

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2021

Public Authority: Commissioner of the City of London Police
Address: Police Headquarters
Guildhall Yard East
London
EC2V 5AE

Decision (including any steps ordered)

1. The complainant has requested information about services it has provided overseas from City of London Police (COLP). COLP disclosed some of the requested information but, after revising its position, withheld the remainder under the exemptions at sections 23(1) (Information supplied by, or relating to, bodies dealing with security matters) and 24(1) (National security).
2. The Commissioner's decision is that both exemptions are only partly engaged. She requires COLP to take the following steps to ensure compliance with the legislation:
 - disclose the parties withheld under section 23(1) in rows (1), (2), (3), (6) and (7) of the table provided which do not refer to any section 23(3) body;
 - disclose the country at row (3) which does not engage section 24(1); and,
 - disclose details of the services offered at rows (6) and (7) of the table as the public interest favours disclosure.
3. COLP 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.

Request and response

4. On 20 March 2020, the complainant wrote to COLP and requested information in the following terms:

"1. Please state how many forms were submitted to the International Police Assistance Board (IPAB) or Joint International Policing Hub (JIPH) with respect to the Force's activities between 1 January 2018 – 20 March 2020?"

2. For each form please state:

a. The date of its submission;

b. The names of the contracting parties in the forms;

c. Description of the services to be provided;

d. Whether the proposed activities took place.

3. Please state how many requests for authorisation under Section 26 of the Police Act 1996 were made by the Force between 1 January 2018 – 20 March 2020.

4. For each of these requests please state:

e. The date of the request;

f. The country receiving overseas and assistance;

g. Description of the services to be provided;

h. Whether the proposed activities took place".

5. On 17 April 2020, COLP responded. It provided some of the requested information but refused to provide the remainder citing sections 27(1)(a) and 31(1)(a) of the FOIA. It also refused to confirm or deny holding any further information citing sections 23(5) and 24(2) of the FOIA.

6. Following an internal review, COLP wrote to the complainant on 7 July 2020. It maintained its position.

7. During the Commissioner's investigation, COLP revised its position. On 12 July 2021 it wrote to the complainant and disclosed further information. It advised that it no longer wished to rely on sections 27(1)(a) and 31(1)(a) of the FOIA but did still wish to rely on sections 23(5) and 24(2), ie to neither confirm nor deny ('NCND') holding any further information. The table it disclosed continued to refer to

exemptions however, but it did not actually cite any exemption/s to cover this information.

8. The Commissioner queried that no exemptions had been cited. She was advised that it was relying on sections 23(1) and 24(1) as follows:

"S23 is applied for the "parties involved" and S24 is applied for the "country" and "description of services".

9. The Commissioner also advised the COLP to clarify its position to the complainant; it did so on 12 July 2021.

Scope of the case

10. The complainant initially contacted the Commissioner on 7 October 2020 to complain about the way her request for information had been handled. Her grounds were as follows:

"As a UK registered charity assisting those at risk of the death penalty and other grave rights abuses, Reprive has a strong interest in ensuring that there is transparency and scrutiny of UK policing assistance overseas to ensure that it does not contribute to the death penalty in retentionist jurisdictions. Authorisation for UK police forces to provide assistance overseas is provided either under Section 26 of the Police Act, or by the Joint International Policing Hub (JIPH) - formerly the International Policing Assistance Board (IPAB). On 20 March 2020, Reprive submitted an FOI request to the City of London Police Force (COLP) asking for the number of requests for authorisation both under Section 26 and from the IPAB/JIPH. Reprive also asked for a description of the services to be provided, the contracting parties, the dates of the request, and whether the request was granted. Our complaint relates to the COLP's failure to provide part of this information.

... the COLP provided information relating to seven requests made to the IPAB but redacted the names of four of the countries who received overseas assistance, asserting that they were exempt by virtue of Section 27(1)(a) and Section 31(1)(a) of the Freedom of Information Act ...

Transparency around international policing assistance leads to better policies and practice, and this public interest has not been afforded proper weight.

... seven forces in the UK have already provided the requested information, following a consideration of the international relations and law enforcement exemptions

... we ask that the COLP provide the remainder of the information requested”.

11. Following COLP issuing its revised response, the Commissioner invited the complainant to submit any further arguments she wished to have considered.
12. On 3 August 2021 she responded as follows:

“As Section 24 still requires a public interest balancing test, we maintain our original arguments on the public interest in transparency in respect of the redactions that have been made on the basis of Section 24. It is unclear how the mere disclosure of the country that the UK gave assistance on would have any negative impact on national security, or at the very least how it could jeopardise national security to the extent it outweighs the strong public interest in knowing whether any assistance may have contributed to the commission of human rights abuses in that country.

As we stated in our earlier complaint, transparency around international policing assistance leads to better policies and practice, and this public interest has not been afforded proper weight...

I also wish to reiterate that seven police forces in the UK have already provided the requested information, following a consideration of the relevant exemptions, including the provision of assistance to countries where the UK works closely on counter-terrorism efforts. I also wish to reiterate that several police forces and institutions regularly publish the countries that have requested assistance in recent years including the Metropolitan Police Service and the College of Policing.

I also wish to respond to the redactions made on the basis of Section 23. Two of these redactions made on the basis of Section 23 are redactions of the description of the services provided by City of London Police. In our request for a description of the services provided, we are not requesting the details of the security bodies also involved, we are requesting a description of the services provided by City of London police, which is not a security body for the purposes of the act. It is therefore unclear how this information would engage Section 23”.

13. It is initially noted that any description of services has been withheld under section 24(1) rather than 23(1) as stated by the complainant; section 23(1) has only been cited in respect of the parties involved.

14. The responses from COLP have been unclear and have changed on more than one occasion. However, reflecting its latest position, the Commissioner considers the following to be the scope of her investigation. There are seven types of training / services which have been identified as falling within the scope of the request. Of these, COLP has withheld the parties involved in five entries under section 23(1), the names of countries in three entries under section 24(1) and the description of services provided in two entries under section 24(1).
15. The complainant did not refer to the citing of sections 23(5) and 24(2), the NCND provisions of these exemptions, which have been cited in respect of "anything else" that may be held; the Commissioner has not considered these further.
16. The Commissioner has viewed the withheld information which was presented to her (and the complainant) in a table with seven rows of data plus headings. For convenience, reference to the withheld information is based on the structure of that table, ie row (1), row (2), etc.

Reasons for decision

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

17. Section 23(1) provides that:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."

18. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3). This means that if the requested information falls within this class it is absolutely exempt from disclosure under FOIA. This exemption is not subject to a balance of public interests test.
19. When investigating complaints about the application of section 23(1), the Commissioner will need to be satisfied that the information was in fact supplied by a security body or relates to such a body, if she is to find in favour of the public authority.
20. This exemption has been cited in respect of the parties involved in five lots of training delivery. COLP has not explained why it considers all of these parties to be caught by section 23. The Commissioner has viewed these parties.

21. In respect of table entries (1) and (2), each refers to a body listed at section 23(3) of the FOIA. The Commissioner is satisfied that these references can be withheld, ie the name of the security body concerned. However, the other entries are not listed in section 23(3), no rationale has been provided to say why section 23 in any way relates to them and the exemption is therefore not engaged.
22. COLP must therefore disclose the remaining information at rows (1) and (2) as well as those at rows (3), (6) and (7), which do not refer to any section 23(3) body*. (*NB The 'parties involved', which refer to specific locations, in rows (6) and (7) can be withheld as per the findings in section 24 below).
23. The Commissioner would again stress that no arguments have been presented to demonstrate how section 23(1) could be said to apply to these parties despite COLP having been given ample opportunity to do so.

Section 24 – National security

24. It was at a very late stage in the investigation that COLP confirmed that it wished to rely on section 24(1) in respect of the name of the countries in rows (3), (6) and (7) and a description of the type of service offered in rows (6) and (7).
25. Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding the national security.
26. In broad terms section 24(1) allows a public authority not to disclose information if it considers that the release of the information would make the United Kingdom or its citizens vulnerable to a national security threat.
27. The term "national security" is not specifically defined by UK or European law. However in *Norman Baker v the Information Commissioner and the Cabinet Office (EA/2006/0045 4 April 2007)* the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman [2001] UKHL 47*, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information tribunal summarised the Lords' observations as:

"national security" means the security of the United kingdom and its people;

The interests of national security are not limited to actions by the individual which are targeted at the UK, its system of government or its people;

The protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;

Action against a foreign state may be capable indirectly of affecting the security of the UK; and

Reciprocal cooperation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security".

28. The exemption provided by section 24 applies in circumstances where withholding the requested information is "required for the purpose of safeguarding national security". Required is taken to mean that the use of the exemption is reasonably necessary.
29. "Required" is defined by the Oxford English Dictionary as 'to need something for a purpose'. This could suggest that the exemption can only be applied if it is absolutely necessary to do so to protect national security. However, the Commissioner's interpretation is informed by the approach taken in the European Court of Human Rights, where the interference of human rights can be justified where it is 'necessary' in a democratic society for safeguarding national security. 'Necessary' in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable. The Commissioner therefore interprets 'required' as meaning 'reasonably necessary'.
30. It is not necessary to show that disclosing the withheld information would lead to a direct threat to the United Kingdom.
31. To engage this exemption, COLP explained the following:

"Every effort should be made to release information under FOI. However, to disclose the information held by CoLP would potentially reveal policing techniques, specialist tactical areas, risk the identification of criminal groups or individuals, reveal the possibility of involvement from any exempt bodies and risk undermining both national security and international affairs. Revealing the requested information may, in itself, be all the information that criminals or terrorists need to act, avoid detection, divert attentions and inhibit the prevention and detection of international crime. It would also render that training inept, if revealed and acted upon.

In order to counter international criminal and terrorist behaviour, it is vital that the police and other law enforcement agencies have the ability to work and train together, in order to successfully deter those who commit or plan to commit acts of terrorism or criminality. In order to achieve this goal, it is vitally important that training with other police forces and security bodies within the UK

and internationally, in order to support counter-terrorism measures, in the fight to deprive international terrorist and criminal networks of their ability to commit crime.

It should be recognised that the international security landscape is increasingly complex and unpredictable. The UK faces a serious and sustained threat from violent extremists and this threat is greater in scale and ambition than any of the terrorist threats in the past".

32. Section 24 will only be engaged if exemption from disclosure is "reasonably necessary" for the purpose of safeguarding national security
33. At this point, the Commissioner additionally notes that, at internal review stage, COLP advised that some countries which it had engaged with had "... stipulated that details of these events remain a matter of confidentiality between them and CoLP" and that "to disclose information about these training operations would be a breach of confidence and it would undermine our international relations with those countries". The Commissioner was also advised regarding a "non-disclosure agreement" with one country. However, these matters do not fall within the remit of section 24 and reliance on any related exemptions, such as section 27 (International relations) has been withdrawn by COLP.
34. The Commissioner understands that the non-disclosure agreement relates to the name of the country at row (3), however, no evidence or rationale has been provided by COLP. Furthermore, none of the arguments which reference national security relate to this country as details of the "investigative interview training" provided have been disclosed; such training does not fall within the national security remit. In this regard, the Commissioner does not find section 24(1) to be engaged and, in the absence of any other exemption being relied on, the country should be disclosed.
35. In respect of the remaining information (the countries and description of service in rows (6) and (7)), taking all the above into account, the Commissioner's view is that the exemption from the duty to disclose is reasonably required for the purposes of national security. She therefore considers that the exemption provided by section 24(1) of the FOIA is engaged.

Balance of the public interest

36. Section 24 is a qualified exemption and so it is nevertheless necessary to consider whether the public interest favours maintaining the exemption or disclosing the information.
37. In forming a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the considerable public interest inherent in the maintenance of the particular exemption, as well as the specific factors that apply in relation to the requested information.

Public interest arguments favouring disclosure

38. COLP has argued:

"The public are entitled to know how public funds are spent and resources distributed within an area of policing or on behalf of the UK. Disclosure of this information would assist with the transparency of public spending and would lead to better public awareness, enabling an improved public debate".

39. The complainant has argued that: *"transparency around international policing assistance leads to better policies and practice"*. And that the disclosure of overseas policing assistance can spark and encourage debate for more effective oversight.
40. She has also argued that there is a strong public interest in: *"knowing whether any assistance may have contributed to the commission of human rights abuses in that country"*.

Public interest arguments favouring maintaining the exemption

41. In any situation where section 24(1) is found to be engaged, the Commissioner must recognise the public interest inherent in this exemption. Safeguarding national security is a matter of the most fundamental public interest; its weight can be matched only where there are also equally fundamental public interests in favour of disclosure of the requested information
42. COLP has argued:

"Security measures are put in place to protect the community that we serve. As evidenced within the harm, to disclose the details of overseas training would reveal our policing and law enforcement purposes, as well possible exempt bodies, and effecting [sic] national security and international affairs. This would ultimately increase the risk of harm to the general public and significantly undermine any training and the benefit that training would have.

Irrespective of what information is held, the public entrust the police service to make appropriate decisions with regard to the safety and protection of the UK and the only way of reducing risk is to be cautious with what is placed into the public domain. The cumulative effect of terrorists or criminals gathering information from various sources would have even more impact, when linked to other information gathered from various sources. The more information disclosed over time will give a more detailed account of the tactical infrastructure of the country as a whole and law enforcement agencies abroad”.

43. In this case the public interest in the maintenance of the exemption concerns preserving the ability of COLP to counter international criminal and terrorist behaviour by not revealing the extent of the services it provides to particular countries. This in turn means that terrorists remain unsure as to the level of expertise available in any particular area. The Commissioner finds the public interest in these efforts not being undermined or circumvented weighs heavily in favour of the maintenance of the exemption.
44. However, the Commissioner also recognises the significant public interest arguments made by the complainant and she has therefore considered whether or not **any** of the withheld information could be partially disclosed. She has determined that disclosure of the service offered, without knowledge of where this was provided, would go some way to assisting both the complainant and the wider general public in understanding the type of services that are being provided. Whilst she recognises that this reveals information which may be of potential use to those terrorists or criminals wishing to understand what risks they face, or what countermeasures they need to anticipate, she considers that this could also act as a deterrent, especially as it is not known where this service has been provided. Furthermore, the actual content of the service delivered is unknown and not part of the request.
45. In conclusion, the Commissioner has recognised the weight of the public interest in avoiding a disclosure that could be detrimental to national security. However, she also recognises the public interest of considerable weight in favour of disclosure given the subject matter of the requested information. The finding of the Commissioner is, therefore, that the public interest in the maintenance of the exemption only outweighs the public interest in disclosure in relation to certain parts of the requested information and that COLP must disclose the description of services at rows (6) and (7), without revealing any details of the countries or locations concerned.
46. COLP must now undertake the steps at paragraph 2 above.

Other matters

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

Information Notice

48. As the COLP 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; the response to that notice was also late. The Information Notice will be published on the Commissioner's website.
49. 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 Design¹ strategy 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

50. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

51. 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.

52. 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