

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2022

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 a "cash for honours" media statement from the Metropolitan Police Service (the "MPS"). The MPS refused to provide the requested information, citing sections 31(1)(a)(b) (Law enforcement), 40(2) (Personal information) and 42(1) (Legal professional privilege) of FOIA.
2. The Commissioner's decision is that section 31 of FOIA is properly engaged and the public interest favours maintaining the exemption; he has therefore not found it necessary to consider the other exemptions cited. No steps are required.

Request and response

3. On 14 November 2021, the complainant wrote to the MPS and requested information in the following terms:

"On 12th November, the Metropolitan Police put out the following statement:

"Specialist detectives have considered the contents of correspondence received by the [force] relating to recent media reports concerning the awarding of peerages.

"Taking into account both the information provided in the correspondence and other available information alongside the relevant legislation, officers have concluded that there are not sufficient grounds to initiate an investigation.

"Should further information regarding these matters be provided to the [force] it will of course be considered."

In light of this, from 6th November to the day this request is processed, I would like to request the following information:

- (1) Please provide a list of people that the Metropolitan Police contacted as it considered whether or not to initiate an investigation. Please provide their full name, as well as the organisation that they represent.
- (2) Please provide copies of all "the information provided in the correspondence and other available information" as referred to in the police statement above.
- (3) Please provide all internal and external correspondence and communications that refer to, or relate to, the police's decision not to initiate an investigation.

To add, please conduct searches within the Met's "Special Enquiry Team" for the requested information sought".

4. On 20 January 2022, following an extension to the time limit, in which it considered the public interest, the MPS responded. It disclosed some press statements but refused to provide the remaining information, citing sections 31(1)(a)(b), 40(2) and 42(1) of FOIA.
5. The complainant requested an internal review on 28 January 2022.
6. The MPS provided an internal review on 9 February 2022 in which it maintained its position.

Scope of the case

7. The complainant wrote to the Commissioner on 9 May 2022 to complain about the way her request for information had been handled. She asked him to consider the citing of exemptions to withhold the requested information.
8. The Commissioner will consider the citing of exemptions below. He has viewed the withheld information, which is accurately reflected in the press statements which have been made.

Reasons for decision

Section 31 – Law enforcement

9. Section 31 of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
10. In this case, the MPS is relying on sections 31(1)(a) and (b) of FOIA in relation to all the withheld information. These subsections state that information is exempt if its disclosure would, or would be likely to, prejudice:
 - (a) the prevention or detection of crime;
 - (b) the apprehension or prosecution of offenders.
11. In order to engage a prejudice based exemption such as section 31 there must be likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice based exemption:
 - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - Secondly, 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,
 - Thirdly, 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.
12. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information should be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
13. Rather than differentiate between the subsections of the exemption, the MPS has presented one set of arguments. The Commissioner recognises that there is clearly some overlap between subsections 31(1)(a) and 31(1)(b) and he has therefore considered these together.

The applicable interests

14. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the law enforcement activities mentioned in sections 31(1)(a) and (b) – the prevention or detection of crime and the apprehension or prosecution of offenders. With respect to law enforcement activities, the Commissioner recognises in his published guidance¹ that section 31(1)(a) will cover all aspects of the prevention and detection of crime. With respect to section 31(1)(b), he recognises that this subsection:

“... could potentially cover information on general procedures relating to the apprehension of offenders or the process for prosecuting offenders”.

15. The Commissioner acknowledges that the arguments presented by the MPS refer to prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders and that the appropriate applicable interests have therefore been considered.

The nature of the prejudice

16. The Commissioner next considered whether the MPS has demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that sections 31(1)(a) and (b) are designed to protect. In his view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.

17. In its refusal notice, the MPS advised the complainant that:

“Disclosure of the information being requested, would cause operational harm to the MPS and affect our ability to fulfil our core functions of law enforcement.

This is because the release of such information would prejudice the MPS’s future ability to prevent and detect crime or apprehend or prosecute offenders, as individuals may be less willing to come forward or assist with our enquiries if they were to believe that this information may become public”.

18. And, at internal review, it added:

¹ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>

"The MPS has a statutory role in investigating criminal offences and deploys a range of investigative tactics and strategies to do so. In general, the MPS follows the College of Policing guidance for the investigation of crime. This information is in the public domain². However to provide detailed information related to the decision making process for a specific investigation would be detrimental to law enforcement".

19. On the evidence provided, and having viewed the withheld information, the Commissioner is satisfied that the MPS has demonstrated a causal link between the requested information and the applicable interests relied on, and that disclosure would be likely to have a detrimental impact on law enforcement.

Likelihood of prejudice

20. With regard to the likelihood of prejudice in this case, the MPS arguments are mostly presented at the level of 'would be likely to' prejudice. Therefore, this is the level of likelihood that the Commissioner has considered.

Is the exemption engaged?

21. In a case such as this, it is not enough for the information to relate to an interest protected by sections 31(1)(a) and (b), its disclosure must also at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it would occur.
22. The Commissioner recognises the importance of protecting information which, if disclosed, would undermine law enforcement activity or make someone more vulnerable to crime.
23. Having considered the arguments put forward by the MPS, the Commissioner accepts that disclosure would be useful to someone intent on establishing details about the assessment of whether or not to investigate an allegation of criminality. This in turn would be likely to be prejudicial to law enforcement as it would reveal the rationale used and the benchmarks required. Consequently, the Commissioner is satisfied that its disclosure would be likely to represent a real and significant risk to law enforcement matters.

² <https://www.app.college.police.uk/app-content/investigations/>

24. As the Commissioner accepts that the outcome of disclosure predicted by the MPS would be likely to occur, he is therefore satisfied that the exemptions provided by sections 31(1)(a) and (b) are engaged.

Public interest test

25. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at sections 31(1)(a) and (b) of the FOIA outweighs the public interest in disclosing the information requested by the complainant.

Public interest considerations favouring disclosure

26. The complainant has argued:

“It is absolutely in the public interest to assess how the MPS considered correspondence relating to media reports concerning the awarding of peerages. The public needs to know how serious the investigation’s findings were taken, and what internal action the police subsequently took.

The public needs to know whether that internal action was sufficient. The media reports concerning the awarding of peerages relates to the Conservative Party - the ruling party. Therefore the release of the information could assure the public that the police are independent and that the decision-making was robust. This can only be served if the information I seek is released”.

27. The MPS has argued:

“There is a public interest in the community being made aware of all the facts relating to policing, including how decisions are made, in order to ensure complete openness and transparency.

Disclosure of the requested information would provide an insight into how the MPS carries out its law enforcement functions. Consequently, this would lead to a better informed public, improving their knowledge and understanding of how the Police Service respond and deal with such matters. Public confidence would be maintained and the public may be encouraged to assist more readily with such matters”.

Public interest arguments in favour of maintaining the exemption

28. The MPS has argued that the withheld information clearly relates to policing matters and how decisions are reached, and that disclosure would be likely to hinder its ability to carry out its core functions in law enforcement. It said:

"It is not in the public interest to disclose the requested information in regards to a specific matter. ... it would be harmful to our policing functions and has the potential to prejudice the MPS's future ability to prevent and detect crime or apprehend or prosecute offenders. This is because, individuals may be less willing to come forward or assist with our enquiries if they were to believe that this information may become public".

29. The MPS also explained that disclosure of the information would be detrimental to investigative decision making processes. It said:

"Those taking part in decision making processes do so on the basis that they are able to work through issues in free and frank exchange without an expectation that the discussions and related documents will be made public.

The release of documents linked to the decision making process of a potential criminal investigation would likely lead to more guarded opinions being expressed in decision making. The impact of this would be significant and could affect how investigators are able to manage decision making.

Release of the relevant documents would lead to a practice of such correspondence being drafted with a public audience in mind and framed in more guarded and neutral terms so as to avoid, for example, anything that could be misconstrued by the public without full context. This would be likely to undermine the decision making process".

Commissioner's conclusion

30. In carrying out the statutory balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to law enforcement matters. Clearly, it is not in the public interest to disclose information that may compromise the police's ability to accomplish its core function of law enforcement.
31. In that respect, he recognises that there is a very strong public interest in protecting the law enforcement capabilities of a police force and he considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders.
32. The Commissioner also recognises the need to ensure transparency and accountability on the part of the police. However, he finds that there is a stronger public interest in ensuring that precise details regarding the way the MPS conducts its investigations and makes its decisions is not

revealed. He also notes that those who wrote to the MPS raising concerns would not expect their correspondence to be published which is, in effect, what disclosure under the FOIA amounts to. Disclosure of the reasons for not pursuing an investigation would also undermine the MPS's law enforcement capabilities by revealing how its decisions are reached.

33. The Commissioner finds that full disclosure in this case would not better serve the interests of the public; the public has already been informed that the allegations have been considered and that "officers have concluded that there are not sufficient grounds to initiate an investigation".
34. Policing techniques can only be properly effective when full policing capabilities are not made available; disclosure of the considerations used in reaching decisions would be to the detriment of the wider public as those seeking to evade the law would be able to ascertain how best to do so.
35. Furthermore, those parties who contacted the MPS would also not expect their reasons for contacting the MPS to be divulged. To do so would result in a loss of confidence in the confidentiality of communications being passed to the police, which is not in the public interest.
36. In the circumstances of this case, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It follows that the MPS was entitled to rely on sections 31(1)(a) and (b) of FOIA to refuse to disclose the requested information.
37. In light of his findings, the Commissioner does not consider it necessary to consider the other exemptions cited.

Right of appeal

38. 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

39. 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.
40. 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
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