

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2015

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 a file from the Metropolitan Police Service (the "MPS") which is referenced on The National Archives ("TNA") website. The MPS confirmed it holds the file but initially withheld it under section 22 (intended for future publication) of the FOIA. It subsequently disclosed some information but cited sections 23(1) (information supplied by, or relating to, bodies dealing with security matters) and, in the alternative, 24(1) (national security), 31(1) (law enforcement) and 40(2) (personal data) to withhold the remaining information. During the Commissioner's investigation it removed reliance on sections 24(1) and 31(1). The Commissioner's decision is that the MPS was entitled to rely on section 23(1). He does not require any steps.

Request and response

2. On 15 April 2014 the complainant wrote to the MPS and requested information in the following terms:

"I would like to request access to the following file under the Freedom of Information Act.

The file is listed on the National Archives website as MEPO 38/152 and I understand the file is currently retained by the Metropolitan Police.

The file had an original departmental reference of 345/TRP/176.

I understand that the file contains information about 'Threats by Scottish Nationalists to steal the Stone of Scone (Coronation Stone) and attempted theft in 1950'.

I understand the information is about events that happened more than 50 years ago.

It is my contention that the file(s) should be opened up".

3. The MPS responded on 14 May 2014. It confirmed holding the file MEPO 38/152 but advised that it was exempt from disclosure by virtue of section 22 of the FOIA as it was held with the intention of future publication. It advised that preparations were in hand to transfer it to TNA.
4. Following an internal review the MPS wrote to the complainant on 15 July 2014. It provided some information but advised that the remainder was exempt by virtue of sections 23(1) and, in the alternative, 24(1), 31(1)(a)(b) and 40(2).
5. During the Commissioner's investigation it removed reliance on sections 24(1) and 31(1).

Scope of the case

6. The complainant contacted the Commissioner on 5 August 2014 to complain about the way his request for information had been handled. He was unhappy with the time taken to comply with his request and the withholding of information. He also specifically referred to section 23 and his understanding that it carried a public interest test when the information concerned was more than 30 years old.
7. In describing the information the MPS has advised:

"In this case the relevant information is contained within MEPO38/152. MEPO38 is the reference within TNA that denotes a class of documents belonging to Metropolitan Police Special Branch. The records in this series consist of 182 registered files relating to a wide range of subjects and are intended to reflect the varied duties

performed by the branch. The records include both policy files and individual case papers between 1880 -1997.

In 1923 the Special Branch registry, which had hitherto been independent from other record-keeping systems, was absorbed into the central registry (General Registry) of the Metropolitan Police. This was however largely in order to facilitate staffing levels and its work remained independent from other types of registration. In 1940 the General Registry was re-organised and since that time the MPS SB has maintained an independent registry. Therefore, in essence, the clue to likely content and origins of the information contained within the file lie in the reference, MEPO38”.

Reasons for decision

Section 23(1) - information supplied by, or relating to, bodies dealing with security matters

8. The MPS has confirmed to the Commissioner that this exemption is being applied to the withheld information in its entirety.

9. Section 23(1) states;

“Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).”

10. To successfully engage the exemption at section 23(1), a public authority must be able to demonstrate that the relevant information was *directly or indirectly* supplied to it by, or *relates to* any of the bodies listed at section 23(3). This means that if the requested information falls within this class it is absolutely exempt from disclosure under the FOIA. This exemption is not subject to a balance of public interests test.

11. As explained above, the file has a reference which indicates it is a Special Branch file. The Commissioner has previously determined that¹: *“there will be very few instances where information held by Special Branch is not also held by a section 23(3) body, even if it was not directly or indirectly supplied by them, as the nature of the work of*

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2011/594104/fs_50258193.pdf

special branches involves very close working with security bodies and regular sharing of information and intelligence...".

12. As it is a class-based and absolute exemption, the only question for the Commissioner is whether the requested information falls within the description of information covered by section 23(1).
13. On this occasion, the Commissioner has not viewed the withheld information. Instead a senior official of the MPS has written to him and stated that the information to which this exemption had been applied does either relate to, or was supplied by, one of the bodies specified in section 23(3). The Commissioner is prepared, in limited circumstances, to accept the assurance of a senior official that information withheld under section 23(1) has indeed been supplied by or is related to security bodies specified in section 23(3). He will only do so where the official occupies a position in relation to the security bodies which allows them genuinely to validate the provenance of the information, and where the official is independent of the public authority's process for dealing with freedom of information requests. The Commissioner is satisfied that the author of this letter occupies such a position within the MPS.
14. Accordingly, the Commissioner accepts that, in the circumstances of this case, the assurance he received from the senior official at the MPS regarding the nature of the withheld information, coupled with his own knowledge and experience gained from investigating previous complaints, is sufficient. He agrees that the withheld information relates to a body listed in section 23(3) for all of the reasons provided by the public authority. The Commissioner therefore accepts that a sufficient explanation as to the nature of the withheld information has been given for him to be satisfied that section 23(1) is engaged.
15. The Commissioner therefore finds that the withheld information is exempt from disclosure on the basis of section 23(1) because it was supplied by, or relates to, a body listed at section 23(3).
16. The Commissioner also notes the complainant's specific concerns regarding the age of the information and his understanding that this means it qualifies to be considered by way of a public interest test. However, section 64(2) of the FOIA means that section 23 is qualified only in relation to 'historical records' that have been passed to TNA. In this instance the information is retained by MPS so no consideration of the public interest is required and the exemption remains absolute.

Other matters

17. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

18. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
19. The complainant requested an internal review on 14 May 2014. The MPS advised him on 18 June 2014 that it was unable to respond within 20 working days and gave a revised date of 10 July 2014.
20. The Commissioner accepts that the MPS took steps to keep the complainant informed and he also notes that it substantially changed its position and released a considerable amount of information, albeit redacted. In this respect he does accept that the case is 'exceptional', but he is nevertheless concerned that it took over 40 working days for an internal review to be completed. The delay will be logged.

Right of appeal

21. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
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SK9 5AF