

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 7 February 2011**

**Public Authority:** Metropolitan Police Service  
**Address:** Public Access Office  
20<sup>th</sup> Floor Empress State Building  
Lillie Road  
London SW6 1TR

### Summary

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The complainant asked for information about the public authority's investigation into an amateur video showing an individual, apparently dressed in Metropolitan Police-issue body armour, inviting two people to shoot at him with a ball bearing gun. The public authority initially declined to provide the information, citing the exemptions at section 30 and section 40. During the course of the investigation it provided sufficient information to cause the complainant to withdraw his complaint into the application of the exemptions. The Commissioner found breaches of sections 1(1)(b), 10(1) and 17(1) in respect of the public authority's delayed response.

### The Commissioner's Role

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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.

### Background

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2. In late 2009 an amateur video was posted on YouTube showing a man standing in a public place, dressed in what appeared to be Metropolitan Police Service body armour, inviting friends to shoot him with a ball bearing gun. The video, and the MPS's subsequent attempt to identify the individuals involved, were widely reported in the media.

## The Request

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3. On 5 January 2010, the complainant emailed the following request to the public authority:

*"I saw a news report on skynews, reference as youtube video of what appears to be a Metropolitan Police Officer in Public order uniform, shooting and being shot at in a public place.*

*I would like to know the following;*

*a. has the officer or any of the people in the video been arrested in relation to this matter?*

*b. Has a Department of Professional standards file been open, if so what is the file reference.*

*c. Has the footage been assessed for possible crimes, if so what does that assessment reveal?*

*d. Have any notices been sent to officers in the Metropolitan police reference these video postings*

*e. what investigations have been commenced in order to discover the identity of the officer involved?*

*f. Have the Met publicised the faces of any of the individual witness' in the video, in an effort to identify the officer involved?"*

4. The public authority issued a refusal notice on 23 April 2010. It confirmed that it had received the request on 5 January 2010 and that it held information covered by the request, but stated that the information was exempt under section 30(2)(a)(iii).
5. The complainant emailed the public authority on the same day and requested an internal review of the handling of the request.
6. On 12 May 2010 the public authority responded, varying its original decision. It declined to confirm or deny whether it held information in respect of question a., citing section 40(5). It stated that some of the information covered by the remaining questions was exempt under section 30(1)(a)(i) and (ii), (b) and (c). However, it provided further, limited information in response to questions b.– f. of the request.

## The Investigation

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### Scope of the case

7. On 12 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled by the public authority. Initially he asked the Commissioner to consider the public authority's application of the exemptions to the requested information. Later he also expressed concern at the length of time it had taken the public authority to respond to his request.
8. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice.
  - The public authority released substantially more information in response to the request. The complainant confirmed that he considered it had supplied sufficient information for his purposes and that he no longer wished to pursue this element of his complaint.
9. This Notice therefore addresses only the delay that occurred between the public authority's receipt of the request and its issuing of a refusal notice.

### Chronology

10. On 5 October 2010 the Commissioner commenced his investigation. Following initial discussions with the Commissioner, the public authority agreed that it could release much more information in response to the request. This it did on 23 November 2010.
11. In an email to the Commissioner dated 24 November 2010 the complainant confirmed that he was content with the public authority's response and no longer intended to pursue that element of his complaint. However, he referred to the length of time it took the public authority to provide a response to his request of 5 January 2010 and asked that the Commissioner continue to pursue that element of his complaint.
12. On 30 November 2010 the Commissioner wrote to the public authority, asking it to explain why it had taken more than 70 working days to issue a refusal notice.
13. On 6 December 2010 the public authority replied. It explained that at the time that the request was received some of its freedom of information resources had been diverted temporarily from dealing with

incoming requests to preparing documents for release in respect of a high-profile murder investigation. A backlog of requests had built up and for this reason work did not begin on the complainant's request until 29 January 2010, when the FOI officer ordered the relevant investigation file from the MPS repository. Orders are usually fulfilled within five days, but in this case the file was not received by the FOI officer until 2 March 2010.

14. On receipt of the file, the FOI officer had to consult with third parties regarding the information therein, as well as attend to the backlog of live requests; as a result the response was not completed and sent to the complainant until 23 April 2010.
15. On 14 December 2010, having been informed of the reasons for the delay, the complainant asked the Commissioner to issue a Decision Notice in respect of his complaint.

## Analysis

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### Substantive Procedural Matters

16. The complainant submitted his request for information by email on 5 January 2010. The public authority issued a refusal notice on 23 April 2010. The notice acknowledged that the request was received by the public authority on 5 January 2010. Therefore the public authority took 76 working days to confirm whether or not information was held, and longer than this to provide the information which was disclosable.

### Section 1

17. Section 1(1) of the Act provides that a public authority in receipt of a request for information must inform the applicant whether the information is held, and if so, communicate the information to the applicant.
18. By failing to communicate to the complainant all the information that was disclosable by the completion of the internal review or the time for statutory compliance, the public authority breached section 1(1)(b).

### Section 10

19. Section 10(1) provides that:

*'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'*

20. By failing to notify the complainant whether or not the information was held within twenty working days, the public authority breached section 10(1). It also breached section 10(1) by failing to communicate all the information that was disclosable within twenty working days.

## **Section 17**

21. Section 17(1) of the Act states:

*'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.'*

22. By failing to issue a refusal notice within twenty working days, the public authority breached section 17(1).

## **The Decision**

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23. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act, since it breached its obligations under sections 1(1)(b), 10(1) and 17(1).

## **Steps Required**

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24. The Commissioner requires no steps to be taken.

## Right of Appeal

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25. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

26. 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.
27. 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 7<sup>th</sup> day of February 2011**

**Signed .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### General Right of Access

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#### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

#### **Section 10(1) provides that –**

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

#### **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."