

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 19 August 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 information about the late Cyril Smith from the Metropolitan Police Service (the "MPS"). The MPS confirmed it was currently undertaking a related investigation but would neither confirm nor deny anything further citing sections 23(5) (information supplied by or concerning security bodies), 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 those exemptions and he requires no steps.

#### **Background**

---

2. Immediately prior to the request, there were several articles in the media regarding the late Cyril Smith. These centred on 'leaked' information reportedly provided by a former police officer. The articles related to the alleged cover-up of enquiries into allegations of sexual abuse committed by Cyril Smith. An example can be found on the BBC website<sup>1</sup>.

---

<sup>1</sup> <http://www.bbc.co.uk/news/uk-31908431>

## Request and response

---

3. On 20 March 2015, the MPS received the following request from the complainant:

*"a) Did senior officers from the Metropolitan Police (or another agency) take possession of video, photographic and documentary evidence relating to the arrest of the late Cyrill [sic] Smith, after his release, and if so where is that evidence stored; or was that material destroyed?*

*b) If part (a) has occurred, under what and whose authority did this take place?*

*c) Who were the senior officers, allegedly from the Metropolitan Police, who had the meeting with the investigative team concerning the criminal investigation into the activities of Cyrill [sic] Smith; and convinced that team to supposedly 'hand over' all investigative material?*

*d) I also seek disclosure of all intelligence and the investigative material that the Metropolitan police may hold on the activities of Cyrill [sic] Smith concerning that criminal investigation, e.g. intelligence logs, pocket book entries, pictures, videos, witness statement(s) or ROTI of Cyrill [sic] Smith himself, officers' reports and similar material."*

4. The MPS responded on 8 April 2015. It refused to confirm or deny holding any information citing sections 23(5) (information supplied by or concerning security bodies), 30(3) (criminal investigations), 31(3) (law enforcement) and 40(5) (personal information).
5. Following an internal review the MPS wrote to the complainant on 7 May 2015. It maintained its position.
6. During the Commissioner's investigation the MPS confirmed that it was conducting an investigation into the matters referred to in the request, but maintained it would neither confirm nor deny any further detail in respect of its lines of enquiry.

## Scope of the case

---

7. The complainant contacted the Commissioner on 28 May 2015 to complain about the way his request for information had been handled.

8. The Commissioner has considered whether or not the MPS was entitled to neither confirm nor deny holding the requested information.

## **Reasons for decision**

---

### **Section 30 – criminal investigations**

9. Section 30(3) provides an exclusion from the duty to confirm or deny whether information is held in relation to any information, whether or not it is held, that would fall within any of the classes described in sections 30(1) or 30(2). In this case, the MPS has confirmed it is relying on section 30(3) as any relevant information it did hold would be exempt by virtue of 30(1)(a)(i). This subsection covers information that was at any time held for the purposes of an investigation which the MPS had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.
10. Consideration of section 30(3) is a two-stage process. First, the exemption must be engaged, which it will be where the wording of the request suggests that any information falling within the scope of it would be within any of the classes described in sections 30(1) or 30(2). Secondly, this exemption is qualified by the public interest, which means that the confirmation or denial must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
11. The first step here is to address whether, if the MPS did hold information falling within the scope of the complainant's request, this would fall within the class specified in section 30(1)(a)(i). The wording of the requests are specifically for information relating to a police investigation and the MPS has confirmed it is undertaking such an investigation. Given this, the Commissioner is satisfied that any information held by the MPS falling within the scope of the requests would be within the class described in section 30(1)(a)(i); that is, it would be held for the purposes of an investigation into whether a person should be charged with an offence. The exemption provided by section 30(3) is, therefore, engaged.
12. The next step is to consider the balance of the public interest. In reaching a conclusion on the balance of the public interest in this case, the Commissioner has considered two key factors. First, he has considered whether disclosure of the confirmation or denial would be likely to harm an investigation being carried out by the MPS, which would be counter to the public interest, and what weight to give to this public interest factor. Secondly, he has considered what public interest there is in confirmation or denial.

13. The MPS has confirmed that there is an ongoing investigation. However, the requested information would relate to individual strands of that investigation and what specifically the MPS may, or may not, be pursuing. Such matters are obviously at the heart of that investigation.
14. The section 30 exemption exists to ensure the effective investigation and prosecution of offences. Given the complexity of the types of allegations the requests relate to, the Commissioner accepts that it is likely that confirmation or denial could be disruptive to those lines of enquiry. The Commissioner accepts that MPS has a legitimate requirement for a safe space in which to operate and premature confirmation or denial could hamper its considerations of how to proceed or investigate. Strong weight should therefore be accorded to maintaining the exemption.
15. Turning to whether there is public interest in confirmation or denial, it is noted that the allegations are extremely serious. These concern the commission of sexual offences and allegations of a cover-up of the same by the police service itself. However, the MPS has confirmed that the allegations are now being investigated and the Commission understands that confirmation or denial in respect of those issues mentioned in the request could seriously undermine that investigation.
16. The Commissioner recognises the public interest in the MPS confirming whether or not it is carrying out an investigation, which has been done. However, he also recognises that a confirmation or denial about the findings of that ongoing investigation could be harmful to any such investigation and may affect the administration of justice were a premature and unfettered disclosure to the general public made. The enquiries concern historical allegations of sexual abuse and how these may have been suppressed. It is clearly essential that the MPS is able to investigate these without any risk of compromise to that investigation; this would clearly not be in the public interest.
17. Having considered all the circumstances the Commissioner has concluded that the public interest in the maintenance of section 30(3) outweighs the public interest in confirmation or denial in response to all parts of the request. The MPS was not, therefore, obliged to confirm or deny whether it holds this information. Given this conclusion, it has not been necessary to go on to consider the other exemptions cited.

## Right of appeal

---

18. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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 .....**

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