

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 September 2012

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant requested specific information about a police investigation into an allegation that she committed theft and criminal damage. The Metropolitan Police Service (the MPS) refused to confirm or deny whether it held the requested information, citing section 40(5) and, later, section 30(3). The Commissioner's decision is that the MPS was entitled to refuse the request under section 30(3) and section 40(5). The Commissioner does not require the MPS to take any steps in relation to the request.

Request and response

2. The complainant was the subject of an allegation of theft and criminal damage which was investigated by the MPS. The complainant is of the view that the MPS failed to take account of all the information available to it, and that this led to her being investigated unnecessarily.
3. On 24 February 2012 the complainant wrote to the MPS and made the following request for information under the Freedom of Information Act 2000 ("the FOIA"):

"Please therefore inform me what was done to eliminate the estate agents from the allegation and the possibility that [a named individual] was wasting police time by making false allegations by providing me with copies of the relevant documents under the FOI Act.

...To be clear I want to receive copies of all documentation including emails, notes, completed forms etc recorded as part of this allegation and investigation. You may redact third party personal data where necessary".

4. The MPS responded on 26 March 2012 and refused to confirm or deny whether it held the requested information, citing the exemption at section 40(5) of the FOIA. It provided an internal review on 8 May 2012, in which it maintained this position.

Scope of the case

5. The complainant asked the Commissioner to consider whether the MPS' response to her request was correct.
6. During the course of the Commissioner's investigation the MPS introduced the exemption at section 30(3) the FOIA. The complainant expressed concern that the Commissioner allowed the late submission of this exemption.
7. In relation to this last point, the Commissioner follows the decision by the Upper Tribunal in the combined cases of the *Home Office v Information Commissioner (GIA/2098/2010)* and *DEFRA v Information Commissioner (GIA/1694/2010)* that a public authority can, as of right, make a late claim of an exemption and that he must consider any such late claim.

Reasons for decision

Exemptions claimed

8. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise the applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.

Section 30(3): investigations and proceedings

9. Section 30(3) provides an exemption from the duty to confirm or deny in relation to any information, whether held or not, that falls within any of the classes specified in sections 30(1) or 30(2). In this case the MPS considers section 30(1)(a)(i) to be the relevant class.

10. Section 30(1)(a)(i) applies to information that was at any time held by the public authority for the purposes of an investigation that the public authority has a duty to carry out with a view to it being ascertained whether a person should be charged with an offence. In addition, the information in question must relate to a specific investigation and not to investigations in general.
11. The MPS clearly has a duty to carry out investigations which fall under the exemption at section 30(1)(a)(i) and was responsible for investigating the allegation specified in the request. Therefore, if the MPS held information relating to the allegation, it would be held for the purpose of the investigation. As any MPS investigations into allegations of theft and criminal damage would fall under the scope of section 30(1)(a)(i), the Commissioner is satisfied that the exemption is engaged.
12. However, this is a qualified exemption and so the Commissioner has gone on to consider the public interest test.

Public interest arguments in favour of confirming or denying that information is held

13. The MPS accepts that confirming or denying whether it holds the requested information might assist the public's understanding of how it operates. In particular, the MPS identified a potential benefit in highlighting the effectiveness of the police in addressing allegations of crime in the capital. Confirming or denying that information is held may encourage trust among the public that the MPS is acting effectively and efficiently with regard to criminal investigations.
14. The complainant is of the view that there is a public interest in the MPS giving her the relevant information, as she was interviewed in connection with the allegation which was the focus of the investigation. She has cited the following public interest arguments in favour of confirming or denying whether the information is held.

- *The MPS are funded by the public and need to demonstrate value for money, efficiency and effectiveness in the way investigations are undertaken.*
- *The MPS need to demonstrate that they are operating with integrity.*
- *The MPS need to demonstrate that they handle personal data in compliance with the Data Protection Act following several cases of Police mishandling personal data and losing details of victims etc.*
- *The MPS need to demonstrate to the public that they are following good practice in their handling of investigations and taking a proportionate approach*
- *The MPS need to demonstrate to the public that they handle personal data in line with the ICO's good practice guidelines*
- *Data handling is a high profile area where the Police have made mistakes in the past and the community has a right to expect to be able to see improvements in this area*
- *The MPS needs to demonstrate how they have made decisions so that those decisions can be challenged.*
- *There is no prospect that disclosure would jeopardise future prosecutions, hamper intelligence gathering or negatively impact on the interests of justice.*
- *Disclosure would not involve confidential sources or hamper future police investigations.*

Public interest arguments in favour of maintaining the refusal to confirm or deny whether information is held

15. The MPS considers that there is a public interest in ensuring the integrity of police investigations, and that to acknowledge whether or not information is held in this instance would provide confirmation to the world at large that information referring to a crime reported by a third party does or does not exist.
16. The MPS argued that it would be unusual for any police force to confirm whether or not it held information relating to a specific investigation, or an investigation into a particular body, as to do so would identify police involvement with the body in question. In turn, this could prejudice law enforcement or have a potentially damaging effect on the criminal justice system. This is because complying with such requests would result in the public becoming aware of those matters the police are or were investigating (or, indeed, not investigating), which could assist individuals engaged in criminal activity in taking action to minimise their risk of being detected.

17. Furthermore, the MPS argued that confirmation or denial as to whether it held information relating to a specific investigation could make individuals less likely to contact it in the fear that such a fact might be disclosed. Confirmation or denial under the FOIA may deter people from reporting crimes in confidence or assisting police enquiries if it were to be assumed that this might be disclosed to the world at some point in the future.
18. This could potentially put the wider public at risk; the rate of undetected crimes could increase which in turn would have a detrimental impact on the level of service that the MPS could provide to the community which it serves.

Balance of the public interest arguments

19. The Commissioner recognises that the complainant has personal reasons for making the request, as she is dissatisfied with the way the MPS conducted an investigation into criminal allegations made against her.
20. However, the FOIA is motive blind and disclosures made under it are treated as being made to the world at large. This means that the Commissioner can only decide whether confirmation or denial that the information is held should be placed in the public domain.
21. Turning to the specific arguments supplied by the complainant, the Commissioner acknowledges that there is a clear interest in the public being reassured that information which it provides to the MPS which may point towards the existence of criminal activity is taken seriously and that the MPS investigate such matters effectively, expeditiously and in accordance with accepted policies and procedures. However, the Commissioner would suggest that the extent to which confirmation by the MPS as to whether or not it holds information falling within the scope of this request is likely to prove of limited value in serving this public interest.
22. The Commissioner is aware that the mechanism for considering complaints about specific police investigations is the Independent Police Complaints Commission (the IPCC), and that it can consider complaints about specific police investigations entirely independently of the FOIA. The Commissioner would therefore suggest that the IPCC is a more appropriate route for addressing the concerns expressed via the complainant's public interest arguments.

23. In cases involving the application of section 30(3), the Commissioner believes that the wording of the request is key to determining whether the balance of the public interest favours maintaining the exemption. This is because the more specific a request, the more likely it is that confirmation as to whether or not information is held would result in the prejudicial effects described by the MPS above, and thus the more likely that the public interest favours maintaining the exemption.
24. In this case the request focuses on a particular criminal investigation and specifically asks for information about police investigations carried out into a named individual and a firm of estate agents.
25. The Commissioner considers that were the MPS to confirm or deny that such information is held there is a real possibility of the sort of prejudice to law enforcement and the criminal justice system envisaged by the MPS occurring. Intelligence about who had been investigated in connection with the allegation might be of assistance to someone in taking action to minimise their risk of being detected. And the Commissioner considers it reasonable to assume that the person named in the request might be deterred from reporting crimes to the police or assisting with enquiries if he believed that information about his actions would subsequently be placed in the public domain.
26. Of further concern is the placing into the public domain of information about parties, in a criminal context, none of whom have been prosecuted in connection with the allegation. The Commissioner considers that, given the low profile nature of the alleged criminal behaviour, each would have the reasonable expectation that any suspicions of their involvement would be investigated discreetly until such time as charges were to be brought. The Commissioner considers that there could be a detrimental effect on witness co-operation if it became the expectation that such information might be disclosed under the FOIA.
27. Having considered both sets of arguments, the Commissioner's view is that the public interest arguments in favour of maintaining the refusal to either confirm or deny whether information is held outweigh those in favour of the MPS issuing such a confirmation/denial. Therefore, the Commissioner finds that the MPS was entitled to rely on the refusal to confirm or deny provided by section 30(3) of the FOIA.

28. In cases where the Commissioner is satisfied that a particular exemption has been correctly applied to the requested information, he will not normally go on to consider the application of a second exemption in respect of the same information. However, in view of the complainant's concern that she may have been denied access to quite sensitive information which relates to her, he considered such an approach to be appropriate in this case, and has considered the application of section 40(5) to the information.

Section 40(5)

29. Section 40(5) provides that the duty to confirm or deny does not arise in relation to information that falls, or would fall if it were held, within the scope of section 40(1) of the FOIA. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This exemption is absolute and requires no public interest test to be conducted. Section 40(1) provides this exemption because individuals have the right to request their own personal information under the Data Protection Act 1998 ("the DPA").
30. The MPS cited section 40(5)(a) of the FOIA to refuse to confirm or deny whether it held information relevant to the complainant's request. It did so because the request was for information about the police investigation into an allegation of a criminal offence committed by the complainant, and the information constituted her personal data.
31. After careful consideration of the wording of the request, the Information Commissioner is satisfied that the complainant is, or would be, the data subject of the information requested. This is because the requested information focuses on the MPS's investigation into an allegation that she committed a criminal offence. The information (if held) would identify her, be linked to her and would relate to issues involving her interaction with the police. The Commissioner is satisfied that disclosure of the existence or not of this information would itself be disclosure of sensitive personal data, and would be unfair. He has therefore concluded that the MPS was entitled to refuse to confirm or deny whether it held the information under section 40(5)(a) of the FOIA.
32. The Commissioner notes that the MPS advised the complainant of her right to make a subject access request under the DPA in its refusal notice of 26 March 2012.

33. The Information Commissioner further notes that the information requested, if held, would contain information about third parties (ie those who are referred to in the request). However, as he considers that the information is properly exempt by virtue of the absolute exemption at section 40(5)(a), he has not gone on to consider whether section 40(5)(b) should be cited in respect of this information.

Right of appeal

34. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

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