



**Neutral citation: [2023] UKFTT 1082 (GRC)**

**Case Reference: EA/2023/00084**

**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Heard at Field House on 31 October 2023 (and consideration of further  
submissions on 21 November 2023)**

**Decision given on: 28 December 2023**

**Before**

**TRIBUNAL JUDGE Stephen Cragg KC  
TRIBUNAL MEMBER Anne Chafer  
TRIBUNAL MEMBER Marion Saunders**

**Between**

**JON AUSTIN**

Appellant

**And**

**INFORMATION COMMISSIONER  
COMMISSIONER OF POLICE OF THE METROPOLIS**

Respondents

**Decision: The appeal is Dismissed.**

**Substituted Decision Notice: No substituted decision notice.**

**The Appellant represented himself**

**The Metropolitan Police Commissioner was represented by Jonathan Dixey**

**The Commissioner was represented by Harry Gillow**

## **REASONS**

### MODE OF HEARING AND PRELIMINARY MATTERS

1. The proceedings were held at Field House.
2. The Tribunal considered an agreed open bundle of evidence comprising 282 pages, a closed bundle, written submissions from both parties and a bundle of authorities.

### BACKGROUND

3. The Appellant requested information about an entry on its gifts and hospitality register from the Metropolitan Police Service (MPS). The MPS provided some information but refused the remainder, citing sections 24(1) (National security), 27(1)(a) and (c) (International relations), 31(1)(a) (Law enforcement), 38(1)(b) (Health and Safety) and 40(2) (Personal information) of FOIA.
4. On 11 July 2022, the Appellant wrote to the MPS and requested information in the following terms:-

In a June entry of the force gifts and hospitality register there was an entry about £12,500 being received in cash in envelopes by a police sergeant from an overseas partner.

Please can you identify when this payment was made and who the police sergeant was.

Please also identify which country the overseas partner was from.

Please identify which overseas partner provided the money and what the reason was given for the money being provided.

Please also identify any and all charities/benevolent funds which received the money.

5. The entry on the register referred to in the request was published by the MPS in June 2022.<sup>1</sup> As per the published register, the monies were received by a police sergeant working in Royalty and Specialist Protection (RaSP).
6. On 27 July 2022, the MPS responded. It stated that the donation was entered on the register on 22 April 2022 and explained that the money was donated by the MPS to the Commissioner's Fund and the Metropolitan Police Benevolent Fund. It refused to provide the remaining information, citing sections 24(1), 27(1)(a) and (c), 31(1)(a), 38(1)(b) and 40(2) of FOIA. It argued:-

To provide the full details requested would reveal individuals or country representatives who have engaged with RaSP whilst within the UK. Protection is provided by the MPS to a number of people where it is in the national interest or where intelligence (information) suggests protection is necessary. Specific protection arrangements are applied in order to safeguard national security by ensuring that appropriate safety and security is provided to key figures such as the Queen and the Prime Minister.

The disclosure of any other information relating to the role of RaSP, including with overseas partners, would ultimately increase the risk of harm to those afforded personal protection and to the general public within their vicinity. This would therefore, not only undermine our law enforcement functions, but also hinder international relations and could negatively affect national security.

7. The Appellant requested an internal review on 2 August 2022. When doing so he said:-

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<sup>1</sup> <https://www.met.police.uk/foi-ai/af/accessing-information/published-items/?q=gifts+and+hospitality+register+june+2022>

Please do an internal review of this partial disclosure -I am of the opinion that you could release details of which country the overseas partner represented without falling foul of any of the exemptions cited - there has to be a potential risk to national security etc for the exemption to apply and that has not been demonstrated. It would also be in the public interest to say which country they were from.

8. The MPS provided an internal review on 19 August 2022 in which it maintained its original position. The MPS said that:-

Disclosing the requested information in full would likely lead to a lack of trust and undermine relations and / or law enforcement agreements with overseas partners. The effective conduct of international relations depends upon maintaining trust and confidence between the government and authorities. If the UK does not maintain trust and confidence with other countries, its ability to protect and promote UK interests through international relations will be disadvantaged. It remains the case that the disclosure of information detailing relationships and engagement with other countries could potentially damage bilateral relationships between the UK and other states. This would reduce the UK government's ability to protect and promote UK interests through its relations with those other states.

9. The MPS has also explained:-

To disclose full details of the identity of those who interact with RaSP would undermine relations between the UK and others. If the United Kingdom does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered. The disclosure of information detailing our relationship with other countries could potentially damage the bilateral relationship between the UK and other states. This would reduce the UK government's ability to protect and promote UK interests through its relations with those other states.

10. The Appellant contacted the Commissioner on 21 November 2022, to complain about the way his request for information had been handled. He said:-

They used an international relations exemption to not provide the country from which a person who paid cash to MPS employees came from - I do not believe that minimal information would be exempt. They have said that disclosing the name of the country would damage international relations, but it is just the name of a country and we should not have a system where this sort of thing can go on in secret the public interest in transparency trumps the weak argument put forward that it would damage international relations

and there is no evidence to support this claim. Also if the individual who provided the cash is a public figure fulfilling a public function (as per our FOIA) then the individual should be named as well.

## THE LAW

### 11. Under section 1(1)(a) FOIA:-

1(1)(a) Any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, ...

### 12. By section 2(3) FOIA, section 27 FOIA is defined as a qualified exemption by its exclusion from the list of absolute exemptions. Therefore, even if the exemption applies the information can only be withheld if ‘in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information’: s2(2)(b) FOIA.

### 13. Section 27 FOIA provides an exception to the duty to make disclosure of the information for international relations. It reads, materially, as follows:-

27 (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

(a) relations between the United Kingdom and any other State,

(b) ...

(c) the interests of the United Kingdom abroad, or

...

### 14. In order for the prejudice based exemption in section 27 FOIA to be engaged, three criteria must be met by the MPS.

### 15. First, the actual harm which MPS alleges would, or would be likely to, occur if the withheld information were disclosed has to relate to the applicable interests within the relevant exemption.

16. Second, MPS must be able to demonstrate that some causal relationship exists between the potential disclosure and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
17. Third, it is necessary to establish whether the level of likelihood of prejudice being relied upon by MPS is met, namely that disclosure ‘would be likely’ to result in prejudice or disclosure ‘would’ result in prejudice.
18. In relation to the lower threshold (‘would be likely’) the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, this places a stronger evidential burden on MPS. The anticipated prejudice must be more likely than not to occur.
19. The first tier tribunal (FTT) in *Gilby v IC and FCO* (22 October 2008) EA/2007/0071 stated that, in the context of s27 FOIA:-
- 23...prejudice can be real and of substance if it makes relations more difficult or calls for particular diplomatic response to contain or limit damage.
20. In *Campaign Against the Arms Trade v Information Commissioner and Ministry of Defence* (EA/2006/0040) at paragraph 80-81 the FTT noted the following:-

80 As a matter of approach the test of what would or would be likely to prejudice relations or interests would require consideration of what is probable as opposed to possible or speculative. Prejudice is not defined, but we accept that it imports something of detriment in the sense of impairing relations or interests or their promotion or protection and further we accept that the prejudice must be “real, actual or of substance”, as described in Hogan [EA/2005/0026/30 at para 30, a case dealing FOIA section 31 (law enforcement)].

81 However, we would make clear that in our judgment prejudice can be real and of substance if it makes relations more difficult or calls for particular diplomatic response to contain or limit damage which would not otherwise have been necessary. We do not consider that prejudice necessarily requires demonstration of actual harm to the relevant interests in

terms of quantifiable loss or damage. For example, in our view there would or could be prejudice to the interests of the UK abroad or the promotion of those interests if the consequence of disclosure was to expose those interests to the risk of an adverse reaction from the KSA [the Kingdom of Saudi Arabia] or to make them vulnerable to such a reaction, notwithstanding that the precise reaction of the KSA would not be predictable either as a matter of probability or certainty. The prejudice would lie in the exposure and vulnerability to that risk. Similar considerations would apply to the effect on relations between the UK and the KSA (compare the approach of the Australian Administrative Appeal Tribunal in *Maier* at para 41 [AATAD no V.84/291B]). Finally in this respect we note that it is the relations of the UK and the interests of the UK with which section 27(1) is concerned and not directly the interests of individual companies or enterprises as such.

21. In the case of *Gibbs v Information Commissioner and Foreign and Commonwealth Office* (EA/2017/0258 & 0275), the FTT at [151] commented that where a diplomatic problem can be resolved by a single telephone call, that is unlikely to be serious enough prejudice to engage the section 27(1) FOIA exemption threshold.

#### DECISION NOTICE

22. The Commissioner investigated and produced a decision notice dated 19 January 2023. The Commissioner explained that the MPS had disclosed the name of the country and the relevant partner to the Commissioner, but that the actual name of the person who made the donation had not been recorded and the receiving officer did not know what it was.
23. The Commissioner said this in relation to the three stage test set out above in the previous section of this decision:-

15. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the MPS believes would be likely to occur if the information was disclosed is applicable to the interests protected by sections 27(1)(a) and (c).

16. With regard to the second and third criteria, the Commissioner accepts that effective international relations depend upon trust and confidence between partners. In this context the Commissioner accepts that the country concerned would not expect the withheld information to be published. He also accepts that disclosure would be likely to impact on relations between the UK and that country, and that such an outcome would meet the

description of prejudice described above. That is to say, disclosure would be likely to make relations more difficult with not only the country in question but with other countries that MPS' RaSP officers deal with. The Commissioner is therefore satisfied that there is a real and significant risk of prejudice occurring and that such prejudice is clearly one of substance.

24. In view of these conclusions, the Commissioner was satisfied that disclosure would be likely to result in the prejudice envisaged by the MPS.

25. The Commissioner went on to consider the public interest in withholding or disclosing the information. The Commissioner considered that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to international relations. The Commissioner recognised that there was a very strong public interest in protecting the RaSP duties of the MPS, both at home and abroad.

26. The Commissioner also recognised the need to ensure transparency and accountability on the part of the police. But the Commissioner also said that that need was met, to some degree, by the initial declaration of the gift itself and confirmation of its ultimate destination as a 'donation'. The Commissioner concluded that:-

26. However, he finds that there is a stronger public interest in ensuring that precise details regarding the role of MPS' RaSP officers abroad should not be revealed. Whilst the complainant does not consider the limited data requested to be sensitive, the Commissioner understands the MPS' concerns about the mosaic approach that those seeking to commit criminal acts will take when trying to source any information to their advantage. Knowing that a particular country provided a sum of money as a donation may reveal details about the work RaSP officers were engaged with around the time the donation was made. Such vital work may be undermined were the country revealed and that country may no longer wish to co-operate with the UK. This may have a significant impact not only on the country concerned but on other countries in a similar situation.

27. On that basis, the Commissioner considered that the public interest in maintaining the exemption readily outweighed the public interest in disclosing the information, and that the MPS was entitled to rely on sections 27(1)(a) and



(c) of FOIA to refuse to disclose the requested information. In light of those findings, the Commissioner did not consider it necessary to consider the other exemptions cited by the MPS.

## THE APPEAL AND THE HEARING

28. By the Grounds of Appeal dated 8 March 2023, the Appellant challenged the Commissioner's decision. He said that the Commissioner was wrong to conclude that the disclosure "would, or would be likely to, prejudice: (a) relations between the United Kingdom and any other State, (c) the interests of the United Kingdom abroad" and that the public interest test should have favored disclosure. He said that:-

...if we look at the array of serious allegations leveled by the British Government at foreign states in recent years they include allegations of state sanctioned murder against Russia and Saudi Arabia and more recently spying on individuals based in the UK leveled at the United Arab Emirates. These are some of the most serious allegations possible against a foreign state that have been made public and none of these have led to the breakdown of the diplomatic system or international relations generally or specifically in connection with these example countries. The diplomatic system has continued and so have relations with these and other countries with their embassies operating within the UK.

...

In order to use the exemptions cited, the MPS would need to advance at least some evidence of how the release of the name of the country in question and/or partner would realistically damage international relations... The MPS has given no evidence at all of how this would be the result, other than mere speculation, and it appears to be just an attempt to withhold the details by using the exemptions as blanket exemptions to do this.

In the case in question we do not know why or if the country and/or partner in question would want the fact that it had made these payments to be kept secret. It could be that it would not be concerned if it/they were identified and therefore the disclosure would not damage any international relations. If the country and/or partner did want the fact it had made these payments to

be made public, then it must have expressly made this clear to the MPS. If that were the case then it may be that the country and/or partner in question would be annoyed that the fact it made the donations was made public.

...

At p16 of the decision notice the ICO states: "In this context the Commissioner accepts that the country concerned would not expect the withheld information to be published. He also accepts that disclosure would be likely to impact on relations between the UK and that country, and that such an outcome would meet the description of prejudice described above."

What is this based on? The ICO does not even know if the country in question wanted it kept secret this is an assumption. I think the tribunal should establish if the country and/or partner in question did want these donations kept secret or not. Was there an express agreement reached with the MPS that the identity of the donor partner/country would be kept secret and for what reason? If it is established that the country and/or partner did want it kept secret, then it could be assumed that it would be annoyed by the disclosure - but it does not follow from this that it would do any real damage to international relations.

29. The Appellant's grounds of appeal said the following about the public interest test:-

Under no circumstances should a British police force be entering into agreements with other countries to keep donations such as this a secret. You would have to ask during the public interest balancing exercise for what reason the country and/or partner organisation would want to keep the donation a secret? Was it a bribe? Was it money laundering? Such secrecy could be for no good reason and certainly not in the public interest. Why on earth would it want it a secret and if it did there is no good reason why the MPS or the ICO should be aiding and abetting this secrecy.

...

I would argue that based on the nature of the information requested that this should be obvious to the UK. We are talking about cash being paid to police officers by a third party. While the cash was declared by the MPS, the identity of the donor and even the country they came from was hidden. It should be obvious to the ICO that police officers should not be paid cash in this country by secret donors and therefore it goes without saying the release of their identity and the country they were from should be known.

Depending on which country the cash originated from, it is possible it was criminal or even terrorist in origin and the handing of it to police officers to end up in a police benevolent fund could be a form of money laundering.

...

Due to these potential issues the MPS should have to disclose which country and/or partner organization this cash originated from.

Public bodies in this country should not be left in a position whereby they could be seen to be aiding and abetting potential money laundering and the public has a right to know about the source of the cash and any due diligence done on its origins.

...

At 25 of the decision notice the ICO states “The Commissioner also recognises the need to ensure transparency and accountability on the part of the police. In this case, that need is met, to some degree, by the initial declaration of the gift itself and confirmation of where it was donated to.”

It is ludicrous to suggest there is transparency when you are only given half of the picture - swap the scenario for an MP receiving a donation from an unknown source - “it was OK as the MP said he received the cash and what he did with it.” - “It matters not where the cash came from or from which country the donor came from.” That would never be acceptable as neither is this scenario.

...

The UK is still a key player on the world stage and other countries see the importance and benefits of having relations with us and if the name of the country from where this donor came from is released they will not stop that cooperation and to suggest otherwise is wrong.

...

It is very unlikely that the country in question would have a hissy fit and stop dealing with the UK if just the name of the country/partner were identified.

Any country would realise that continuing to cooperate with the UK would be more in its interest than having a stop over being identified.

Unless of course something untoward has happened here. The country/partner should have been recorded in the register at the time anyway.

It is hard to understand why the ICO should be enabling secret cash payments from a country to police officers through this decision notice.

It is clear the public interest in knowing which country it came from is stronger than the hypothetical argument of the harm that would not even be caused.

30. We had a witness statement (in OPEN and CLOSED format) from Chief Inspector (CI) Sammi Elfituri from the RaSP. The following summary is from

the OPEN version. Further reference to the CLOSED part of the statement will be made in the CLOSED annex to this decision. In OPEN the statement explained that:-

RaSP is a specialist unit within the MPS. It provides protection to certain individuals because it has been assessed by the MPS and others that the lives of those individuals are likely to be at significant risk if protection were not provided. In this context, protection can be provided through a variety of measures: both overt and covert.

A Home Office Body, the Executive Committee for the Protection of Royalty and Public Figures ("RAVEC") determines who receives protection from RaSP. People who receive protection are known as 'Principals'.

The risks to the lives of the Principals to whom protection is provided come from a variety of sources, but include hostile actors and terrorists who it is known scour publicly available material to identify opportunities to target high-profile and sometimes controversial individuals....

I am aware that the RaSP's work attracts occasional attention in the media. However, in light of the risks referred to, the information put into the public domain by RaSP, the MPS more broadly, the Government and Royal Family is limited... For example, and at its most fundamental, RaSP does not provide a list of those to whom protection is provided or the extent to which protection is provided (i.e. the number of officers who may be working to a particular Principal at any time or whether the protection offered is for 24 hours a day or otherwise). To do so would reveal not just those individuals who are protected but also those who are not. Revealing information of this kind would inevitably result in an increased risk to those individuals. It would also pose an increased risk to RaSP officers and others if it became known who did or did not receive protection.

31. The statement explains that protection can be provided to UK dignitaries travelling abroad and to foreign dignitaries travelling to the UK. CI Elfituri listed some of the challenges faced when providing protection to the latter. These include the nature, theme, profile and schedule of the visit, the profile of the principal and the country from which they come, managing expectations of foreign delegations and planning for various specific emergencies. Close protection officers (CPOs) 'need to demonstrate integrity, professionalism and diplomacy' and 'will receive highly personal and sensitive information from the guest embassy or mission regarding the movements and schedule of the visiting principal.

32. In the OPEN statement in relation to the information sought CI Elfituri said:-

There is an expectation that visiting Principals' security arrangements will not be disclosed, and this extends to whether or not they received RaSP protection, which would in turn indicate the result of a RAVEC assessment. Disclosure of whether RaSP protected a particular Principal is in itself disclosure of a sensitive tactic and has implications on how the UK could conduct itself with the visiting nation...

Disclosure of the country of origin would lead to the identity of the Principal becoming known...This would effectively disclose through the "mosaic effect" that a sensitive policing tactic which is designed to protect a person who has been assessed by RAVEC as needing protection, was deployed.

In considering whether to disclose the country of origin, the [Metropolitan Police Commissioner] has to take into account the principle of reciprocity: there will likely come a time when a UK protected Principal is required to travel to the guest's country of origin. Broadly speaking, the extent of security provision offered by RaSP CPOs when visiting overseas is based on the security provision that a guest nation received when they last attended the UK. Thus, a disclosure regarding the guest's country of origin in this case could give rise to that country of origin releasing details of attending UK protected Principals at a later stage. This is likely to have a direct effect on the risk posed to the UK Principals and has a tangible negative (through the increased risk) affect on UK state visits by overseas officials and ministers to that country.

33. In relation to the giving of gifts from representatives of nations who are guests of the UK, CI Elfituri said in his statement:-

It is not uncommon for representatives of nations that are guests of the United Kingdom Government to offer a gift, or to provide hospitality to RaSP officers. Reasons for why a gift or hospitality are offered are often simply due to cultural behaviour by the guest nation, and would be entirely accepted in their own domestic setting. RaSP officers will push-back against any offer of a gift or hospitality, sometimes successfully, but they also recognise that a refusal to accept the gift may well be seen as rude by the guest, embarrassing and could impact on future UK relations with that country.

34. On public interest matters CI Elfituri says:-

While there are public interest factors in favour of disclosure of the countries of origin of Principals who offer hospitality, this is outweighed by the prejudice to operational and national security matters, and to international relations. Moreover, RaSP has a well-advertised and understood gifts and hospitality policy. Its officers are obligated to disclose the gift/hospitality and then document the fact, as well as ensuring that the gift is secured. RaSP officers are routinely reminded of the policy and its requirements...

If however, the gift by the country of origin or indeed any country were to be made public, one must take account of the fact that some countries visiting the UK are not wealthy on a global scale. It could be perceived by their domestic audience that to offer gifts to UK security personnel is not 'money well spent', and could be received negatively in their own country. To disclose this from the UK side may stretch relations between the UK and the guest country.

35. In oral evidence in OPEN, CI Elfituri expanded on his statement to answer questions about the way RaSP worked. He emphasised that revealing information about protection of foreign dignitaries led to increased risk, as malefactors would then have information about who was protected.
36. To anyone thinking of doing harm knowing whether a person received protection or not could inform the level of force that might need to be used on a subsequent visit.
37. Disclosing information could damage the UK's reputation as a leader in diplomatic protection.
38. CI Elfituri confirmed that he had not been involved in the protection in question which led to the payment of money. He also confirmed that he was not an expert in international affairs, although briefings were received at different levels by those who worked in RaSP. CI Elfituri was giving evidence as someone who is based in HQ and who has a strategic role.
39. He accepted that the policy of RaSP was that gifts of cash should always be declined but there were situations where, if that might give offence, then the gift of cash would be accepted and reported. Officers involved would be experienced

and would know whether refusal would offend, although no real guidance was provided to officers. Officers would try to make the right decision in the circumstances.

40. CI Elfituri confirmed that in this case if the name of the country were disclosed then it would be possible to work out the identity of the principal.
41. He accepted that principals could be informed at the start of a visit that cash could not be accepted, but that was not the current policy. He said that it was not unusual for cash to be given as a gift, and the service received a multitude of gifts. He did not think that the amounts involved in this case were unusual. He confirmed that a record had not been kept as to the actual person who made the gift, and the policy does not require this to be obtained. The policy was created in February 2020 and was reviewed in May 2023.
42. CI Elfituri confirmed that only one of the envelopes containing money had been photographed, and that ideally all the envelopes and the money should have been photographed. There was not a written record of the rationale for retaining the money taking into account all the circumstances as required by the policy.
43. CI Elfituri said that disclosing the information may have an impact on the provision of protection for UK dignitaries abroad in the future. He confirmed that the country involved had not been asked about possible disclosure of the information, and accepted that if the Tribunal directs disclosure there would be time to manage the situation before the information is actually disclosed.
44. In the CLOSED session CI Elfituri gave further evidence in relation to the withheld material and the Tribunal heard closed submissions. A ‘gist’ of this part of the proceedings was prepared and is annexed to this decision as appendix 1.
45. In order to allow the Appellant to have sufficient time to make oral submissions in OPEN, it was agreed that responses from the Respondents and any reply from the Appellant should be made in writing after the hearing and the panel considered these along with the contents of the oral hearing.

46. A main point of the Appellant's submissions (orally and in writing) was that the disclosure of the country and the name of the principal in question (and at least the name of the country) would not lead to the kind of harm which would engage the exemption in s27 FOIA. The country in question had not been asked about disclosure, and there was no evidence that it would take negative action if it were disclosed. Any submission that harm would be caused was entirely speculative. CI Elfituri had accepted that he had not had personal involvement in the case and was not an expert on international relations.
47. The Appellant took issue with the evidence as to how a 'poor country' might react as set out in CI Elfituri's witness statement. There would be plenty of time, if the decision went against the MPS, for the UK to contact the country in question, to explain why disclosure was necessary under the FOIA. This was the kind of issue covered by the case of *Gibbs* where any diplomatic issue could be dealt with simply and quickly without s27 FOIA being engaged.
48. In relation to the public interest question, the Appellant submitted that it was extraordinary that large amounts of money were being handed over in envelopes to police officers, without even full photographic evidence of what was handed over. There was no rationale as to why the money was retained by the MPS (as opposed to accepted in the first place) and no record as to who made the gift. On that basis only half the story as to what had happened has been revealed, which raises suspicions for the public.
49. Finally, in oral submissions, the Appellant stated that the Commissioner had not carried out a rigorous assessment on the public interest issue, and he criticized the informal and 'chummy' tone of the email correspondence between the Commissioner and the MPS. In his written response the Appellant concluded:-

The Tribunal should find the public interest favours disclosure and that the risk of prejudice has not been made out and in any event is defeated by the public interest due to the number of failings in the recording of the gift as identified during this appeal and due to the "extraordinary" nature of the gift. It should be confident that the MPS will have 35 days to make contact



with the country in question to mitigate any perceived fears and that there is a clear system for the MPS now to adopt going forward to bring an end to this grey area.

I would also be grateful if the Tribunal could make any observations it sees fit on the email correspondence between the regulator and the second respondent which was disclosed during this appeal for the reasons I gave at the hearing.

50. The Commissioner and the MPS maintained the position that the exemption in s27 FOIA is engaged and that the public interest favours non-disclosure.

## DISCUSSION

51. The Appellant has raised very real and important issues in presenting his appeal and advocating for the disclosure of further information in this case. It is extraordinary, in our view, that thousands of pounds in cash has been handed over to a police officer in envelopes by a foreign dignitary who is being provided with police protection in the UK. Indeed, it was accepted that there is a policy, unsurprisingly, that such gifts should not be accepted.
52. However, as the case has developed, in OPEN and in CLOSED, it is clear that in terms of disclosing the full information requested, there are other factors to take into account. Considering all the information and evidence we have received, in OPEN and in CLOSED, it is our conclusion that, applying the three-stage test set out above, the exemption in s27 FOIA is engaged and that the public interest favours withholding the information.
53. In relation to the application of the exemption in s27(1) FOIA in the end we have little difficulty in finding that s27(1)(a) and (c) FOIA apply. The details of who receives protection from the police and where they are from (which is essentially the information the Appellant seeks) and the disclosure of the information is fraught with problems. It would reveal that a particular person from a particular state has received protection and that could have an impact both in relation to the instant case (where the person and state may well not want that information revealed), and in relation to other states, whose dignitaries may or not receive protection from the UK on visits, and who may have a reaction to

the information disclosed. We also accept the evidence of CI Elfituri that disclosure of the information may affect the nature and content of protection provided abroad for UK dignitaries.

54. As we explain in CLOSED the identity of the principal and the country in this particular case, heightened our concerns in relation to s27(1)(a) and (c).
55. We accept the point made by the MPS that in context of international relations it is not always possible to anticipate a response from another State: see *Savic v Information Commissioner; Attorney General's Office and Cabinet Office* [2016] UKUT 535 (AAC) and that [116] 'It must be remembered that what is relevant is an assessment of those reactions rather than of the validity of the reasons for them looked at through "English or any other eyes".'
56. We also accept the point that it is not always possible to predict what may happen if the type of disclosure in question has not been made previously. This applies in the present case as the MPS does not disclose details of who receives protection from RaSP, with the exception of the Sovereign and the Prime Minister.
57. CI Elfituri summed all this up by referring to the 'politics of protection' and we accept on the basis of his evidence in OPEN and CLOSED that disclosure of the information would be likely to prejudice both the relations between the UK and other states, and also the interests of the UK abroad. The disclosure of the disputed information would have a general impact on the UK's international relations and would make the UK's ability to provide protection more difficult because it would reveal information about who had received protection in the past, and there was a risk that certain countries might take offence or otherwise react to the level of protection offered to other countries, and/or demand similar treatment.
58. In relation to the case of *Gibbs v Information Commissioner; Foreign and Commonwealth Office*, the general issues raised by CI Elfituri mean that this is not a case where 'the diplomatic problem caused by disclosure can be resolved

by a single telephone call or meeting’, such that the section 27(1) FOIA threshold is not met.

59. Thus, the actual harm which the MPS alleges would, or would be likely to, occur if the withheld information were disclosed does relate to relations between the United Kingdom and any other State, and/or the interests of the United Kingdom abroad. The MPS, through the evidence of CI Elfituri, has demonstrated that a causal relationship exists between the potential disclosure and the actual prejudice which the exemption is designed to protect. The level of likelihood of prejudice being relied upon by MPS is met, namely that disclosure ‘would be likely’ to result in prejudice.
60. In relation to the public interest balance, this is a case where there are strong public interests in favour of disclosure. The public does have an interest in knowing the details of large gifts of money given to the police by foreign dignitaries for all the reasons set out by the Appellant, especially where there is an MPS policy that such gifts should not be accepted.
61. Nevertheless, in the Tribunal’s view the public interest in scrutiny of gifts received is met to an extent by the fact that the MPS publishes a Gifts and Hospitality Register which contains details of the gift and the fact that it was then donated to charity. We accept that that there is a more limited public interest in knowing who exactly made the gift and from which country they came.
62. To the extent that section 27(1)(a) and (c) FOIA are engaged (and we have found that they are), there is considerable public interest in withholding the information. This is especially the case where there is a potential of danger to the safety of British nationals abroad arising from disclosure. We also agree with the Commissioner’s analysis of the public interest in the decision notice that:-

Knowing that a particular country provided a sum of money as a donation may reveal details about the work RaSP officers were engaged with around the time the donation was made. Such vital work may be undermined were the country revealed and that country may no longer wish to co-operate with

the UK. This may have a significant impact not only on the country concerned but on other countries in a similar situation.

63. Taking into account all these factors, and the evidence heard in the CLOSED session, the Tribunal's view is that the public interest strongly favours non-disclosure in this case. Having found that the exemption in s27(1)(a) and (c) FOIA applies, the Tribunal does not go on to consider the other exemptions relied upon.

64. Finally, in relation to the Appellant's comments about the over-friendly tone of communications between the MPS and the Commissioner, we would first note that this is not an issue for the Tribunal. It is not surprising that the staff of public authorities who receive many FOIA requests will develop a familiarity with those who work for the ICO – we would just note that it is important that those communications should always be carried out in a professional tone.

## CONCLUSION

65. Taking into account all of the above, this appeal is dismissed.

**Stephen Cragg KC**

Judge of the First-tier Tribunal

Date: 11 December 2023

**Appendix 1 – Gist of closed session on 31 October 2023**

1. The question was put to the witness of when the gift was made, and was not something the witness had direct knowledge of; counsel for CPM provided a report to the court of his instructions concerning the timing of the visit.
2. The witness was asked about how the redacted parts of paragraph 18(m) of his statement related to the exemptions claimed, and this was explored with the Tribunal.
3. The witness explained that it is necessary to consider the holder of the office, the country and the relevant individual independently and in conjunction, and that all of these may be factors in assessing the relevant threat and/or the interests protected by the exemptions.
4. The witness was asked in detail about the risks arising from the particular country of origin in detail.
5. There was a discussion with the witness of the assumption that certain individuals would receive protection on visiting the UK and how accurate that was. This discussion reflected certain lines of questioning asked by Mr Austin during the Open Evidence Session.
6. The witness was asked about the experience and judgment of the officer who received the gift, in particular as concerned his experience of being offered gifts and of the relevant culture of the country of origin.
7. There was a discussion with the witness of the politics of protection, in particular whether certain countries might take offence or otherwise react to the level of protection offered to other countries, and/or demand similar treatment. The officer agreed that was a risk.
8. The Tribunal broke for lunch.
9. The witness was asked further questions about the particular country of origin and his own knowledge of the situation in that country. The witness stated that the concerns expressed in the witness statement were principally general rather than specific to the country of origin.
10. The witness was asked about the redactions to the RaSP's hospitality policy at pages F105-F106 of the Open Bundle and the Tribunal agreed that these had no relevance to the present case.

11. Tribunal Member Chafer asked about differences between documents at pages 14 and 17 of the Closed Bundle, one of which was a cut-off version of the register entry, set out in full at paragraph 7 of counsel for CPM's skeleton argument. The witness didn't believe there was any further material recorded centrally at RaSP relating to these documents.
  
12. Counsel for the ICO and CPM then provided closed closing submissions. Counsel for CPM noted that disclosure of certain further details would render the country of origin easily identifiable, and therefore also the identity of the principal. He made further submissions as to the relevance of specific details of the country of origin. Counsel for the ICO made certain submissions on other points relating to the specific situation of the country of origin.