

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 July 2010

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

Summary

The complainant requested the dates of pre-hunt meetings and the names of police officers who had attended these. The public authority disclosed the dates of the meetings, but refused to disclose officer's names and cited the exemptions provided by sections 31(1)(a) (prejudice to the prevention or detection of crime), 31(1)(b) (prejudice to the apprehension or prosecution of offenders), 31(1)(c) (prejudice to the administration of justice), 38(1)(a) (endangerment to health) and 38(1)(b) (endangerment to safety). Section 40(2) (personal information) was also cited following the intervention of the Commissioner. The conclusion of the Commissioner is that information recording the officers' names is exempt by virtue of section 40(2) and, therefore, the public authority is not required to disclose this information. However, the Commissioner has also found that the public authority failed to comply with the procedural requirements of sections 17(1) and 17(3)(b) in its handling of the 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 complainant made the following information request on 7 October 2009:

"Dates of [pre-hunt] meetings in last 5 years and names of officers attending pre-hunt meetings with Isle of Wight hunt"

3. The response to this was dated 26 October 2009. In response to the request for dates of pre-hunt meetings, the public authority gave four dates, the earliest of which was in November 2007, and stated that it did not hold any information recording dates of meetings prior to this.
4. The public authority refused the request for the names of officers and cited the exemptions provided by sections 31(1)(a) (prejudice to the prevention or detection of crime), 31(1)(b) (prejudice to the apprehension or prosecution of offenders), 31(1)(c) (prejudice to the administration of justice), 38(1)(a) (endangerment to health) and 38(1)(b) (endangerment to safety). The reasoning as to why these exemptions were believed to be engaged and as to why the balance of the public interest favoured the maintenance of these exemptions was addressed collectively for all the exemptions cited, rather than separately in relation to each of the exemptions.
5. The complainant responded to this on 26 October 2009 and requested that the public authority carry out an internal review. At this stage the complainant specified only the refusal to disclose officers' names; no reference was made to the public authority stating that it did not hold information recording the dates of meetings prior to November 2007.
6. The public authority responded with the outcome of this review on 17 November 2009. The conclusion of the review was that the exemptions cited in relation to the request for officers' names should be upheld, but the response gave no reasoning for this outcome.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner's office in connection with this information request on 8 December 2009 and argued that the information recording the officers' names should be disclosed. The complainant's reasoning for this was that she had met with officers of

Sussex Police in connection with hunting previously and was aware of the identities of officers who liaised with hunts in Sussex. The complainant also suggested that there was evidence that officers from the public authority were *'turning a blind eye'* to the Hunting Act 2004 and allowing offences under the Protection of Badgers Act 1992 to be committed on the Isle of Wight. For these reasons the complainant argued that disclosure of the information requested was in the public interest.

8. As noted above, when requesting an internal review the complainant made no reference to the public authority having stated that it did not hold the dates of pre-hunt meetings prior to November 2007. Neither did the complainant make any reference to this at the time of making her complaint to the Commissioner's office. As a result, this Notice focuses solely on the refusal of the request for the names of police officers who had attended pre-hunt meetings.

Chronology

9. The Commissioner contacted the public authority in connection with this case initially on 1 April 2010. The public authority was asked to respond with its reasoning for citing sections 31(1)(a), (b) and (c) and 38(1)(a) and (b). It was also noted that the exemption provided by section 40(2) (personal information) had not been cited, despite it being clear from the wording of the request that information falling within the scope of the request would be personal information. The public authority was asked to confirm in its response if it now wished to introduce section 40(2).
10. The public authority responded to this on 26 April 2010 and confirmed that it did now wish to also cite section 40(2). It provided an explanation in relation to this exemption, and in relation to the exemptions cited in the refusal notice. The public authority specified sections 31(1)(a) and (b) at this stage, but not section 31(1)(c). The Commissioner took this as an indication that the public authority was withdrawing reliance on section 31(1)(c).

Analysis

Exemptions

Section 40

11. The public authority has cited section 40(2). This provides an exemption for information that is the personal data of any individual

aside from the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. Section 40(2) is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice.

12. Consideration of this exemption is a two stage process. First, it is necessary to address whether the information specified in the request is the personal data of any individual aside from the requester. The second stage is to consider whether the disclosure of that personal data would be in breach of any of the data protection principles.
13. Turning to the issue of whether the information specified by the complainant in the request constitutes the personal data of any other individual, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

“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”.*

14. The complainant has in this case requested the names of individuals. The Commissioner considers it clear that individuals could be identified from this information and so, in accordance with (a) above, this information would constitute the personal data of those individuals.
15. As to whether disclosure of this information would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully. The first question to address in connection with this principle is whether disclosure would be, in general, fair.
16. The complainant has, as noted above at paragraph 7, referred to being aware of the identities of police officers who undertake hunting related duties in Sussex and the public authority has acknowledged that the identities of police officers would not ordinarily be considered confidential. However, the public authority has stated that the circumstances in relation to the officers in question here, who are hunt liaison officers, differ and maintains that the identities of these officers should not be disclosed. The Commissioner has taken into account the reasoning of the public authority when considering whether disclosure would be fair.

17. When considering the issue of fairness, the Commissioner will take into account the possible consequences of disclosure for the data subject. The public authority believes that disclosure here may result in a negative consequence to the data subjects in that it may lead to the officers in question being harassed.
18. The public authority has advanced two factors in support of this argument. First it referred to the Isle of Wight being a small community, in terms of both physical size and population. Due to this being an island community, the public authority has stated that police officers who work on the Isle of Wight are also likely to live there, whereas in other areas a police officer will have greater freedom to live in a different area from that in which they work. The public authority believes the size of the Isle of Wight and the fact that it is likely that the police officers concerned will live within this community means that there is an increased likelihood of the names of the officers being linked to their home addresses.
19. The public authority has also advanced evidence that hunt liaison officers have suffered harassment thought to be linked to their professional lives at their home addresses. The public authority believes it to be the case that officers have been harassed as a result of their status as hunt liaison officers being known and suggest that naming other hunt liaison officers may lead to the other officers being subjected to similar harassment.
20. The Commissioner accepts the relevance of these points to the issue of whether disclosure would be fair, but notes that the evidence provided by the public authority in connection with the second point suggests that there are means by which, other than disclosure via the Act, individuals may become aware of the status of a police officer as a hunt liaison officer. In order for the Commissioner to conclude that disclosure would be unfair, it must be clear that the outcome predicted by the public authority would be as a result of disclosure. So, if it is the case that the identities of hunt liaison officers are already known prior to disclosure through the Act, the harassment predicted by the public authority could occur, but would not necessarily be as a consequence of disclosure in response to the complainant's request.
21. On this point, the Commissioner considers it important to differentiate between the global disclosure that the Act requires (once information is disclosed via the Act it effectively becomes publicly available) and the knowledge that may have been gleaned by individuals about the identity of hunt liaison officers on the Isle of Wight. Whilst it may be possible to glean such knowledge through, for example, regularly

monitoring hunt activities, the Commissioner does not believe that this precludes the possibility that disclosure of this information to the world at large would be unfair.

22. The conclusion of the Commissioner is that disclosure of the information requested by the complainant would be unfair to the police officers named and in breach of the first data protection principle. The exemption provided by section 40(2) is, therefore, engaged. The reasoning for this conclusion is that the Commissioner accepts the representations from the public authority that it is possible that naming the officers concerned would enable identification of their home address and that this may lead to harassment of these officers. The Commissioner also accepts that the knowledge of some individuals about the identity of hunt liaison officers is not equivalent to this information being disclosed into the public domain via the Act.

Sections 31 and 38

23. As the Commissioner has reached the above conclusion on section 40(2), it has not been necessary to go on to consider the other exemptions cited by the public authority.

Procedural Requirements

Section 17

24. As noted above at paragraph 4, the public authority addressed why the exemptions cited were believed to be engaged and why the public interest was believed to favour the maintenance of the exemptions collectively, rather than separately in relation to each exemption cited. In failing to provide adequate explanations as to why the exemptions cited were believed to be engaged or why the balance of the public interest favoured the maintenance of these exemptions, the public authority did not comply with the requirements of sections 17(1)(c) or 17(3)(b).
25. In failing to cite section 40(2) within twenty working days of receipt of the request, the public authority did not comply with the requirements of section 17(1).

The Decision

26. 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(2) correctly. However, the Commissioner has also found that the public authority failed to comply with the procedural requirements of sections 17(1) and 17(3)(b) in its handling of the request.

Other matters

27. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

As referred to above at paragraph 6, when giving the outcome to the internal review, the public authority gave no reasoning for concluding that the refusal of the request should be upheld. Paragraph 39 of the section 45 Code of Practice states the following:

"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."

28. The internal review response from the public authority did not reflect that a reconsideration of the request conforming to the description above took place. The Commissioner would advise the public authority that a response giving the outcome of an internal review should state the reasoning why the initial refusal was upheld and should reflect that there has been a genuine reconsideration of the request.

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,
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.

30. 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 5th day of July 2010

Signed

**David Smith
Deputy Commissioner**

**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 31

Section 31(1) provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice”

Section 38

Section 38(1) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

Section 40

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."