

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 June 2014

**Public Authority:** Commissioner of the Metropolitan Police  
Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

#### Decision (including any steps ordered)

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1. The complainant requested witness statements which were referred to in a report which the Metropolitan Police Service (the "MPS") had previously disclosed to him. The MPS cited sections 23(1) (bodies dealing with security matters), 30(1) (investigations and proceedings) and 40(2) (personal information) to withhold the information. The Commissioner's decision is that the MPS was entitled to rely on section 23(1). No steps are required.

## Background

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2. The request under consideration follows on from the release of a report in connection with the deaths of Diana, Princess of Wales, Dodi Al Fayed and Henri Paul. The report has been placed on the MPS's publication scheme and can be found online<sup>1</sup>.

## Request and response

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3. On 17 December 2013, the complainant wrote to the MPS and requested information in the following terms:

*"I understand the met has carried out an investigation into the allegations that the SAS or some other government organisation was involved / responsible for the death of Princess Diana. Please let me have a copy of the report".*

4. On 23 January 2014, the MPS responded. It provided a full copy of the report (see "Background" above).
5. Within the disclosed report was the statement:

*"As part of this scoping exercise the team has been given unprecedented access to Special Forces Directorate records and have taken eight statements".*

6. On 24 January 2014 the complainant made a further information request in which he asked for copies of these eight statements.
7. On 19 February 2014 the MPS responded. It refused to provide the requested information citing the following exemptions as its basis for doing so: 30(1)(a), 31(1)(a)(b) (prejudice to law enforcement) and 40(2).
8. Following an internal review the MPS wrote to the complainant on 13 March 2014. It revised its position and advised that it was now relying on sections 23(1), 30(1)(a) and 40(2).

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<sup>1</sup>[http://www.met.police.uk/foi/pdfs/disclosure\\_2014/february\\_2014/2013120001738.pdf](http://www.met.police.uk/foi/pdfs/disclosure_2014/february_2014/2013120001738.pdf)

## Scope of the case

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9. The complainant contacted the Commissioner on 24 March 2014 to complain about the way his request for information had been handled. He stated:

*"I believe this info should be made public and that the suggestion that because it was provided by special services protects it from disclosure is quite unacceptable.*

*The investigation has nothing to do with national security and should be in the public domain".*

10. In his initial correspondence with the complainant, the Commissioner advised the complainant in respect of section 23(1):

*"Please understand that if this exemption is engaged, ie if the requested information relates to any of the security bodies listed in section 23(3) of the FOIA, then it will be absolutely exempt from disclosure; there is no requirement to consider any public interest in disclosure".*

11. The complainant raised further concerns in response to this which the Commissioner has responded to in "Other matters" at the end of this notice.
12. The Commissioner will consider the application of exemptions below.

## Reasons for decision

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### Section 23 – security bodies

13. Section 23(1) of the FOIA states that:

*"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)".*

14. Section 23(3) contains a list of bodies dealing with national security matters. To successfully engage the exemption at section 23(1), a public authority must be able to demonstrate that the relevant information was directly or indirectly supplied by, or relates to any of the bodies listed at section 23(3).

15. The report itself clearly states in its opening paragraph that:

*"As a result of information received on 16 August 2013, the Metropolitan Police Service Specialist Crime and Operations Command commenced a scoping exercise to assess the credibility and relevance of allegations that members, or former members, of the Special Air Service (SAS) were involved in the circumstances leading to the deaths of Diana, Princess of Wales, Mr. Dodi Al Fayed, and Mr. Henri Paul on 31<sup>st</sup> August 1997 in Paris, France".*

The connection with the special forces, which includes the SAS, is therefore apparent from the outset of the MPS's investigation.

16. The MPS explained to the Commissioner that, in the circumstances, it could not release the withheld information to him. Instead, it provided a letter from a Detective Superintendent who has the experience and authority to validate the origin of the withheld information. This party assured the Commissioner that the withheld information related to a body listed at section 23(3).

17. From the wording of the report, and the wording of the complainant's request, it is fully apparent to the Commissioner that the requested information was either received from or relates to the special forces. The Commissioner therefore finds that the withheld information is exempt from disclosure on the basis of section 23(1) because it was supplied by, or relates to, a body listed at section 23(3).

18. In view of his decision that section 23(1) was correctly engaged, the Commissioner did not consider the applicability of the other exemptions cited.

## **Other matters**

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19. As referred to above, the complainant raised the following concerns in correspondence with the Commissioner, which the Commissioner comments on here.

20. The complainant has stated:

*"My concern is that a matter that is not of national security may be excluded from the foi because people that usually deal with national security matters investigated this matter".*

21. Firstly, the Commissioner would like to note that the withheld information has not been withheld under the exemption at section 24 which covers "national security". Rather it has been withheld under

section 23 which covers "information supplied by, or relating to, bodies dealing with security matters".

22. Furthermore, it is not one of the security services which has considered the matters but the MPS itself. However, as the remit of the investigation was to consider alleged involvement of the special forces it necessarily follows that relevant parties from within the special forces might have been consulted. From reading the disclosed report, the Commissioner can only conclude that the requested statements concern the special forces.

23. The complainant has also stated:

*"I am sure when the Act was passed it was not the intention of parliament that non security issues should be excluded from the right to access for information. I hope this aspect of your review will receive very serious consideration. Perhaps an explanation why the previous document was released which was part of their investigation but now it is excluded from the foi".*

24. The Commissioner is bound by the wording of the FOIA legislation and he notes that section 23(1) is one of the exemptions which is absolute and carries no requirement to consider the public interest. If Parliament had intended for it to be interpreted otherwise then he believes this would be apparent in the drafting of the FOIA.

25. The overarching report has been provided in its entirety. Indeed, it states at the beginning of the report that it has been written in such a way that it can be released into the public domain without any detriment. Nevertheless, had it elected to do, the MPS may well have been entitled to withhold some, if not all, of the disclosed report as it is clear that it directly relates to a section 23 body.

26. As section 23(1) is an absolute exemption this means that, if it is engaged, then any associated information may be lawfully withheld. However, this does not mean that a public authority must withhold the information. On this occasion the MPS has obviously opted to satisfy the public's interest in this subject matter by releasing the concluding report.

## Right of appeal

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27. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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