

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 July 2017

**Public Authority:** Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

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1. The complainant has requested information about meetings held in respect of a particular investigation by the Metropolitan Police Service (the "MPS"). The Commissioner's decision is that, although it has complied with section 10(1) in confirming that information is held, and 17(1) in stating which exemptions are to be relied upon, by failing to complete its public interest test considerations within a reasonable time period the MPS has breached section 17(3) of the FOIA. Additionally, as it subsequently relied on section 12(2)(cost of compliance), rather than the exemptions previously cited for delaying its response, she finds a further breach of section 17(5). As a response has since been provided, no steps are required.

### Request and response

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2. Following two earlier requests, which were both refused on the grounds of cost of compliance, on 19 December 2016 the complainant wrote to the MPS and requested information in the following terms:

*"Under the Act, I request the following information in relation to the Metropolitan Police investigation into Kato Harris, a teacher aged 37 recently acquitted of rape at Isleworth Crown Court:*

*In evidence at Mr Harris' trial, it emerged that former Met DAC Sue Akers held 'a number of meetings with serving officers about the*

*case' and that Ms Akers 'sought to give directions' to investigating officers about 'what they should do'. It was also revealed that former senior CPS prosecutor Alison Levitt had involvement in the case.*

*Please provide the following:*

- 1) The number of meetings between Ms Akers and the Kato Harris investigation team, inclusive of a summary of content and context of each meeting, between 03/12/2014 and 25/07/2016;*
  - 2) Please provide the date of each and every meeting where Metropolitan Police officers and/or civilian staff on the Kato Harris investigation team met Ms Akers between 03/12/2014 and 25/07/2016;*
  - 3) Please indicate whether minutes of these meetings exist;*
  - 4) Please provide a copy of the terms of reference agreed when dealing with Ms Akers at the outset, and:*
  - 5) Please disclose if the Commissioner of the Metropolitan Police, Sir Bernard Hogan-Howe, was formally notified of Ms Akers' liasons [sic] with the investigation team at any stage, and if so, when".*
3. On 21 December 2016 the MPS acknowledged receipt of the request. On 18 January 2017 (the twentieth working day after receipt of the request) the MPS wrote to the complainant to advise him that it needed more time in which to consider the public interest, citing sections 30 (investigations and proceedings) and 40 (personal information) of the FOIA as its basis for doing so.
  4. Following this extension to the time limit, the MPS responded on 15 March 2017. It did not rely on any of the exemptions cited for requiring additional time to consider the public interest. Instead, it advised the complainant that it was unable to confirm or deny whether it held any information, citing section 12(2) of the FOIA, as to undertake the necessary searches in order to locate any information which may be held would in itself exceed the appropriate limit.

## **Scope of the case**

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5. The complainant contacted the Commissioner on 16 February 2017 to complain about the way his request for information had been handled. He clarified that he wished the Commissioner to only consider timeliness.
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## **Reasons for decision**

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### **Section 10 – time for compliance**

6. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.
7. The request was submitted on 19 December 2016 and, on the twentieth working day following its receipt, the complainant received a response which confirmed that the MPS was in possession of the relevant information, but was extending the time for compliance in which to consider the public interest in responding to the request, citing sections 30 and 40 of the FOIA.
8. The Commissioner therefore finds that the MPS did not breach section 10(1) as it complied with section 1(1)(a) within the statutory time period.

### **Section 17 – refusal of request**

9. Section 17 requires a public authority to accurately convey its position as to why it is refusing a request.
10. Section 17(3) states that if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is 'reasonable in the circumstances', and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosure.
11. Although the FOIA does not define what a reasonable time is, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days - which means that the total time spent dealing with the request should not exceed 40 working days. Any extension beyond 40 working days would require there to be exceptional circumstances, fully justified by the public authority.
12. In the circumstances of this case, although the MPS has informed the complainant of the delay while the public interest is considered, the total time taken by the MPS has significantly exceeded 40 working days. Furthermore, no reasons were given for the delay and the Commissioner believes this to be unacceptable.

13. The Commissioner does not consider this to be a reasonable timescale and she finds that the MPS has not complied with section 17(3).
14. Furthermore, when it did issue its refusal notice, the MPS did not rely on either section 30 or 40 but instead advised that it was unable to confirm or deny whether any information was held within the appropriate cost limit, citing section 12(2).
15. Section 17(5) of the FOIA requires that a public authority which, in relation to any request for information, is relying on a claim that section 12 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact. The MPS failed to do so and therefore the Commissioner finds a further breach of section 17(5).

## Right of appeal

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16. 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)

17. 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.
18. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**