



ASSOCIATION OF CHIEF POLICE OFFICERS

c/o PO BOX 481
Fareham
Hampshire
PO14 9FS

Tel: 02380 674255

Email: acpo.request@foi.pnn.police.uk

23/07/2013

Dear Mr Tindell

FREEDOM OF INFORMATION REQUEST REFERENCE NUMBER: 000148/13

Thank you for your request for information regarding RSPCA & PNC which has now been considered.

Applicant Question:

1. Please disclose the service level agreement (SLA) with the RSPCA that gives it access to the Police National Computer (PNC).
2. Please disclose details of any investigations or assessments (including emails, report and memoranda) into the legal basis for the RSPCA SLA (given that all the other authorities that have SLAs are prosecuting authorities whereas the RSPCA is a private organisation with no statutory powers and not subject to the FOIA).
3. Please disclose what data protection assurances the RSPCA has given over its access to the PNC. Specifically, please disclose what mechanisms that RSPCA have agreed to that will prevent subject data being disclosed to staff not directly involved in a prosecution?

ACPO Response:

Section 17 of the Freedom of Information Act 2000 requires ACPO, when refusing to provide information by way of exemption, to provide you with a notice which: (a) states that fact, (b) specifies the exemption in question and (c) states why the exemption applies. In accordance with the Freedom of Information Act 2000 this letter acts as a Refusal Notice for those aspects of your request.

1. ACPO do hold information captured by your request. I have pleasure in providing to you the Service Level Agreement (SLA) between ACPO and the RSPCA. This document has been redacted by virtue of the following exemptions:

Section 40(2) – Personal information

Section 43(2) – Commercial Interests

Section 40 Personal information – the legislation:

(2) 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.

If the request for information relates to third parties (anybody other than the data subject), it is absolute under Section 40(2) if disclosure would breach any of the data protection principles. Releasing sensitive personal information to someone other than the data subject will almost infringe the data protection principles contained in the Data Protection Act 1998 (DPA).

However, in certain exceptional circumstances where there is significant public interest, or other mitigating circumstances in releasing that personal data, a public authority can consider those circumstances and considerations to decide whether or not it is in the best interest of the general public for that personal information to be disclosed, even when considered against the rights of those individuals under the Data Protection Act.

In order to establish whether any such considerations or circumstances exist in this instance, I have to consider the Data Protection Act Principles. If any of these principles are breached, S40(2) becomes absolute which means there is no requirement to consider the public interest in disclosure.

The first Data Protection Principle outlines whether it would be ‘fair or lawful’ to disclose the information. Considerations include the confidentiality expectations of the subject, and the circumstances in which the information was provided. The DPA does not seek to guarantee personal privacy at all costs, but to strike a balance between the rights of individuals and the sometimes competing interests of those with legitimate reasons for using personal information.

The legitimate interests of the public in obtaining the names do not come close to countering the damage and distress that would be experienced by the data subject in this case. In the below decision notice, the ICO concluded that ‘the disclosure would be unfair (and they are) satisfied that in this case, the disclosure would be against the reasonable expectations of the data subject, be a breach of their confidentiality and would cause them unwarranted and unjustified damage and distress’.

http://www.ico.gov.uk/tools_and_resources/decision_notices/decision_notice_list.aspx?m=1&y=2012

ACPO are required to look to balance the consequences of any release of personal data and the reasonable expectations of the data subject, with general principles of accountability and transparency. Therefore in this case, I have concluded it would be

unfair to the data subject to disclose the information requested as it would be a clear breach of this first principle.

The Information Commissioner's Office (ICO) has issued new guidance in relation to requests for personal data about public authority employees and further information can be found by following the web-link below:

<http://www.ico.gov.uk/>

Given that the public interest has been met by disclosing the majority of the requested information to you, along with the new ICO Guidance regarding requests for personal data about public authority employees, I am satisfied on this occasion that releasing the names of some of the individuals within SLA would be irresponsible and reasonable on ACPO's part.

Section 43 Commercial interests – the legislation:

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice commercial interests of any person (including the public authority holding it)

In order to apply this exemption I am required to conduct a Public Interest Test.

The ICO is very clear that when considering the prejudice to third parties commercial interests, it will not be sufficient for the public authority to speculate about prejudice that may be caused; rather arguments originating from the third party itself will need to be considered.

In a previous Scottish Information Commissioner Decision Notice, relating to the cost of purchasing vehicles, the Commissioner noted that in order to claim the exemption for commercial interest the damage caused as a result of disclosure would have to be:

“...real or very likely, not hypothetical. The harm caused must be significant, not marginal, and it would have to occur in the near future not in some distant time.”

In the same decision notice it was stated that the vehicle company had argued that the publication of this information would give a false indication of both the available discounts and the manufacturing cost of the vehicles. The company indicated that release would therefore damage its bargaining position in relation to future vehicle sales.

Within the SLA I have redacted the charges that ACPO levy to RSPCA. To make it clear, although ACPO charge for their services, such as PNC checks, ACPO is not a profit-generating company. The charges provide financial support which goes back into supporting maintenance of criminal records, to ensure that they are up to date and fit for the purpose of policing.

Disclosure of the information would allow the public to assess the accountability and justification for its charging regime in regards to the provision of certain services, which would give the public a better understanding of the decision-making process. There is public interest in establishing that ACRO has negotiated a competitive rate for the charging of its services, in this case PNC checks for non-police agencies.

Disclosure of the information would jeopardise the commercial interests of ACRO in that it relates to sensitive commercial information held about its business. A CRO has a different charging scheme for the different agencies that it works with. Disclosure of the charging scheme between ACRO and the RSPCA would give other companies an unfair advantage should they wish to procure the services of ACRO. It may also result in ACRO being unable to maximise income from any future commercial arrangements that it may consider entering into.

In balancing the public interest considerations, the main factors favouring disclosure are accountability and transparency. However, disclosure of the charging scheme applied by ACRO to the RSPCA would undermine the commercial interests of the business and may compromise the relationship ACRO has with the company. Therefore the factors favouring non-disclosure outweighs the factors favouring disclosure.

2. ACPO do not hold information captured by your request.

I have made enquiries with the ACRO Criminal Records Office who confirm that there is no historic information held.

The normal standard of proof to apply in determining whether a public authority does hold any requested information is the civil standards of the balance of probabilities.

In deciding where the balance lies, the Information Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering where appropriate, any other reasons offered by the public authority to explain why the information is not held.

ACPO is responsible for defining national standards and professional practice in key areas of policing. Standards and practice provide a framework which supports accountability, interoperability and improvement in working practices across the police service and its partners. In high risk areas of policing they help ensure consistency of approach, underpin training and business processes and thereby better protect the public.

ACPO is an independent, professionally led strategic body. National policing work though ACPO is conducted through Business areas, each taking lead responsibility for a broad area of policing and headed by a serving Chief Officer. In order to ascertain what information is held, I engage with relevant key ACPO Business Areas.

The Business Areas lead the direction and development of policing in that area, working with Government and external stakeholders. Under each Business Area sit portfolios, led by an individual officer who acts as the national lead for specific issues.

I have undertaken all of the necessary checks in establishing whether information is held which is captured by your request and any necessary steps with regard to retrieval of such information. There is no information held within ACRO and I therefore conclude that the information that you seek is not held by ACPO.

In order to provide assistance to you, I am able to furnish you with the following information:

The current ACRO Criminal Records Policy Lead met with the RSPCA representatives and agreed that there is an existing common law right for any private citizen to bring a prosecution under animal welfare legislation.

The RSPCA currently exercise this right in prosecuting animal welfare offences and ACRO agreed a partnership arrangement with RSPCA under the Crime and Disorder Act 1998 (S115). The SLA was signed and the format of which has remained unchanged since the original draft. The SLA is renewed annually.

The SLA formalises the arrangements for ACRO to provide the RSPCA with access to information held on the Police National Computer (PNC), to create PNC records to show impending prosecutions, supply arrest summons numbers and add court results when available, for criminal investigations and prosecutions conducted by the RSPCA.

Her Majesty's Inspectorate of Constabulary (HMIC) reviewed the existing arrangement between ACRO and the RSPCA in October 2010. The report is available through open source channels. For your convenience, I provide you with a direct web-link to this information:

<http://www.hmic.gov.uk/media/acpo-criminal-record-office-police-national-computer-compliance-report-20110109.pdf>

In addition, the CPS recognise that prosecutions involving animal welfare are also conducted by the RSPCA and further information can be found via their web-site, and in particular, the 'supplementary functions undertaken by CPS' page of their site. For your convenience, I also provide the direct web-link below:

http://www.cps.gov.uk/legal/s_to_u/supplementary_functions_undertaken_by_the_cps/#a14

3. The RSPCA do not have direct access to the PNC. They only have access to information held on the PNC via ACRO for their prosecution purposes.

The SLA provides the following undertakings:

- Personal Data shared in accordance with this Agreement will only be used for the specific purposes for which they are requested.
- With the exception of telephone requests in cases of emergency, contact between ACRO and the RSPCA should only be made over a secure communication network and care must be taken where personal information is shared.
- Similarly, request and replies should not be communicated via insecure email as the internet is not secure and must not be used for the transmission of personal/sensitive personal data.
- Parties to this agreement undertake to ensure that personal data are handled, stored and processed as RESTRICTED level as defined by the Government Protective Marking Scheme (GPMS).

- The information shared should not be disclosed to any third party without the written consent of the party that provided the information. It should be stored securely and deleted when it is no longer required for the purpose for which it is provided.
- The RSPCA will not release the information to any third party without obtaining the express written authority of ACRO unless such disclosure is for the purposes defined in this Agreement or they are otherwise required to do by law.
- The RSPCA, as receivers of police information, will accept total liability for a breach of this Agreement should legal proceedings be served in relation to the breach.

Paragraph 8 of the SLA deals specifically with Subject Access Requests (SARs) and Notices served under Section 10 of the Data Protection Act 1998 (DPA).

Yours sincerely

Sherry Traquair
Freedom of Information Officer & Decision Maker

www.acpo.police.uk

COMPLAINT RIGHTS

Internal Review

If you are dissatisfied with the response you have been provided with, in compliance with the Freedom of Information legislation, you can lodge a complaint with ACPO to have the decision reviewed within 2 months of the date of this response. The handling of your request will be looked at by someone independent of the original decision, and a fresh response provided.

It would be helpful, if requesting a review, for you to articulate in detail the reasons you are not satisfied with this reply.

If you would like to request a review, please write or send an email to ACPO Freedom of Information, c/o PO Box 481, Fareham, Hampshire, PO14 9FS.

If, after lodging a complaint with ACPO, you are still unhappy with the outcome, you may make an application to the Information Commissioner at the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.