

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 August 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 "covert profiles" from the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny ("NCND") holding the requested information, citing sections 23(5) (Information supplied by, or relating to, bodies dealing with security matters), 24(2) (National security), 31(3) (Law enforcement) and 40(5) (Personal information) of FOIA.
2. The Commissioner's decision is that sections 23(5) was cited correctly so he did not consider the other exemptions cited. No steps are required.

Request and response

3. On 5 March 2023, the complainant wrote to the MPS and requested the following information:

"How many covert profiles have been made as part of Project Alpha¹?"

A covert profile is defined in this document:

<https://library.college.police.uk/docs/NPCC/Internet-Intelligence-and-Investigation-v1.5.pdf>

The definition is:

"Any profile designed or created to obfuscate the fact it is being used for a policing purpose. This includes accounts which have minimum details, with obvious factious names, such John Doe etc."

- I would like the information supplied to me to be as up-to-date as possible".

4. On 23 April 2023, the MPS responded. It would NCND holding the requested information, relying on sections 23(5), 24(2), 31(3) and 40(5) of FOIA.

5. The complainant requested an internal review on 2 June 2023. He said:

"It is publicly stated by the NPCC in its Internet Intelligence & Investigations Strategy document that individuals conducting covert internet intelligence and investigations "will routinely utilise covert accounts or profiles".

This is not a secret tactic or something that the general public don't already know.

I'm just asking how many have been made".

6. The MPS provided an internal review on 30 June 2023 in which it maintained its position.

¹ Background information about Project Alpha can be found in the following decision notice: <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619961/ic-58919-t8h2.pdf>

Scope of the case

7. The complainant contacted the Commissioner on 30 June 2023 to complain about the way his request for information had been handled.
8. The Commissioner required further information from him which was provided on 14 July 2023.
9. The complainant asked the Commissioner to consider the application of exemptions to the request. The Commissioner will consider these below.

Reasons for decision

NCND

10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
11. The decision to use an 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.
12. 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.
13. The MPS has taken the position of neither confirming nor denying whether it holds the requested information, citing sections 23(5), 24(2), 31(3) and 40(5) of FOIA. 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 information of the type requested by the complainant.
14. Put simply, in this case the Commissioner must consider whether or not the MPS is entitled to NCND whether it holds any information about its use of covert profiles.

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

15. Section 23(5) 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.

16. The arguments from the MPS on this exemption are very limited. However, it is noted that Project Alpha: "was set up in June 2019 and is a dedicated police resource aimed at developing intelligence from social media platforms linked to offline gang violence and serious and organised crime" (see footnote 1 for source).
17. Therefore, if the information specified in the request did exist, it is very likely that it would either have come from, or be related to, section 23(3) bodies.
18. 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)
19. The approach of the Commissioner on this point is that he 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).
20. In this case, the Commissioner considers it clear that the subject matter of the request – the use of covert profiles – is within the area of the work of bodies specified in section 23(3). He also accepts that it is likely that, if the information described in the request does exist, it would probably have some relevance to work being undertaken by security bodies.
21. 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). His conclusion is therefore that section 23(5) is engaged. As this conclusion has been reached on section 23(5), the Commissioner has not gone on to consider the other exemptions cited.

Right of appeal

22. 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

23. 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.

24. 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
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