

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 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 requested a number of special branch files from the Metropolitan Police Service (the "MPS") relating to the Newham Monitoring Project. The MPS would neither confirm nor deny holding any of the files by virtue of sections 23(5) (supplied by, or relating to, bodies dealing with security matters), 24(2) (national security), 30(3) (criminal investigations), 31(3) (law enforcement) and 40(5) (personal information). The Commissioner's decision is that the MPS was entitled to rely on the exemption at section 23(5) to neither confirm nor deny whether it held information within the scope of the request which, if held, would be exempt by virtue of section 23(1) of the FOIA. He requires no steps.

Background

2. The request can be followed on the "What do they know" (WDTK) website¹.

Request and response

3. On 10 July 2014, the complainant wrote to the MPS and requested information in the following terms:

"Please could you confirm whether the Metropolitan Police holds or has ever held:

- (a) a Special Branch (subsequently SO15 Counter Terrorism Command) file on the east London community group 'Newham Monitoring Project'*
- (b) a separate Special Branch file on the following campaigns coordinated by Newham Monitoring Project: The Newham 7 Defence Campaign, the Newham 8 Defence Campaign, the Justice for the Pryces Support Committee, the Panchadcharam Sahitharan Memorial Campaign, the Tower Hamlets Nine Defence Campaign, the Shiji Lapite Memorial Committee and the Ibrahima Sey Memorial Campaign.*
- (c) a separate SO15 file on the following campaigns coordinated by Newham Monitoring Project: The Jean Charles de Menezes Family Campaign (aka Justice4Jean) and the Ian Tomlinson Family Campaign.*

If these files have ever existed, please could you confirm their Special Branch / SO15 file references.

If these files still exist, please provide me with copies of each file".

4. The MPS responded on 6 August 2014. It refused to confirm or deny holding the requested information citing the exemptions at sections 23(5) (security bodies), 24(2) (national security), 30(3) (criminal investigations), 31(3) (law enforcement) and 40(5) (personal information).

¹ https://www.whatdotheyknow.com/request/surveillance_on_black_justice_ca

5. Following an internal review the MPS wrote to the complainant on 26 September 2014. It maintained its position.

Scope of the case

6. The complainant contacted the Commissioner on 23 December 2014 to complain about the way his request for information had been handled. The Commissioner has considered below whether the MPS is entitled to neither confirm nor deny holding any information by virtue of any of the exemptions cited.

Reasons for decision

Sections 23 – supplied by, or relating to, bodies dealing with security matters

7. This exemption has been considered first because it is absolute and has been applied to the request in its entirety.
8. Section 23(5) excludes the duty of a public authority to confirm or deny whether it holds information which, if held, would be exempt under section 23(1).
9. The test as to whether a disclosure would relate to a security body is decided on the normal civil standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the section 23 exemption would be engaged.
10. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
11. The MPS has provided the following arguments:

"To provide any indication through confirmation or denial that any information is or is not held, would itself constitute the disclosure of exempt information, as such any indications would amount to a statement that relates to a security body or bodies. The purpose of applying this exemption is to avoid confirming or denying the

involvement of a security body and thus to maintain a position which safeguards any activities...

In a recent Information Commissioners Office (ICO) Decision Notice FS50443643² the Commissioner's opinion was that 'the exemption contained at section 23(5) should be interpreted so that it is only necessary for a public authority to show that either confirmation or denial as to whether the requested information is held would involve the disclosure of information relating to a security body. It is not necessary for a public authority to demonstrate that both responses would disclose such information. Whether or not a security body is interested or involved in a particular issue is in itself information relating to a security body.

Decision Notice FS50443643³ the ICO states '...it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FoIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request'.

Decision Notice FS50503584⁴ - It was The Commissioners opinion the exemption contained in Section 23(5) should be interpreted so that it is only necessary for a public authority to show that either confirmation or denial as to whether the requested information is held would involve the disclosure of information relating to a security body. Whether or not the security body is interested or involved in a particular issue is in itself information relating to a security body.

The application of Section 23(5) for this purpose has been acknowledged in a number of previous decisions (for example Baker

² https://ico.org.uk/media/action-weve-taken/decision-notices/2012/768126/fs_50443643.pdf

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2012/768126/fs_50443643.pdf

⁴ https://ico.org.uk/media/action-weve-taken/decision-notices/2013/915178/fs_50503584.pdf

*v The Information Commissioner and the Cabinet Office
[EA/2006/0045]⁵.*

Decision Notice FS50258193⁶ - The Commissioner was satisfied that 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 special branches involves very close working with security bodies and regular sharing of information and intelligence.

Being an absolute exemption, there is of course no requirement for a prejudice or public interest test on neither confirming nor denying the existence of pertinent information”.

12. The requested information specifies 'Special Branch files' as its focus. It is therefore patently clear that any information held would directly relate to Special Branch work. The Commissioner is satisfied that there is a close working relationship between the MPS's Special Branch and the security bodies and, as cited by the MPS in its response above, the Commissioner has previously stated that he is satisfied that (except on rare occasions) such work will necessarily involve close working with security bodies and regular sharing of information and intelligence.
13. In light of the MPS's relationship with the security bodies and the wording of the request, the Commissioner finds that, on the balance of probabilities, the requested information, if held, would relate to or have been supplied by one or more bodies identified in section 23(3) FOIA.
14. On this occasion the Commissioner is satisfied that complying with the requirements of section 1(1)(a) would be likely to reveal whether or not the security bodies were interested in the subject matter of this request. The need for the MPS to adopt a position on a consistent basis is of vital importance in considering the application of an NCND exemption and he is satisfied that section 23(3) is engaged. The Commissioner has not therefore needed to consider the application of the other exemptions cited.

⁵ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i24/Baker.pdf>

⁶ https://ico.org.uk/media/action-weve-taken/decision-notices/2011/594104/fs_50258193.pdf

Right of appeal

15. 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

16. 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.
17. 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
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF