

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2023

Public Authority: Commissioner of Police of the Metropolis
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about protest marches from the Metropolitan Police Service (the "MPS"). The MPS provided some information but would neither confirm nor deny ("NCND") holding any further information by virtue of sections 30(3) (Investigations and proceedings) and 40(5) (Personal information) of FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 30(3) of FOIA. No steps are required.

Request and response

3. On 14 July 2022, 17 July 2022 and 19 July 2022, the complainant wrote to the MPS and requested information in the following terms:

"I ask about the Al Quds March on 19 June 2017 in London, in particular the delay caused as a group of 30 or so Zionists blocked the route. I ask about any notification in advance that the blocking action was about to take place, and any information at the time (from police day books and police videos) and any internal reviews if such exist.

I do not know what information does exist, but if an internal review exists that would be useful.

For further information: Video footage here (see around 14 minutes

especially) - (356) Al Quds March London 2017 (Raw Footage) - YouTube

This shows police with collar signs [redacted]. The blocking took place at Scribbler - not sure which store. Those involved in the action (holding Israeli flags) may include members of the Israeli Advocacy Movement including [names redacted]. If appropriate, please detail the role of such groups/ people in your reply.

Received on 17/07/2022:

Further to this foi (typo Quds not Wuds)

A similar disruption for about 30 minutes took place in Oxford Street London, November 4th 2017, involving the same disruptors. This time the march was for the PSC (Palestine Solidarity Campaign), in the afternoon.

I ask about police reviews etc. on this disruption, and whether the police were notified in advance.

Received on 19/07/2022:

Further to this foi I ask for any reviews of the 2018 Al Quds, especially a disruption around 52 Curzon Street (Cafe Nero, intersection of Half Moon Street), 10 June. Several mounted police and around 20 officers on foot had to move a group of Zionists blocking the march.

What information does Met Pol have? For example, the legality of the blocking, the cost of this particular incident and so on".

4. On 13 September 2022, following an extension to the time limit in which it considered the public interest, the MPS responded jointly to all three requests. It provided some information but refused to confirm or deny holding any information on the named individuals citing section 40(5) of FOIA. It advised the complainant:

"We were not informed in advance of the intention to protest at those locations at those times.

The use of the highway for protest has been held to be a lawful use in case law. The same right to assemble and use the highway for protest applied to those attending the Al Quds demonstrations, and those who attended counter demonstrations. The police are obliged under the European Convention on Human Rights not to interfere in those rights unless there is a lawful power to do so, and it is reasonable, proportionate and necessary. In some cases we are obliged to protect those rights. In each of these protests, police assessed the actions of both protest groups. Police officers were deployed at points to engage with both protest groups, to assess

whether offences were being committed, and to prevent a breach of the peace”.

5. The complainant requested an internal review on 13 September 2022. His main concerns were:

“It seems to me that the Public Order Act was being flouted in that counter protests were organised that took the police by surprise and the police were not notified. Just who were counter protesting in this way is no secret. The police must have discussed internally about this apparent rule-breaking, so I think that the police really must have something that they can make public”.

He made no reference to the citing of section 40 in respect of the parties he had named in his request of 14 July 2022.

6. The MPS provided an internal review on 14 October 2022 in which it revised its position, adding reliance on section 30(3) of FOIA to NCND whether further information was held. It explained:

“There is information in the public domain which confirms the existence of the protests cited in your requests. However, for the MPS to confirm or deny that named individuals and / or specific groups / organisations have contacted the MPS and / or have been subject of a MPS review concerning counter-protesting acts that were designed to block a lawful march would require the MPS to disclose personal information and information gathered for the purpose of an investigation. Therefore the MPS has refused your request by virtue of Section 30(3) and Section 40(5) of the Act”.

7. It advised him that:

“The MPS did not consider taking action for a breach of Section 11 Public Order Act (POA) and therefore there is no information held in respect of the points you have raised regarding this matter.

It is pertinent to note that a simple lack of notification does not automatically mean that Section 11 of POA is breached. It should also be noted that the offence relates to the organiser specifically who needs to be identifiable”.

8. It also explained:

“Although the MPS does collate costs for some of its high profile policing operations and investigations, this is generally only in exceptional circumstances. The MPS does not routinely collate the costs of individual police operations and investigations. The underlying circumstances relevant to costing MPS investigations /

operations have previously been explained within ICO Decision notices¹.

With respect to the protests mentioned in your request, the MPS does not hold individuals costs for these as they formed part of day to day policing and as such a breakdown of costs has not been collated. It should be noted that under FOIA, there is no requirement for the MPS to create new information to satisfy a FOIA request for which there is not a specific policing purpose”.

Scope of the case

9. The complainant contacted the Commissioner on 14 October 2022 to complain about the way his request for information had been handled. The Commissioner required further information from him which was provided on 21 October 2022.
10. The complainant said: “I disagree with Met Pol's understanding of the public interest - they try to make a balance of compting [sic] interests, but get the balance all wrong”.
11. The complainant made no mention of the citing of section 40 to withhold personal information, if held, in either his request for an internal review or when submitting his complaint. The Commissioner has therefore not further considered this exemption. As the only other exemption cited by the MPS is section 30(3) the Commissioner will consider this below.
12. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/946636/fs_50512734.pdf

Reasons for decision

Neither confirm nor deny ("NCND")

13. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
14. The decision to use a NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
15. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
16. The MPS has taken the position of neither confirming nor denying whether it holds any further information, citing sections 30 and 40 of FOIA. Whilst it has confirmed that it was not informed in advance of the intention to hold the protests referred to by the complainant, and it also confirmed that not consider taking action for a breach of Section 11 POA, it will NCND whether or not it has undertaken any review of these actions.
17. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not the MPS is entitled to NCND whether it holds any further information of the type requested by the complainant.
18. Put simply, in this case the Commissioner must consider whether or not the MPS is entitled to NCND whether it holds any information about any reviews undertaken regarding the protests. As mentioned above, the Commissioner is only considering the citing of section 30(3) of FOIA.

Section 30 – Investigations and proceedings

19. Section 30(3) of FOIA provides an exclusion from the duty to confirm or deny in relation to any information which, if it were held, would fall within any of the classes described in sections 30(1) or 30(2) of FOIA. The MPS confirmed that, in this case, section 30(1)(a) was the appropriate limb of section 30.
20. Section 30(1)(a) of FOIA states:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of –

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it..."

21. The Commissioner considers the phrase "at any time" to mean that information can be exempt under section 30(1)(a) if it relates to a specific ongoing, closed or abandoned investigation. The information requested (if it were held) must be held for a specific or particular investigation and not for investigations in general.

22. His guidance² also states:

"Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence. However, the purpose of the investigation must be to establish whether there were grounds for charging someone, or if they have been charged, to gather sufficient evidence for a court to determine their guilt".

23. Consideration of section 30(3) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test: whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.

24. The first step is to address whether, if the MPS holds information falling within the scope of the complainant's request, it would fall within the classes specified in section 30(1)(a) of FOIA.

25. In its internal review the MPS explained that confirmation as to whether or not it had conducted a review concerning specific groups and identifiable individuals would require confirmation or denial that the MPS had conducted specific investigations. It said:

² <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

“To confirm that information is held by way of a FOIA disclosure must be considered as an acknowledgement to the world as a whole. Whilst it could be argued that it would be in the public interest to inform the public which protest groups and individuals affiliated with these groups had made contact with the MPS and which of these the MPS did or did [not] have an interest in, there are many factors which indicate that it is not in the public interest to acknowledge the existence or otherwise of such information in instances such as this.

To confirm or deny whether or not review investigations have been conducted concerning the groups and individuals named in your request, or in fact any organisation or individual, would clearly indicate the nature and scale of police involvement in the area of preventing and detecting crime”.

26. The Commissioner is satisfied that, as a police force, the MPS has a duty to investigate criminal offences and allegations of offences.
27. Referring to the wording of the request, and to the explanation provided by the MPS, the Commissioner is satisfied that any information, if it were held, would be held in relation to investigations into the protests. Therefore, the Commissioner is satisfied that, if the MPS were to hold the requested information, it would be held for the purpose of criminal investigations. The exemption provided by section 30(3) is, therefore, engaged.

Public interest test

28. Section 30(3) is a qualified exemption. This means that the Commissioner must consider the public interest test contained at section 2 of FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
29. In accordance with his guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
30. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings.

Public interest arguments in favour of confirming whether or not the requested information is held

31. The MPS argued:

“The MPS recognises that there will only be a slight legitimate public interest in confirming or denying that information is held pertaining to particular individuals / groups in the sense that it may enhance the transparency of police action if held.

If held, disclosure of information may increase public participation and debate in relation to this area of policing and may also empower members of the public to hold public authorities to account and make informed choices”.

Public interest arguments in favour of maintaining the exemption

32. The MPS argued that confirming or denying whether information is held in relation to an investigation may enable offenders to evade detection by indicating:

- whether a police investigation had taken place
- the extent of enquiries made and/or
- the extent of information held in relation to an investigation.

33. It also argued that:

“The disclosure of information relating to investigations and proceedings, such as a confirmation or denial statement in response to a request, may also have a negative effect upon the analysis and flow of information to an investigation. Such a statement, could potentially enable individuals who might otherwise have been the focus of an investigation or charged with an offence, to ascertain or infer the likely extent of information held in relation to an investigation / proceeding. This may also enable such individuals to adapt their behaviour and/or avoid detection”.

34. And:

“There is a strong public interest in enabling the MPS to investigate fully, and without any hindrance to the process, when considering its position in relation to the investigation of criminal conduct”.

Balance of the public interest

35. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the act of confirming or denying

whether the requested information is held could have a harmful impact on the ability of the police to carry out effective investigations.

36. This does not mean that public authorities should use a NCND response in a blanket fashion. They should base their decision on the circumstances of the particular case with regard to the nature of the information requested and with appropriate consideration given to the public interest test. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.
37. In considering the balance of the public interest in this case, the Commissioner recognises that there is a significant public interest in the need to prevent disclosure (by way of confirmation or denial) that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings. This goes to the heart of what the section 30 exemption is designed to protect.
38. The Commissioner also considers that significant weight has to be given to the need to protect the MPS's ability to adopt a consistent approach when responding to similar requests in the future.
39. The Commissioner recognises that confirmation or denial in relation to an investigation might generally be harmful to the MPS's ability to manage its investigations effectively. He accepts that it has the potential to undermine its present and future investigations and therefore hinder its ability to conduct its policing functions, which would not be in the public interest.
40. However, it needs to be borne in mind that section 30 is not an absolute exemption and there will be occasions where the public interest overrides any inherent harm in this exemption; this goes, too, for the NCND principle.
41. It is noted that the MPS has provided the complainant with helpful information regarding the protests in question. He has been advised that the MPS was not made aware of them in advance but that there was no breach of the POA. He was also provided with further rationale, as shown in paragraphs 4, 6 and 7 above.
42. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – that is the public interest in the MPS being able to effectively conduct its function of carrying out criminal investigations.
43. Having given due consideration to the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of confirmation or denial do not equal or outweigh those in favour of

Reference: IC-197236-K7S4



maintaining the exemption. Accordingly, the Commissioner is satisfied that the MPS is entitled to rely on section 30(3) of FOIA

Right of appeal

44. 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

45. 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.
46. 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