

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 November 2010

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

Summary

The complainant requested various information concerning the investigation and proceedings relating to a crime for which he was convicted. The public authority refused the request under section 40(1) (personal information of the requester) of the Freedom of Information Act 2000. The Commissioner finds that the exemption provided by section 40(1) is engaged as all of the information requested does constitute the personal information of the complainant and so the public authority refused the request correctly. However, the public authority breached procedural requirements of the Act.

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 20 April 2009:
 - i. *"Previous convictions of the deceased and all of the prosecution witnesses in the case."*

- ii. *"All material which discloses information that may have been communicated by lay witnesses e.g. previous witness statements, unused witness statements, CAD Messages, Officers IRBs and CRIS."*
 - iii. *"All material which directly, or indirectly reveals that the case against the defendant has been obtained, prepared and processed by the Police Officers e.g. crime reports, CAD messages, memos, action and message forms and other operational documents."*
 - iv. *"All documentation the defendant is entitled to."*
 - v. *"Any information indicating a background to this offence which is consistent with the defendant innocence; for e.g. names and details of other suspects and their previous convictions."*
 - vi. *"All information indicating that the integrity of the evidence or of the integrity of the prosecution witnesses, or the inferences to be drawn from that or their evidence is in doubt."*
 - vii. *"Information as to the reliability of the observations made by Prosecution witnesses; for e.g. any disciplinary or police complaint commission action on the investigation taken against any of the police officers involved in dealing with this offence."*
 - viii. *"Any and all, other information which could reasonably be expected to assist the defence."*
3. The public authority responded to this on 20 May 2009. The requests were refused, with the public authority citing the exemptions provided by sections 30 (information held for the purposes of investigations), 40(1) (personal data relating to the requester), 40(2) (personal data relating to third parties) and 42 (legal professional privilege). No subsections from sections 30 or 42 were specified at this stage.
 4. The complainant responded to this on 23 May 2009 and requested an internal review. The response giving the outcome of the internal review was dated 27 July 2009. The conclusion of the review was that the exemptions cited previously were upheld. Again no subsections from 30 or 42 were specified.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner in connection with the refusal of his requests initially by letter dated 27 July 2009. At this stage the complainant referred specifically to the Data Protection Act 1998 (DPA).

6. An assessment under section 42 of the DPA was carried out by the Commissioner's office as to whether the above requests had, to the extent that these were requests for the complainant's own personal data, been dealt with in accordance with section 7 of the DPA. The conclusion of this assessment was that it was likely that the public authority had dealt with these requests in accordance with the DPA. The complainant was informed at that stage that it would also be considered whether his requests had been dealt with in accordance with the Freedom of Information Act.

Analysis

Exemptions

Section 40(1)

7. The public authority cited the exemption provided by section 40(1). This provides that information which is the personal data of the requester is exempt. The task for the Commissioner is, therefore, to consider whether the information held by the public authority that is within the scope of the complainant's requests is the personal data of the complainant.
8. When citing section 40(1), the public authority did not specify to which of the complainant's requests it believed this exemption to be engaged. The Commissioner has assumed, therefore, that the public authority cited this exemption in relation to all of the complainant's requests. In forming a conclusion as to whether this information would constitute the personal data of the complainant, the Commissioner has taken into account the wording of the requests and what this suggests about the nature of the information requested. Apart from where specified otherwise, the following analysis relates to all of the 8 requests made by the complainant.
9. Covering first the Commissioner's understanding of the background to the complainant's requests, the complainant was convicted of a crime and imprisoned as a result. The requests made by the complainant relate to this offence and conviction.
10. 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”.*

11. The Commissioner would note at this point that the wording of some of the requests suggests that some of the information requested by the complainant is likely to be the personal data of other individuals. This would apply to, for example, request (vi), in which the complainant asks for information relating to witnesses. That some of the information requested may be the personal data of other individuals does not, however, preclude this also being the personal data of the complainant.
12. 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.
13. **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?

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. This relates to the investigation and proceedings for a crime for which he was convicted. Given this, the view of the Commissioner is that it is clear that the complainant could be identified from the majority of the information in question.

14. The Commissioner recognises, however, that it may not be possible to identify the complainant from some of the information within the scope of the requests were this information to be viewed 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.

1

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 means by which information relating to the investigation and proceedings that led to the conviction of the complainant could be linked to the complainant. This could be through, for example, pre-existing knowledge about this crime; given that the conviction of the complainant appears to relate to a serious crime, the Commissioner believes that it is likely that there will be those with knowledge of the circumstances surrounding the complainant's conviction. Alternatively, if there were media coverage of the complainant's conviction, this may enable individuals who would otherwise have had no knowledge of this case to link information within the scope of the requests to the complainant. The Commissioner finds, therefore, that the complainant could be identified through information falling within the scope of the requests, either directly, or through this information combined with other information.
17. **ii.** Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?

The relevance of this question here is whether the information in question relates to the complainant. The view of the Commissioner on this point is that, as all of the information requested relates to the crime for which the complainant was convicted, it is clear that this all also relates to the complainant.

18. The Commissioner concludes that the information requested relates to the complainant and that the complainant would be identifiable from it. This information does, therefore, constitute the personal data of the complainant according to the definition in section 1(1) of the DPA. The Commissioner finds, therefore, that the exemption provided by section 40(1) is engaged in relation to the entirety of the information requested by the complainant.

Sections 30, 40(2) and 42

19. As the conclusion above relates to the entirety of the information falling within the scope of the complainant's requests, it has not been necessary to also go on to consider the other exemptions cited by the public authority.

Procedural Requirements

Section 17

20. In failing to specify any subsections from sections 30 and 42 when citing these exemptions, the public authority did not comply with the requirement of section 17(1)(b).

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 the exemption provided by section 40(1) was cited correctly. However, he also finds that the public authority failed to comply with section 17(1)(b) when failing to specify down to the subsection all of the exemptions cited.

Other matters

22. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern. 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 this time frame. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

23. 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.

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.

Dated the 15th day of November 2010

Signed

**Jon Manners
Group Manager**

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

Legal Annex

Section 17

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 30

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (d) any criminal proceedings which the authority has power to conduct.”

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(2) provides that –

"Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

Section 42

Section 42(1) provides that –

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."