

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 1 November 2010

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

Summary

The complainant made requests for full unredacted versions of nineteenth century Special Branch Ledgers and for specific entries from these Ledgers in unredacted form. These Ledgers had been the subject of a previous finding by the Information Tribunal that these should be disclosed, but that what the Tribunal described as 'real' names within the Ledgers could all be redacted as they were subject to the exemption provided by section 30(2) of the Act (information relating to investigations and to the obtaining of information from confidential sources). The public authority cited this Tribunal decision when refusing the complainant's requests under section 30(2). The Commissioner finds that the exemption provided by section 30(2) was engaged and that the public interest favoured the maintenance of this exemption, and so the public authority was not obliged to disclose the information requested by the complainant. He also finds, however, that the public authority failed to comply with the requirement of section 17(1) of the Act in that it failed to issue a refusal notice in response to one of the complainant's requests within 20 working days of receipt.

The Commissioner's Role

1. 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 the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made the following information requests to the public authority, all of which relate to the same information, with either the entirety of this information, or specific excerpts from it, specified in each request.

3. (a) Date unknown:

"The release of MEPO 38 files, specifically the bound ledger/index book which details Special Branch casework between 1880 – 1910."

The public authority responded to this request on 11 December 2008. The request was refused, with the exemption provided by section 30(2) (information relating to investigations and to the obtaining of information from confidential sources) cited. The public authority referred to a then-pending Information Tribunal hearing relating to the information specified by the complainant and stated its position that it would refuse to disclose this information unless it was required to do so by the Tribunal.

4. (b) 15 June 2009:

"The information I am seeking is contained in the Chief Constable's CID register 'Special Branch' (1888 – 1892)

All entries and names shown in the ledgers which do not disclose or reveal the names of 'police informants'."

The response to this request was dated 29 June 2009. This was refused under section 30(2), with the public authority now stating that the Information Tribunal hearing referred to in the response to request (a) had taken place and that the conclusion of this was that what the Tribunal described as 'real' names in the Ledgers in question were exempt under section 30(2). The position of the public authority was that it conformed with this Tribunal decision to refuse this request under section 30(2).

5. (c) 7 July 2009:

"[From] the Chief Constable's CID register 'Special Branch' (1888 – 1892)

i. Entry under the heading 'Jack the Ripper' which names a

suspect.

ii. Entry under Chief Inspector Littlechild's reference which again names [a] suspect in the Jack the Ripper case."

(d) 16 August 2009:

"[I request] to examine the unredacted ledgers."

The response to both requests (c) and (d) was dated 15 September 2009, outside 20 working days from receipt of request (c). These requests were refused under section 30(2), with the public authority again relying on the aforementioned Tribunal decision as justification for the refusal of these requests.

6. The complainant contacted the public authority again on 17 September 2009 and requested an internal review of the refusals of all of his requests. After a delay, the public authority responded to this on 10 December 2009. The public authority declined to review the refusal of request (a) as it believed that too long a period had elapsed between the refusal notice and the request for the review. In relation to requests (b), (c) and (d), the public authority maintained the section 30(2) refusals and referred again to the Tribunal having found that real names of individuals within the Ledgers should not be disclosed.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 28 January 2010. The complainant explained that his interest was in information within the Ledgers that he believed related to the Jack the Ripper murders. He stated that he believed that the public interest favoured the disclosure of the information requested.
8. Early in the case handling process, the Commissioner's office contacted the complainant and explained the distinction between it and the Tribunal. The background to the decision of the Tribunal (set out below at paragraphs 12 to 14) was explained to the complainant and he was notified that it was unlikely that the Commissioner would make a decision that contradicted that Tribunal decision in this case unless there was an overriding reason for him to do so. In response to this the complainant confirmed that he wished to continue with the case and maintained that real names from the Ledgers should be disclosed,

despite the Tribunal decision. The grounds that the complainant gave for this are covered in the Analysis section below.

9. Following the intervention of the Commissioner's office, the public authority disclosed to the complainant the information specified in request (c). This request was resolved at that stage and so is not covered in this Notice, save where the procedural breaches in the handling of this request are recorded and where the complainant has made reference to this disclosure in his grounds as to why the remainder of the information requested should be disclosed.

Chronology

10. The Commissioner contacted the public authority by letter dated 17 June 2010. The public authority was asked to respond confirming if the Commissioner's understanding was correct that the information requested by the complainant was either the same information, or part of that same information, to which the Tribunal case had related. If so, the public authority was asked to confirm if it maintained that it could not differentiate between the names of informants and non-informants. The public authority was also asked to specifically consider whether it would be possible to disclose the individual entries that the complainant specified in request (c).
11. The public authority responded on 15 July 2010 and confirmed that the information requested by the complainant was the same information that had been considered in the previous Tribunal case. The public authority confirmed that its stance was that it maintained its position from that case that it was not possible to differentiate between the names of informants and others and that this information was exempt under section 30(2). However, in relation to request (c), the public authority stated that "*after careful scrutiny*" the entries specified by the complainant could be disclosed.

Background

12. The complainant's requests all relate to Special Branch Ledgers dating from the late nineteenth century. These Ledgers were considered by the Commissioner in a previous Decision Notice¹. In the previous Notice the Commissioner had concluded that the exemption provided by section 30(2) was engaged, but that the public interest in the

¹ http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs_50106800.pdf

maintenance of this exemption did not outweigh the public interest in disclosure.

13. The public authority appealed to the Information Tribunal (*Commissioner of the Metropolitan Police vs the Information Commissioner (EA/2008/0078)*). At that stage the public authority argued that it was vital that it was able to give a guarantee of confidentiality to informants that continued to apply even after their death. It also argued that some of the names within the Ledgers identified informants, but that it was unable to differentiate between the names of informants and those of non-informants. The Tribunal accepted these arguments and issued an amended Decision Notice that concluded that the balance of the public interest favoured the maintenance of the exemption provided by section 30(2) in relation to real names of individuals within the Ledgers.
14. The public authority was required to disclose the Ledgers with real names redacted. The complainant has confirmed that he has viewed the redacted versions of the Ledgers.

Analysis

Exemptions

Section 30

15. The public authority has cited section 30(2). This provides an exemption for information that was held for the purposes of an investigation with a view to it being ascertained whether a person should be charged with an offence, or whether a person charged with an offence is guilty, and that relates to the obtaining of information from confidential sources. This is a class-based exemption, meaning that information that conforms to this description is exempt.
16. Consideration of this exemption is a two-stage process. First, it must be established if the exemption is engaged as a result of the information in question conforming to the class specified in section 30(2). Secondly, this exemption is subject to the public interest, which means that, if the exemption is engaged, it must be considered whether the public interest in the maintenance of the exemption outweighs the public interest in disclosure. If it does not, the information must be disclosed.

17. In his previous Decision Notice, the Commissioner concluded that the Ledgers which the complainant's requests were concerned with were within the class specified in section 30(2), and so that exemption was engaged in relation to that information. In reaching this decision the Commissioner commented that his understanding was that information provided by, or recorded in relation to, informants would have been recorded for the purpose of investigations to determine whether or not someone should have been charged with an offence, or whether a person charged with an offence was guilty of it.
18. The Commissioner understands the complainant's case to relate to the balance of the public interest, rather than being that this exemption is not engaged. Given this the Commissioner need only confirm here that he follows his own previous finding and the finding of the Tribunal that the exemption provided by section 30(2) is engaged in relation to all real names recorded within the Ledgers, which includes the information specified by the complainant in his requests.

The public interest

19. Having concluded that the exemption is engaged, it is necessary to go on to consider whether the balance of the public interest favours the maintenance of this exemption. In reaching this conclusion, the Commissioner has taken into account the factors considered by the Tribunal, as well as its conclusion, and the arguments advanced by the complainant, which are addressed here.
20. Turning first to the Tribunal decision, when concluding that the public interest favoured the maintenance of this exemption in relation to real names within the Ledgers, the Tribunal stated the following:

"The Tribunal is therefore firmly of the view that the substituted Decision Notice as set out above at the outset of this judgment represents the overwhelming importance of the longstanding policy adopted by the MPS that informants can be assured that their names and identities will not be disclosed even after they die. It follows that redaction of all the names in the requested material should be carried out." (paragraph 21)

21. Whilst the Commissioner is not bound to follow the decisions of the Tribunal, he will only issue a decision contradicting the Tribunal where there is clear justification for doing so. In this case the Tribunal referred to the *"overwhelming importance"* of preserving the anonymity of informants and the basis for its decision was the preservation of this anonymity. In order for the Commissioner to conclude differently in this case, he must either disagree with the view

of the Tribunal about the importance of preserving the anonymity of informants, or accept this but find that the public interest in any event does not favour maintenance of the exemption.

22. Turning to the arguments advanced by the complainant, central to his case is that, contrary to the evidence provided by the public authority to the Tribunal, it would be possible for it to distinguish between the names of informants and those of non-informants recorded within the Ledgers. As evidence for this the complainant has stated that, in his capacity as a former police officer, he is aware of what would be required to distinguish the names of informants and believes that this would be possible in relation to the Ledgers. He also believes that the decision by the public authority to now disclose the information falling within the scope of request (c) shows that it can, in fact, make this distinction.
23. As to whether it is possible for the public authority to distinguish those entries in the Ledgers that relate to informants, for the Commissioner to question the evidence provided by the public authority to the Tribunal in the previous case, there would have to be convincing counter-evidence in support of this. Whilst the Commissioner does not question the sincerity of the complainant's intent in making the assertion that, as a former police officer, it would be possible for him to make this distinction, this does not meet the threshold for being convincing evidence that the basis for the decision of the Tribunal was mistaken.
24. The complainant also suggests that the disclosure of the information specified in request (c) supports his argument. The Commissioner, however, accepts that the public authority chose to disclose these specific entries, despite the exemption provided by section 30(2) applying to them, after detailed consideration led it to the conclusion that they could be disclosed (in order to assist the complainant) without significant risk to its ability to recruit informants in future. It is not the case that the implication of this disclosure is that the public authority can, in fact, distinguish between informants and others. Neither is it the case that the public authority no longer believes that section 30(2) is engaged in relation to real names within the Ledgers, nor that it believes that the public interest no longer favours the maintenance of this exemption.
25. In his correspondence with the Commissioner the complainant has specified further individual entries within the Ledgers that he wishes to be disclosed. In response to this the Commissioner would stress that this case relates to the information requests set out above. If the

complainant now wishes to make further requests, he should contact the public authority directly.

26. The complainant has also referred to other occasions when content within the Ledgers has been disclosed, specifically a published thesis, the author of which had viewed the unredacted Ledgers, and photographs placed online by another researcher who had viewed the Ledgers. On this point the Commissioner would note only that the Tribunal was aware of these previous disclosures when making its decision. It is not the case, therefore, that these disclosures represent a new factor that was not taken into account in the Tribunal ruling. These disclosures also do not, therefore, represent a persuasive factor for the Commissioner to make a decision that contradicts the Tribunal ruling.
27. Finally, the complainant has suggested that the concerns of the public authority could be mitigated by a confidentiality agreement being reached between himself and the public authority. The question here is not, however, whether the information should be disclosed specifically to the complainant, rather it is whether it should be disclosed in accordance with the Act, which would effectively mean that this information would become publicly available. Any agreement reached between the complainant and the public authority would not be relevant to this question.
28. Having considered each of the complainant's arguments, the Commissioner is not persuaded by these that he should conclude differently from the Tribunal as to the balance of the public interest. Neither does the Commissioner disagree with the view of the Tribunal about the importance of preserving the anonymity of informants; the Commissioner considers it axiomatic that the status of an individual as a police informant must be secret and sees no grounds to dispute the argument that it continues to be important to preserve this anonymity after death.
29. In the absence of factors that persuade him to do otherwise, the conclusion of the Commissioner is that this Notice should follow the finding of the Tribunal. Therefore, his decision is that the public interest in the maintenance of the exemption provided by section 30(2) outweighs the public interest in disclosure of the information requested by the complainant and so the public authority is not obliged to disclose this information.

Procedural Requirements

Section 17

30. In failing to respond to request (c) with a refusal notice within 20 working days of receipt of the request, the public authority did not comply with the requirement of section 17(1).

The Decision

31. The Commissioner's decision is that the public authority dealt with the requests for information in accordance with the Act in that it applied the exemption provided by section 30(2) correctly and so was not obliged to comply with the requirement of section 1(1)(b) to disclose the information requested. The Commissioner also finds, however, that the public authority failed to comply with section 17(1) in not responding to request (c) within 20 working days of receipt of the request.

Other matters

32. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

The Commissioner's published guidance on internal reviews states that a review should be conducted within 20 working days, unless there are exceptional circumstances, in which case the review period may be extended to 40 working days. In this case the Commissioner notes that there appeared to be no exceptional circumstances, but that the public authority failed to provide the outcome to the review within 20 working days. Neither did the public authority respond with the outcome of the review within 40 working days. The public authority should ensure that internal reviews are carried out promptly in future.

Right of Appeal

33. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

34. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 1st day of November 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

Section 10

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Section 17

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies."

Section 30

Section 30(1) provides that –

"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,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct."

Section 30(2) provides that –

"Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources."