

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 December 2020

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 'non-conformances' in its forensic services from the Metropolitan Police Service (the "MPS"). The MPS provided some information but withheld the remainder citing sections 31(1)(a) and (b) (Law enforcement) and 40(2) (Personal information) of the FOIA. It also advised that to undertake any further work in respect of part (1) of his request would engage section 14(1) (Vexatious requests) of the FOIA.
2. The complainant advised the Commissioner that he only wished her to consider the MPS's response to part (2) of his request. He agreed that names and any other information which could identify any parties could be withheld. The Commissioner finds that neither section 40(2) nor 31(1) are engaged.
3. In respect of part (2) of the request, the Commissioner requires the MPS to take the following steps to ensure compliance with the legislation:
 - disclose all headings with each spreadsheet;
 - disclose all information withheld under section 40(2), other than staff names / operational names / exhibit references / crime reference numbers; and,
 - disclose any data withheld under section 31.

4. The MPS must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The MPS has explained to the Commissioner:

"ISO 17025 is the international standard used to confirm the competence of a laboratory. It specifies the general requirements for testing and allows laboratories to develop management systems for quality, administrative and technical operations.

The MPS Directorate of Forensic Science operates a Quality Management System (QMS) to manage risk and security of supply in line with the Forensic Science Regulator's Codes of Practice and Conduct.

The MPS was the first force in the UK for its police laboratory to be accredited to the ISO 17025 standard by the United Kingdom Accreditation Service (UKAS) in 2010.

The QMS is a collection of business processes, not a specific application or database. The recording of non-conformance is a part of this process.

A 'non-conformity' is a deviation from a specific procedure, standard, process or system requirement. Instances of non-conformity may be recorded on an Improvement Action Request (IAR) form. Summary details derived from the form are then recorded on an Excel spreadsheet.

There is no single 'forensic quality management system database'. Separate spreadsheets are used for different labs/units within the MPS Forensic Science department for each financial year".

Request and response

6. On 29 July 2019, the complainant wrote to the MPS and made the following information request:

"I am sending this request under the Freedom of Information Act.

1) Please state the number of serious incidents and or "never events" that occurred within your police force's forensics department in each of the last five calendar years, and the current calendar year to date.

2) Please provide a copy of all fields of the serious incidents database, including the date of the incident, the kind or category of incident that occurred, any free text description of what happened, and the outcome of the incident (whether any disciplinary action took place, or whether training was required by staff).

3) Please provide a copy of your force's guidance on handling serious incidents and or never events within its forensics department".

7. On 9 August 2019, the MPS wrote asking for clarification of the request as follows:

"We don't recognise the term "never events" and in relation to "serious incidents", it is also not clear on the type of incident you are referring to. Does it relate to Health & Safety for example?"

8. On 18 August 2019, the complainant clarified his request as follows:

"By never event, I mean an event that should never occur in a regulated environment.

By serious incident, I mean events that have a negative impact so significant that they warrant investigation.

I don't know what exact terminology your force uses for these kinds of events, so if you could advise how you categorise these kinds of incidents within your force under your section 16 duty to provide advice and assistance, I would be very grateful, and am happy to amend my request accordingly".

9. On 21 August 2019, the MPS responded. It refused to provide the requested information and cited section 12 (cost of compliance) of the FOIA.

10. On 23 August 2019, the complainant submitted the following refined request:

"I am happy to reduce the scope of my request to ensure a response can be provided within the cost limit. Please provide a response to the following:

1) Please state the number of non-conformances recorded in your forensic quality management system in each of the last five calendar years, and the current calendar year to date. Please provide all fields in your forensic quality management system database for these non-conformance incidents that would not require redaction.

2) For the period April 1st 2019 to August 23rd 2019, please provide all fields in your forensic quality management system for non-conformances incidents, redacting personal details and identifying case details where required.

This should include the date of the incident, the kind or category of incident that occurred, any free text description of what happened, and the outcome of the incident (whether any disciplinary action took place, or whether training was required by staff).

For question 2, please note, redaction time is not includable for cost calculation purposes under FOIA section 12. However, taking the 18 hour time limit as a guide, and assuming around 240 records to redact based on the figure of incidents given for 2018-19, this would allow a rough time of 2.5 minutes per incident. As such, providing details for this limited period is highly unlikely to be unduly burdensome under section 14. In addition, any repeated names could also be removed rapidly through a find and replace search, and any fields that contain mostly personal details could be removed in bulk without the need for redaction time, making it even more unlikely that section 14 would be triggered.

3) Please provide a copy of your force's guidance on handling non-conformances within your forensics department".

11. On 16 October 2019, with a letter dated 14 October 2019, the MPS responded. It provided some information. It withheld the remainder citing sections 40(2) and 30(1)(a) of the FOIA.
12. On 6 November 2019, the complainant requested an internal review of the response to parts (1) and (2) of his request.
13. The MPS sent the outcome of its internal review on 3 December 2019. It revised its position. It maintained reliance on sections 30(1)(a) and 40(2) in respect of part (2) of the request and further advised that it considered the request to be vexatious under section 14(1), on the basis of it being burdensome and likely to cause a disproportionate or unjustified level of disruption, irritation or distress to comply with it.
14. During the Commissioner's investigation, on 15 September 2020, the MPS revised its position. It disclosed some information, which it said it

understood to have complied in full with part (1) of the request; adding that, if it did not, then section 14(1) applied to the remainder. In respect of part (2) it advised:

"To the extent that additional information within the scope of question 2 is held by the MPS, the MPS maintains that the requested information is exempt from disclosure. However, the MPS is claiming that section 31(1)(a) and (b) is applicable instead of section 30(1)(a)(i).

The MPS also maintains that section 40(2) is applicable to the withheld information".

15. The Commissioner has viewed the information which consists of 42 individual spreadsheets, ie there is no actual database *per se* as the various departments involved all complete their own bespoke spreadsheets, which are all slightly different. She has also discussed the data with a manager from the forensics services at the MPS.

Scope of the case

16. The complainant contacted the Commissioner on 9 December 2019, to complain about the way his request for information had been handled. He asked her to consider the 'blanket-style' application of exemptions, adding that he was happy for any personal information to be withheld.
17. Following the late change of position in this case, the MPS wrote to the complainant with a partial disclosure and details of its revised position.
18. Subsequently, the Commissioner wrote to the complainant. She enquired about the wording of the request, and the latest response, as follows:

"Part (1)

The way I read your request is thus. You want the total number of entries for the 5 year period – which I presume you may be able to calculate from what has now been provided, although this isn't very clear.

You want a list of all the fields that are in the database (unless a field is exempt for some reason). You are not actually asking for any database content here, just information about its structure. Is this correct?

Part (2)

You want the actual data held in the database for a 5 month period, with personal data / identifiers redacted.

Part (3)

A response seems to have been omitted".

19. The complainant responded saying:

"Yes, for question 1, I was after the statistical data of the number of non-conformances for the five year period, but including any fields (such as perhaps category of breach, severity of breach etc) that would not need to be redacted to be provided. So that might simply be an excel table, with a row for each non-conformance, and perhaps its severity and the date it occurred. I was happy for any free text fields in this data to be redacted in full. I was then after a copy of all the field headings, so I could see what material was being redacted. They've provided some data on this, but it's not very well explained, and may be partial.

Yes, for question 2, it was redacted copies of the free text data for the 5 month period, which hasn't been provided at all.

Yes, for question 3, I was after a copy of force guidance, which hasn't been provided at all".

20. Following further enquiries with the MPS it was established that it had provided the complainant with its guidance "*Non-conformities and Corrective Actions*" when it responded to the complainant on 14 October 2019. The Commissioner can confirm that this was provided so she has removed part (3) of the request from the scope of her investigation. Furthermore, it was noted that the annual figures for non-conformities were also provided to the complainant in the same response; therefore the first part of part (1) of the request will also be removed from the scope of the investigation.

21. The complainant has stated: "*On section 40, the force has argued that more than just names may need to be redacted to avoid jigsaw identification of those listed in the reports. This is something I do not dispute, however, there is no reason this material could not also be redacted*". Accordingly, the Commissioner has removed names, or other personal identifiers, from the scope of the investigation.

22. The Commissioner liaised further with the complainant about some of the withheld information. Firstly, she enquired whether he wanted some alpha numeric unique reference numbers within the spreadsheets which were variously referred to as 'process reference', 'Audit Ref / Source of

IAR [improvement action request]' and 'IAR Ref' (as had been described to him by the MPS in its letter of 8 October 2020). He responded saying:

"If they are only internal markers for reference markers, they are unlikely to be much use to me, so am happy for you to exempt those from the disclosure".

The Commissioner can confirm they are internal references and she has therefore removed this data from the scope of her investigation.

23. The Commissioner also notes that the occurrence dates in the data that had been disclosed were 'rounded up' to yearly figures on the basis that some reidentification of staff or related police operations may be possible. She asked the complainant whether or not this was acceptable to him and was advised:

"It would be good to have the dates if possible, just to get a sense of when there [sic] incidents have been occurring, maybe a compromise might be to give me the month and year but not the exact date if the Met can provide credible issues with providing exact dates?"

As the dates are therefore of some value to the complainant the Commissioner has considered their disclosure below.

24. It is further noted that some of the requested information is not recorded on the spreadsheets. At internal review the complainant was advised:

"You have asked for 'the outcome of the incident (whether any disciplinary action took place, or whether training was required by staff. The QMS does not contain this type of information. To obtain it, cross referencing would have to be made with staff disciplinary / misconduct / training records".

This was not queried by the complainant so has not been further considered.

25. The complainant subsequently agreed with the Commissioner that she could remove part (1) of his request from the scope of her investigation as he was satisfied with the response.
26. The Commissioner will consider the application of sections 40(2) and 31(1) to part (2) of the request.

Reasons for decision

Interpretation of the request

27. The Commissioner has included this information to explain her position in this case.
28. The MPS contends that it has complied with the second part of part (1) of the complainant's request. It advised:

"In relation to the second part of question 1 (i.e. 'all fields in your forensic quality management system database for these nonconformance incidents that would not require redaction'), the MPS has decided to amend its position and disclose the information [redacted spreadsheets provided] ...

This substantively answers question 1, includes information within the scope of question 2 and as a gesture of goodwill, includes additional data relating to the full financial year 2019/20".

29. The Commissioner notes that this part of the request asked for: *"... all fields in your forensic quality management system database for these non-conformance incidents that would not require redaction"*. The MPS disclosed redacted versions of all 42 spreadsheets falling within the scope of the request. It fully withheld all the spreadsheet columns, including the headings, where it considered that the column held information which would require redaction. This is because, based on the wording of the request, the MPS considered that it only had to provide the headings and content of those columns of data which did not require redaction. It also confirmed that it had provided the complainant with the full list of the titles of the columns in its written response.
30. The Commissioner discussed these points with the complainant and he said he understood the MPS's position and was therefore happy to remove any further consideration of this part of his information request from the scope of the investigation.
31. The MPS also advised that the data disclosed in respect of part (1) of the request included any data which it was prepared to disclose in respect of part (2), as the requested part 2 data was a subset of the disclosed data. However, the Commissioner considers that there is a difference in the wording of part (2) of the request. Here, the complainant does specify that he requires *"all fields"* rather than just those fields which the MPS did not consider to be exempt. No exemption was cited in respect of the names of the column headings, which the MPS has indicated were disclosed in the body of its accompanying letter rather than as part of the disclosed spreadsheets. As the spreadsheets

do not contain a consistent structure, it is not possible for the complainant to ascertain what has been withheld from each one.

32. The Commissioner therefore finds that the interpretation of part (2) of the request was incorrect and that the MPS should have disclosed all the column headings in the various spreadsheets, whether or not it considered the actual data to be exempt. Accordingly, it is now required to do so for any column headings falling within part (2) of the request.

Section 40 – personal information

33. As stated above, the Commissioner is only considering part (2) of the request.
34. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
35. In this case, the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the Data Protection principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
36. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
37. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

38. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

39. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
40. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

41. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
42. At internal review, the MPS advised:

"The exemption has been applied as disclosure of the information you have requested could identify living individuals linked to criminal investigations".
43. At a later stage it further argued that:

"Due to the granular nature of the data requested, identification of individuals is possible. You have said we can easily remove names, however personal data is not limited to the names of individuals. Even with the removal of names, there still remains many lines of data which are unique instances of a particular circumstance, therefore personal information could still be gleaned from the disclosure of the information. For example operation names and details of forensic material".
44. Although asked by the Commissioner to highlight any data in the withheld information where section 40 had been applied, the MPS has not done so.
45. It is again noted that the complainant was happy for any identifying information to be redacted. This obviously includes names. The Commissioner also accepts that this can include police operational names and crime reference numbers as these relate to specific investigations and the data may reveal something about the suspects / victims; she has therefore also removed these from the scope of the investigation as being properly withheld. From viewing the spreadsheets the Commissioner further notes that exhibit references have been included on some entries which will be unique to the investigation, with some also including the initials of the party who provided the exhibit. She considers that these are also personal identifiers and should be properly withheld.
46. The Commissioner has been unable to find any other examples where she believes that reidentification would be possible. As regards the forensic material itself, no examples have been provided and the Commissioner is not persuaded that reidentification could be possible from this alone.
47. When discussing the data with the MPS, the Commissioner was advised that revealing the non-conformance dates may mean that staff can be identified or it may be possible to link the issue with an investigation. However, it is noted that the dates in the database are those logged when a non-conformance was identified, not necessarily when it

occurred, so it is not possible to accurately ascertain who may have been working in any particular department at the time a non-conformance was found and logged or to ascertain with any accuracy which investigation the MPS was conducting at that time. This is not to say that the personnel were not subsequently identified, just that their identification is not possible from disclosure of the date a non-conformance was discovered. Accordingly, the Commissioner does not accept that the dates are the personal data of any related parties.

The Commissioner's conclusion

48. The Commissioner does not agree that the remaining parts of those entries withheld under section 40 constitute 'personal data' given the removal of the types of data listed above. Therefore, other than for these items, she has ordered disclosure of any other entries caught within part (2) of the request where section 40(2) alone has been cited.

Section 31 – law enforcement

49. At a late stage in the investigation, the MPS advised that it was relying on sections 31(1)(a) and (b) of the FOIA to withhold some of the data. It explained that:

"Section 31 has been applied as it has not been possible to reliably ascertain the extent to which the requested information has been held at any time for the purpose of an investigation that the MPS has a duty to conduct with a view to determining whether an individual should be charged with an offence".

50. Although asked by the Commissioner to highlight any data in the withheld information where section 31 had been applied, the MPS has not done so.

51. Section 31(1) of the FOIA states that:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
(a) the prevention or detection of crime,
(b) the apprehension or prosecution of offenders".

52. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but also that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

53. In order for section 31 to be engaged, the following criteria must be met:

- the actual harm which the public authority claims would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, the prevention or detection of crime and the apprehension or prosecution of offenders);
- the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

54. The first point for the Commissioner to consider is whether the arguments provided by the MPS relate to the relevant applicable interests, namely the prevention or detection of crime and/or the apprehension or prosecution of offenders in each instance where section 31(1) has been cited.

55. The MPS has advised:

"All of the requested information is processed by the MPS for law enforcement purposes. Specifically, the prevention and detection of crime and/or the apprehension and/or prosecution of offenders. The disclosure of the withheld information would be likely to prejudice law enforcement purposes by:

- *Impairing the effective investigation and prosecution of offences*
- *Compromising the security of policing information*
- *Compromising law enforcement techniques and capabilities*
- *Impairing the efficient and effective conduct of the MPS due to the timing of the request".*

56. However, not all of the entries in the spreadsheets refer to investigations, for example there may be a technical or environmental concern related to a non-conformance. This is acknowledged by the MPS to the extent that it advised:

"The requested information in part consists of information derived from, and/or held for the purpose of, investigations conducted with

a view to determining whether an individual should be charged with an offence and/or whether an individual is guilty of an offence”.

Therefore, by saying “*in part*”, it has already confirmed that not all the information is caught by section 31, which is contradictory.

57. As explained above, the MPS did not advise the Commissioner specifically where this exemption has been applied to the withheld information, rather it has withheld whole columns of data. Whilst this may have been appropriate for its position in respect of the burden in compliance for the second part of part (1) of the request, this is not the same for the much reduced scope of part (2). It did provide some general rationale as follows:

“... the date of the IAR report, follow-up actions, completion and verification ... is being withheld from disclosure as disclosing information at a level of detail greater than a whole calendar or financial year would be likely to compromise the security of policing information from both an law enforcement and privacy perspective”.

“... documents have been further redacted to remove information relating to secure forensic teams that deal with sensitive investigations”.

“... although a brief summary, the free text description of the error in some cases, is specific to a particular investigation, disclosure of this information could prejudice the outcome of an investigation if placed into the public domain”.

“The MPS as an organisation deals with sensitive issues relating to national security such as counter-terrorism and serious and organised crime. The nature of such investigations and related investigative tools are typically sensitive in nature. This includes forensic tools as any disclosure indicating the capabilities, limitations or use of law enforcement tactics may undermine the use of such tools and tactics.

The MPS and wider police service regularly receive requests for information that would directly or indirectly infer law enforcement tactics and/or capabilities. Cumulative prejudice may result from the disclosure of such information. The use, or non-use of specific techniques has been subject to a number of ICO and tribunal decisions”.

58. The MPS also advised the Commissioner that: *“... the same rationale previously explained at the internal review stage in relation to section 30*

is applicable to the request". This rationale included the following explanation:

"When considering the harm of disclosure, the MPS has to be mindful that to release information that was obtained as part of a police investigation might reveal to others how investigations are conducted and are likely to be conducted in the future. If the requested information was published, the methods, tactics and strategies used to deal with certain criminal investigations would need to be changed as criminals would then know what methods they should use to evade detection and / or cause the most harm.

The publication of sensitive intelligence or other material could prejudice other investigations and thereby compromise the safety of the public.

The publication of information that could reveal operational methodology could have a prejudicial impact on the investigation of crime generally.

The MPS will only disclose information concerning investigations when it considers that no harm will be caused to the investigative process or any individual involved in the investigation. I consider that the public interest in this matter has been met by providing you with a partial disclosure.

It is of paramount importance that responses to a Freedom of Information request do not disrupt or have negative impacts on investigation. Clearly, such disruption to an investigation would not be in the best interests of the public".

59. As it is not possible to identify which investigation each entry on the spreadsheets relates to, and personal identifiers can be withheld where included, the Commissioner fails to see how details of the non-conformance in isolation can reveal which investigation it relates to, if indeed it does relate an investigation. As previously stated, the dates in the spreadsheets are those when the non-conformance was identified not when it occurred. This could be as a result of an internal audit or an annual audit, or it may be discovered by staff; there is therefore very little realistic chance of matching a date on the spreadsheets with an actual investigation and no actual examples of how this could occur were provided by the MPS.
60. The MPS refers to some harm to its investigations were its methodologies disclosed. However, it provided no examples and the spreadsheets do not record details of methodologies.

61. Whilst there is some free text recorded for each of the occurrences, the Commissioner is not persuaded that, after removal of personal identifiers, this can be linked to any particular investigation or that its disclosure could harm law enforcement more generally.
62. The exemptions have been applied in a 'blanket' fashion to whole columns of data. Furthermore, the Commissioner has not been provided with any realistic evidence from the MPS to support its position that disclosure would be likely to prejudice either the prevention or detection of crime and / or the apprehension or prosecution of offenders once personal identifiers have been removed.
63. It is not for the Commissioner to try to make a case for the MPS, the responsibility lies with the public authority.

The Commissioner's conclusion

64. In the absence of any sufficient evidence having been provided by MPS, the Commissioner has necessarily found that neither section 31(1)(a) nor (b) is engaged. Therefore, she has ordered disclosure of all the entries caught within part (2) of the request where section 31(1) has been cited.

Other matters

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

Delays

66. Whilst the Commissioner accepts that the impact of COVID-19 has obviously affected organisations such as the police service and its ability to deal with casework, it is noted that the investigation in this case predated the onset of any lockdown. Furthermore, other complaints which were received and passed to the MPS subsequent to this one have been dealt with satisfactorily, with little or no delay. The Commissioner considers the delays in this case to be exceptionally poor and without any sound basis.

Information Notice

67. As the MPS failed to respond to the Commissioner's enquiries in a timely manner it was necessary for her to issue an Information Notice in this case, formally requiring a response. This response arrived after the period for compliance with the notice had expired and had been passed to the Commissioner's lawyers with a view to commencing proceedings. The Information Notice will be published on the Commissioner's website.

68. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her draft Openness by Design strategy¹ to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy².

¹ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

² <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

69. 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@justice.gov.uk

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

70. 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.

71. 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