The Commissioner also finds that the public authority disclosed to the complainant all recorded information held by it that falls within the scope of these requests.
28. However, in citing section 22 in relation to policy document 07401, the public authority breached section 1(1)(a). When citing this exemption, the public authority implied that this information was held and was intended for future publication. The public authority has since stated that this information was not held at the time of the request. Therefore, the response of the public authority should have confirmed that this information was not held.
29. When responding to part i of the request, the public authority failed to explicitly confirm or deny whether the information requested here was held. Following the intervention of the Commissioner, the public authority declined to take remedial action, as referred to at paragraph 15. The public authority therefore failed to comply with the requirement of section 1(1)(a) when responding to part i of the request.
30. When responding to parts iv – ix of the request, the public authority cited exemptions. The public authority has since altered its stance, stating that it cannot confirm whether information falling within the scope of these requests is held as to do so would exceed the cost limit. When refusing these parts of the request, the public authority indicated that recorded information falling within the scope of these requests was held by it when it had, apart from in connection with request v, not verified this. In respect of parts iv and vi-ix the public authority has therefore failed to comply with section 1(1).
31. The public authority failed to treat part x of the request as a valid information request for the purposes of the Act. Whilst the wording of this request is more indicative of a question rather than a request for recorded information, the Commissioner believes that the correct approach for the public authority here would have been to treat this as a request for recorded information. In failing to do so, the public authority did not comply with the requirements of section 1(1).

Section 12

32. The Commissioner is satisfied that the information requested at part v of the

request is personal data of the complainant. Further, he considers that information relevant to requests vi, viii, ix and x is, or if it were held would be, personal data of the complainant. This applies whether the information is on the PSD file or held elsewhere.

33. In respect of requests iv and vii, the Commissioner is satisfied that any material on the PSD file that would satisfy these requests would also constitute the complainant's personal data. This is because that information would be held as part of the complaint file and would therefore have been used by the public authority when it was making a decision affecting the complainant. The Commissioner has not considered section 12 in relation to any of this information. This is because he considers that these elements of the complainant's requests should have been processed under the DPA. This is addressed further in the section below about section 40.
34. However, the Commissioner recognises that information may be held by the public authority regarding parts iv and vii of the request other than on the PSD file specified at part v. It is not clear that any such information would necessarily constitute the complainant's personal data. Therefore, the Commissioner has considered whether the public authority was correct to cite section 12 in relation to parts iv and vii of the request in terms of material beyond that held in the PSD file.
35. Where the public authority is a non central government public authority, the cost limit is £450. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 requires that the cost of complying with a request should be calculated at £25 per hour. This means that, in effect, there is a time limit of 18 hours. Section 12(2) provides that the public authority is not obliged to confirm or deny whether it holds information falling within the scope of the request if to do so would, in itself, exceed the cost limit.
36. The public authority has stated that it would be necessary for it to search areas other than the PSD file where the requested information may be held. The public authority has specified that it would be necessary to search 350 'action logs' and 30 'detailed working sheets'. These other areas also contain substantial volumes of information, which may include information falling within the scope of the request.
37. The Commissioner accepts that searching through areas other than the PSD file for information falling within the scope of parts iv and vii of the request would exceed the cost limit. The Commissioner finds, therefore, that section 12 provides that the public authority is not obliged to confirm or deny whether it holds information falling within the scope of parts iv and vii of the request in terms of material beyond that held in the PSD file.

Section 16

38. The Commissioner believes that, where a public authority is citing section 12, the duty to provide advice and assistance imposed by section 16 requires that the public authority should advise the complainant as to how the request could be

refined in order that it may be possible to comply with it without exceeding the cost limit, for example by providing a time frame e.g. information recorded during 2006.

39. In this case, as the public authority failed to cite section 12 prior to the involvement of the Commissioner, the complainant has not been offered the opportunity to amend her request in order to bring it within the cost limit. The public authority has, therefore, failed to comply with the duty to provide advice and assistance.

Section 17

40. Section 17(5) requires that, where a request is refused under section 12, the applicant should be provided with a refusal notice stating that fact. In this case, the public authority failed to issue any such notice and, therefore, failed to comply with the requirements of this provision.

Section 40

41. Section 40(1) provides that, where an individual makes a request under the Act for information that is personal data of which they are the data subject, this information is exempt under section 40(1). In this case, it is apparent that several parts of the information request are for information constituting personal data of which the complainant is data subject.
42. Specifically, the Commissioner believes that parts v, vi, viii, ix and x of the request are for information constituting personal data of which the complainant is data subject. The details of the Commissioner's considerations of this issue are as follows:
43. v. The public authority has confirmed that information falling within the scope of this request is held by it. Previously it has stated that this would include personal data relating both to the complainant and to third parties. The Commissioner believes that the information requested here, including the contents of the PSD file, would be personal data relating to the complainant in its entirety. This information is, therefore, exempt by virtue of section 40(1).
44. In coming to this decision, the Commissioner recognises that information included in the scope of this request is likely also to constitute personal data relating to individuals other than the complainant. However, the Commissioner believes that the context of this information, which relates to investigations of allegations made by and about the complainant, indicates that this information would be personal data relating to the complainant, even where it may also be personal data relating to other individuals.
45. vi. In relation to this part of the request, the public authority has not confirmed or denied whether the requested information is held and instead has cited section 12. Section 40(5) provides that a public authority is not obliged to confirm or deny whether it holds information that either is personal data relating to the requester, or would be if it were held. In effect, this provision removes from the public

authority the duty to confirm or deny whether it holds the requested information if it is sufficiently clear from the wording of the request, or through any other means, that the request is for personal data of which the requester is the data subject.

46. It is necessary here for the Commissioner to consider whether it is sufficiently clear from the wording of the request that the information requested here would be personal data relating to the requester. This is also necessary for parts viii, ix and x of the request, which are discussed below. In coming to his decision on this issue in relation to parts vi, viii and ix of the request, the Commissioner has taken into account the conclusion that the PSD file, which the public authority has confirmed it does hold, would constitute personal data relating to the complainant.
47. The request of the complainant here is for information regarding whether the PSD based decisions on telephone conversations. It is clear that the decisions referred to by the complainant would be those made by the PSD concerning its dealings with her and that any recorded information about whether the public authority has made decisions relating to the complainant on the basis of telephone conversations would be personal data relating to the complainant. The Commissioner concludes, therefore, that section 40(5) provides that the public authority is not obliged to confirm or deny whether it holds recorded information that falls within the scope of this request.
48. viii. There are two elements to this request. Firstly the complainant requests information about whether investigations have been carried out into an alleged false statement made by a third party. Secondly, the complainant requests information about investigations carried out into complaints made by her.
49. Whether information about the statement allegedly made by the third party would be personal data relating to the complainant is dependant on the nature of any such statement. Similarly to the situation described above with the PSD file, information about any such statement is also likely to constitute personal data relating to the third party, but this does not preclude the possibility of this information also constituting personal data relating to the complainant.
50. When considered in the context of the overall dispute between the complainant and the public authority and the large volume of documentation available to the Commissioner in connection with this case, it is apparent that the false statement that the complainant believes was made by the third party relates to her. The Commissioner considers that any such information that is held by the public authority would be personal data relating to the complainant.
51. Turning to the second part of this request, this relates to complaints made by the complainant. Whilst the focus of these complaints is a third party, it is apparent from the overall context of the complainant's issues with the public authority that the "*complaints of harassment*" referred to in this request are about alleged harassment of the complainant by the third party. The Commissioner considers that any information held by the public authority about these complaints would constitute personal data relating to the complainant. The Commissioner concludes that, in respect to both elements of this request, section 40(5) provides that the public authority is not obliged to confirm or deny whether information

falling within the scope of this request is held.

52. ix. The several elements of this request focus on the information utilised by the PSD. Further to the finding above that the PSD file itself would be personal data relating to the complainant, the Commissioner considers that any recorded information held about the information utilised by the PSD in its dealings with the complainant would constitute personal data relating to the complainant. Section 40(5) therefore provides that the public authority is not obliged to confirm or deny whether it holds recorded information that falls within the scope of this request.
53. x. Whilst the request here asks for information about the actions of an employee of the public authority, the actions described in the request would have been carried out in connection with the complainant. It is clear that any information held that falls within the scope of this request would be personal data relating to the requester and, therefore, the exemption provided by section 40(5) would apply here. The public authority would not be obliged to confirm or deny that the information requested here is held.

The Decision

54. In relation to part i of the request, the Commissioner finds that the public authority failed to comply with section 1(1)(a) in that it failed to confirm or deny whether it held recorded information falling within the scope of this part of the request. The public authority also failed to comply with section 1(1) in that it did not initially respond to part x of the request in accordance with the Act. In relation to parts ii and iii of the request, the Commissioner finds that the public authority has complied with section 1(1) in that it confirmed that information falling within the scope of these requests is held and disclosed this information to the complainant, but that it failed to comply when citing section 22 in relation to information that it has since confirmed was not held at the time of the request.
55. The Commissioner also finds that section 12 was applied correctly in relation to parts iv and vii of the request. The Commissioner also finds that the exemption provided by section 40(1) applies to the information held by the public authority that falls within the scope of part v of the request and that section 40(5) provides that the public authority is not obliged to confirm or deny whether it holds information that falls within the scope of parts vi, viii and ix of the request.
56. However, the Commissioner further finds that the public authority failed to comply with the requirements of sections 16(1) and 17(5) when responding to this request.

Steps Required

57. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

58. Provide to the complainant a response to part i of the request that is compliant with section 1(1) of the Act. This response should:
- Explicitly confirm or deny whether the requested information is held by listing the recorded information held by the public authority that falls within the scope of this part of the request, and
 - provide to the complainant a copy of any recorded information held that falls within the scope of this request that has not been provided to the complainant previously, or if an exemption applies issue a section 17 refusal notice.
59. In accordance with the duty to provide advice and assistance imposed by section 16(1), provide to the complainant advice as to how parts iv and vii of her request could be refined in order that it may be possible to comply with them without exceeding the cost limit.
60. Whilst the public authority failed to comply with section 17(5) when refusing parts iv and vii of the request under section 12, the complainant has been informed through this notice that compliance with parts iv and vii of the request would exceed the cost limit. For this reason, the public authority is not required to take steps to remedy the breach of section 17(5).

Other matters

61. In relation to several parts of the request, the conclusion of the Commissioner is that the information falling within the scope of the request, or that would fall within the scope of the request if it were held, is personal data relating to the complainant. In relation to these parts of the request, consideration will be given to whether it is necessary to carry out an assessment under section 42 of the DPA concerning whether this personal data should be disclosed to the complainant in line with section 7 of the DPA.
62. The Commissioner has carried out an assessment of the processing of the complainant's personal data by the public authority previously. If, upon review, it appears that this assessment covered the issue of the complainant requesting the personal data covered in this notice, a repeat assessment will not be necessary and will not be carried out.

Failure to comply

63. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court

Right of Appeal

64. 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

65. 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 28th day of January 2008

Signed

**Jane Durkin
Assistant Commissioner**

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