

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 October 2013

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information related to two criminal cases. During the Commissioner's investigation some information was provided, however, the public authority would neither confirm nor deny holding further information citing sections 30(3) and 40(5) of the FOIA. The Commissioner accepts that these exemptions apply and so the public authority had no duty to confirm or deny holding this information. He does not, therefore, require it to take any steps.

Request and response

2. On 25 June 2012, the complainant wrote to the public authority and requested information in the following terms:

"We should be grateful for the following information and documents:

All statements given by or on behalf of the Metropolitan Police in relation to the investigation and prosecution of [name removed] and his associates.

All statements given by or on behalf of the Metropolitan Police and all notes of conversations and meetings between on the one hand the Metropolitan Police and on the other the Guardian relating to

information supplied by the Metropolitan Police about the police and IPCC investigation of [name removed], in particular any material relevant to communications between the two before and after and relating to assertions made in the following article:

<http://www.guardian.co.uk/uk/2012/may/22/metropolitan-police-anti-corruption-allegations>".

3. The public authority responded on 17 September 2012. In respect of the first part of the request it advised that the information held was exempt under sections 30(1)(a) and 40(2) of the FOIA. In respect of the second part it would neither confirm nor deny holding information by virtue of section 30(3).
4. Following an internal review the public authority wrote to the complainant on 5 November 2012. It maintained its position.

Scope of the case

5. The complainant contacted the Commissioner on 11 January 2013 to complain about the way his request for information had been handled. He wanted the Commissioner to consider the application of exemptions.
6. During the course of the investigation, the public authority clarified the request with the complainant. On 1 August 2013 he advised that he wanted:
 - 1) *All press statements given by or on behalf of the Metropolitan Police in relation to the investigation and prosecution of [name removed] and his associates?*
 - 2) *I wish to have all details and records of communication between the police and the Guardian. In am [sic] particularly interested in communications relating to the article I have quoted. I dare say the communications may have been through press releases, or through meetings (presumably noted) or in other ways. I am asking for all records of the dealings between those two parties. As the Guardian are external to the Met, they are, in that sense public and therefore the communications and records of the communications are not private and therefore they should be made available".*
7. Following this clarification, the public authority provided a full response to the first part of the request. The Commissioner has therefore removed this element from the scope of his investigation.

8. The public authority also provided some press statements in respect of the second part of the request. However, it continued to neither confirm nor deny holding any further information citing section 30(3); it also added section 40(5). The Commissioner will therefore consider whether or not it was entitled to maintain this position.

Reasons for decision

9. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise the applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.
10. It should also be noted that the public authority has provided the Commissioner with some 'confidential' arguments which are for his eyes only. These have been taken into consideration but are not repeated in this notice.

Section 30 – investigations and proceedings

11. Section 30 is a class-based exemption. Therefore, in order for it to be engaged there is no need for a public authority to demonstrate any level of prejudice were the requested information to be disclosed, ie in this case there is no need for the public authority to demonstrate why confirming whether or not the requested information is held would result in any level of prejudice. Rather, the public authority simply has to demonstrate that the requested information, if held, would be held for the purposes specified in the relevant part of the exemption which has been cited.
12. Section 30(3) of the exemption states that:

"The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2)".
13. Subsection 30(1) provides an exemption for information which has at any time been held by a public authority for the purposes of:
 - investigations into whether a person should be charged with an offence or whether a person charged with an offence is guilty of it;
 - investigations which may lead the authority to initiate criminal proceedings which it has the power to conduct;
 - criminal proceedings which the public authority has the power to conduct.

14. The public authority in this case is a police force and the Commissioner is satisfied that it has the power to carry out investigations of the sort described above to establish whether an offence has occurred. Furthermore, the public authority has also confirmed to the complainant that the information requested related to a 'live' investigation.
15. The Commissioner is therefore satisfied that, if the public authority holds information falling within the scope of the request, such information would be held for one of the purposes set out above. The Commissioner is therefore satisfied that the exemption at section 30(3) is engaged.

The public interest test

16. As section 30(3) is a qualified exemption the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds any information falling within the scope of the request.

Public interest arguments in favour of confirmation or denial that information is held

17. In its refusal notice the public authority advised the complainant:

"The MPS is a public authority and should be held to account for its actions and the conduct of its employees. To provide details about an ongoing investigation when a question is received under the Act would reinforce the MPS commitments as an open and transparent organisation..."

There has been some public and media interest/speculation regarding the alleged actions of a number of MPS employees. Owing to the speculation surrounding this investigation, there is an inherent public interest in making suitable information available to the public that would inform and enhance the accuracy of public debate..."

The general public rightly expects the highest standards of professionalism in the delivery of policing services by the MPS. Any allegation of malpractice can accordingly serve to damage the relationship between the MPS and the general public. It is important that the MPS shares suitable information with the public at the appropriate time in order to maintain public confidence".

18. The public authority added the following arguments in later correspondence with the complainant:

"It is recognised that the police service have a duty to enforce the law and investigate crime and in this case confirming or denying that pertinent information is or is not held would highlight the effectiveness of police in combating serious crime in the capital. It would demonstrate the spending of public funds, decisions taken by police officers and enhance transparency and accountability. There would also be the potential to reinforce public confidence in the MPS as to how it deals with allegations into illegal payments and corrupt police officers".

Public interest argument considerations in favour of maintaining a neither confirm nor deny response

19. In its refusal notice the public authority advised the complainant:

"To confirm or deny whether the MPS has had specific communication with the Guardian newspaper regarding this investigation would reveal information about the direction of this investigation. For example, if the MPS confirms that [it] any information is held, this would confirm contact with the Guardian newspaper. Conversely, should the MPS state that no information is held, this would confirm that the MPS has had no direct contact with the Guardian newspaper. Whilst the effect upon the investigation may not be obvious, it is correct, whilst an investigation is ongoing, that an Investigation Officer controls what information is released about an investigation and decides when it is appropriate to protect the integrity of that investigation".

20. It also stated:

"This request relates to a live police investigation. To confirm or deny whether information that concerns a live investigation is held, at this stage, could be prejudicial to this investigation. This would not serve the public interest...

The public interest, at this stage, is best served by ensuring that the investigation is conducted fairly and promptly without the premature release of any information that might compromise that investigation".

21. The public authority added the following arguments in later correspondence with the complainant:

"There is legitimate public interest in not precisely identifying the scope of the information held in relation to investigations, especially those that are ongoing. To do so would prejudice the legitimate public interest inherent in section 30.

The investigation in question relates to allegations about illegal payments and private investigators which is currently ongoing."

"There is a need to ensure the integrity of live ongoing investigations and to acknowledge whether or not specific bodies and or any of the individuals named in the article have been spoken too [sic] as either suspects/witnesses or approached in the course of the investigation would be likely to compromise the investigation".

Conclusions

22. In its refusal notice the public authority concluded as follows:

"Having identified and considered the factors relevant to the public interest, I have felt it important to attribute particular importance to holding public authorities to public account for their actions and those of their staff. This has been central when considering your request, owing to the serious allegations made concerning receipt of inappropriate payments by MPS employees.

In evaluating your request, I have also considered the effect that confirming or denying whether information is held would have upon the investigation. In doing so, I have considered the risk of prejudicing an ongoing investigation. I have attached considerable weight to this as one of the primary roles of any Police Service is to detect crime and to ensure that any investigation conducted is fair and thorough.

In considering any request for information, the balance between all opposing interests must be found. In view of the ongoing investigation and the risk of prejudicing it, I have found that it is not in the public interest to confirm or deny that information is held."

23. In later correspondence with the complainant the public authority added:

"On balance, I find that the public interest in non-disclosure outweighs the public interest in disclosure. This is due to the complex history of the investigation and related convictions along with the potential for disclosure to undermine future legal proceedings and investigations.

Whilst the news article in question has been published, who the MPS approach in the course of an investigation would not be placed in the public domain or any such confirmation or indeed denial into the public domain".

24. The Commissioner's guidance on the duty to confirm or deny explores the implications of the wording of the request in relation to the duty to confirm or deny. In the Commissioner's view, the wording of the request for information will affect whether or not a public authority will confirm or deny it holds that information. The Commissioner also considers that, in many cases, the more specific the request, the lower the likelihood of the duty arising. In this case the request clearly focuses on a particular investigation rather than investigations in general. Furthermore, it seeks specific details relating to that investigation which the public authority has already confirmed to be 'ongoing'.
25. In the Commissioner's view, the public must be satisfied that a public authority takes seriously any allegations that may point to the existence of activity in breach of the legislation which it has power to investigate. Sufficient information should therefore be made available to give the public reassurance that its work in this respect is done effectively and promptly; on this occasion the public authority has confirmed that it is currently investigating the related allegations. The Commissioner therefore concludes that the public has been adequately informed about the current circumstances of the investigation.
26. The Commissioner recognises that there is real weight in the public interest argument for disclosure of information relating to alleged inappropriate payments to MPS employees, however, he places the strongest weight on the public authority's ability to maintain a robust investigatory process when actively conducting a criminal investigation. He agrees that it would not be in the public interest for it to be required to divulge information that would harm its ability to investigate criminality. Were it required to do so then this could ultimately have an impact on a fair and just criminal process which could undermine its ability to ensure that policing purposes are served. Such an impact cannot, in the Commissioner's view, be in the public's interest.
27. The Commissioner recognises that the complainant may have personal reasons for making the request as he has, albeit indirectly, a connection to the case. However, the FOIA is motive blind which means that the Commissioner can only decide whether confirmation or denial that the information is held should be put into the public domain.
28. In reaching a decision in this case, having considered the opposing public interest factors, the Commissioner considers that, in all the circumstances of the case, the public interest in maintaining the exclusion from the duty to confirm or deny outweighs the public interest in confirming or denying whether information is held.
29. In light of these findings the Commissioner has not gone on to consider the public authority's reliance on section 40(5).

Reference: FS50497490

Right of appeal

30. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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