

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2016

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 Trident referrals from the Metropolitan Police Service (the "MPS"). The MPS refused to confirm or deny whether they held information within the scope of this request and cited the exemptions provided by sections 23(5) (information relating to, or supplied by, security bodies), 24(2) (national security) and 31(3) (law enforcement) of the FOIA.
2. The Commissioner's decision is that sections 23(5) and 24(2) were cited correctly so the MPS was not obliged to confirm or deny whether the requested information was held. No steps are required.

Background

3. The request refers to "Trident". The MPS has provided the following explanation regarding this term:

"Operation Trident was first initiated in 1998 in response to a number of shootings in Lambeth and Brent Boroughs, albeit in 2012, 8 February to be precise, Operation Trident was relaunched as the Metropolitan Police Service's (MPS) response to tackling gang-related crime and associated violence, with additional responsibility for the prevention and investigation of all shootings in

*London regardless of the victim's background. The Command now sits within the Gangs and Organised Crime area of business along with Specialist, Organised Crime.*¹

Trident Gang Crime Command merged with The London Crime Squad to provide a unit to lead the MPS against Gang crime and serious acquisitive crime on Boroughs.

Trident and Area Crime Command will:

- *Investigate all non-fatal shootings or discharges involving a lethal barrelled weapon (or a weapon that has been converted to be such a lethal barrelled weapon); or shootings or illegal discharges of blank firing weapons, regardless of the victim or perpetrator's ethnicity;*
- *Investigate any threat to police officers or police staff where a firearm is produced;*
- *Conduct proactive operations targeting firearms and / or gangs focussing on intelligence, prevention and enforcement;*
- *Conduct secondary investigations on all recovered firearms on BOCUs [Borough Command Units];*
- *Deploy to and support boroughs to tackle gang criminality, embedding Ending Gang and Youth Violence best practice in relation to gang suppression;*
- *Work with partners, groups and communities to tackle gang criminality and prevent offending;*
- *Lead on knife enabled crime;*
- *Investigate the following serious gang-related crimes;*
- *GBH (excluding DV), or knife injuries where the victim is U25 (excluding DV), or aggravated residential burglary IF either the perpetrator or the victim is listed on the Gangs Matrix with a*

¹ <http://content.met.police.uk/Article/History-of-Trident/1400014986671/1400014986671>

<http://content.met.police.uk/Article/Who-we-are/1400014982729/1400014982729>

score of more than zero AND the incident has / is likely to attract a GA flag on CRIS [Crime Report Information System];

- *Support the Gang Enforcement, Assessment and Review (GEAR) protocol in consultation with Boroughs to reinforce the overall MPS response to gang incidents".*
4. Reference is also made to "PREVENT". There is a lot of information available online about this programme², which the MPS has summarised to the Commissioner as a programme: *"to stop people becoming terrorists or supporting terrorists"*.

Request and response

5. On 19 November 2015 the complainant wrote to the MPS and requested information in the following terms:

"How many times have Trident officers referred a suspect/individual to the Prevent counter terrorism programme in 2015?"

6. On 22 December 2015, following an extension to the time limit in which it considered the public interest, the MPS responded. It refused to confirm or deny that it held the requested information, citing sections 23(5), 24(2) and 31(3).
7. The complainant requested an internal review on 6 January 2016.
8. The MPS sent the outcome of its internal review on 18 January 2016. It maintained its position.

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf

http://www.legislation.gov.uk/ukdsi/2015/9780111133309/pdfs/ukdsiod_9780111133309_en.pdf

https://www.london.gov.uk/sites/default/files/preventing_extremism_in_london_evidence_pack.pdf (Pages 42 - 44)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/425189/Channel_Duty_Guidance_April_2015.pdf

Scope of the case

9. The complainant contacted the Commissioner on 27 January 2016 to complain about the way his request for information had been handled. The Commissioner required further information from him which was provided on 3 March 2016.
10. The complainant asked the Commissioner to consider the application of exemptions to the request. The Commissioner will consider these below.

Reasons for decision

Section 23 - information relating to, or supplied by, security bodies

11. Section 23(5) of the FOIA provides an exemption from the duty imposed by section 1(1)(a) to confirm or deny whether information is held if to do so would involve the disclosure of information, whether or not recorded, that relates to or was supplied by any of the security bodies listed in section 23(3). This is a class-based exemption, which means that if the confirmation or denial would have the result described in section 23(5), this exemption is engaged.
12. The argument from the MPS on this exemption was that if the information specified in the request did exist, it is very likely that it would have come from, or be related to, section 23(3) bodies. Were it the case that absolute certainty of the connection with a section 23(3) body was required, this might mean that the possibility, however slim, of the MPS holding relevant information that was not related to, or supplied by, a section 23(3) body would undermine its reliance on section 23(5).
13. In the Tribunal case *The Commissioner of Police of the Metropolis vs Information Commissioner (EA/2010/0008)* the argument was advanced that it was highly likely that any information held by the public authority that fell within the scope of the request would have been supplied to it by a section 23(3) body and, therefore, section 23(5) was engaged. The counterargument was made that only certainty as to the source of the information would be sufficient. The Tribunal rejected this counterargument and stated:

"[The evidence provided] clearly establishes the probability that the requested information, if held, came through a section 23 body."
(paragraph 20)

14. The approach of the Commissioner on this point is that she accepts the Tribunal view that the balance of probabilities is the correct test to apply. This means that for section 23(5) to be engaged, the evidence must suggest to a sufficient degree of likelihood (rather than certainty) that any information held that falls within the scope of the request would relate to, or have been supplied by, a body specified in section 23(3).
15. In this case, the Commissioner considers it clear that the subject matter of the request – involvement with terrorist groups – is within the area of the work of bodies specified in section 23(3). She also accepts that it is likely that, if the information described in the request did exist, this would have been compiled with input from, or shared with, one or more of the security bodies.
16. The Commissioner accepts that, on the balance of probabilities, any information held by the MPS falling within the scope of the complainant's request would relate to, or have been supplied by, a body or bodies listed in section 23(3). Her conclusion is therefore that section 23(5) is engaged.
17. As this conclusion has been reached on section 23(5), it is not strictly necessary to go on to also consider any other exemptions. However, as the MPS also relied on section 24(2), the Commissioner has gone on to consider that exemption.

Section 24 – national security

18. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security. Consideration of this exemption is a two-stage process. First, the exemption must be engaged due to the requirement of national security. Secondly, this exemption is qualified by the public interest, which means that the confirmation or denial must be provided if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
19. The Commissioner has already accepted when finding that section 23(5) is engaged that revealing whether or not information is held within the scope of the request would reveal information relating to the role of the security bodies. The Commissioner also accepts that disclosure that touches on the work of the security bodies would consequentially undermine national security. For that reason section 24(2) is also engaged as exemption from the duty to confirm or deny is required for the purposes of national security.
20. Turning to the balance of the public interest, the question here is whether the public interest in safeguarding national security is

outweighed by the public interest in disclosure of the confirmation or denial. Clearly, the public interest in safeguarding national security carries very great weight. In order for the public interest to favour provision of the confirmation or denial, it will be necessary for there to be public interest factors in favour of this of at least equally significant weight.

21. The view of the Commissioner is that there is some valid public interest in confirmation or denial in response to this request. This would increase public knowledge of the work that the MPS is involved in to counter participation with terrorist groups.
22. The MPS advised the Commissioner that it had located some previously disclosed information on this subject area on the National Police Chiefs' Council's FOIA disclosure log³. It stressed that this disclosure was only provided on a regional basis rather than in any greater geographic detail, such as requested in this case. However, the Commissioner notes that this disclosure does not specifically relate to its Trident Operation although it is of public interest in respect of the wider PREVENT programme.
23. The MPS has explained the full remit of the type of work undertaken by its Trident officers, in the "Background" section above. Were it to confirm or deny holding the requested information it would reveal to those parties who have been dealt with by Trident officers the likelihood of whether or not their activities had attracted further attention and been passed on to PREVENT. For example, were the figure a zero, then any such individual could be fairly confident that their activities were not considered of interest to the PREVENT programme and, if they were involved in any way with terrorism, then they could safely assume their activity had gone unnoticed. Conversely, were the figure a high number then it may "tip off" any such individuals and make them aware of the likelihood that they could be under further suspicion as any involvement with Trident officers means their activity is considered likely to be of interest to PREVENT. Clearly releasing such information would not be in the public interest as it may be used by a terrorist group to its advantage whatever the figures may, or may not, be.

³ <http://www.npcc.police.uk/FreedomofInformation/counterterrorism/2016.aspx>
[Ref:069/16]

24. The MPS has also provided further submissions in confidence which, in view of their sensitivity, the Commissioner has been unable to cite in this notice. She can however confirm that they have been taken into account in her decision-making.
25. Whilst the complainant considers that the information he has requested is of a similar nature to the types of information which have previously been disclosed, the Commissioner does not consider this to be the case. The available data is much less specific and relates largely to the PREVENT programme on a national basis rather than a local initiative such as is being requested here.
26. The Commissioner considers it to clearly be the case here that the public interest in confirming or denying that information is held does not match the weight of the public interest in safeguarding national security. This means that her decision is that the public interest in the maintenance of the exemption provided by section 24(2) outweighs the public interest in disclosure of the confirmation or denial.
27. In view of this finding and that above on section 23(5), the MPS was not required to confirm or deny whether it held the information requested by the complainant.
28. As she has accepted the citing of these exemptions the Commissioner has not found it necessary to also consider the citing of section 31(3) of the FOIA.

Right of appeal

29. 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

30. 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.
31. 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

Carolyn Howes
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