

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2019

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about the use of paper boiler suits in custody suites from the Metropolitan Police Service (the "MPS"). The MPS provided some information but advised that further information is not held. During the Commissioner's investigation, some further information was identified as suitable for disclosure. In respect of that information the MPS is now required to:
 - either disclose it, or issue a valid refusal notice under section 17 of the FOIA explaining why it cannot be disclosed.
2. In respect of any further information, the Commissioner's decision is that, on the civil standard of the balance of probabilities, the requested information is not held.
3. The MPS must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 23 November 2018 the complainant wrote to the MPS and requested information in the following terms:

"I am writing to request information under the Freedom of Information Act 2000 and would be grateful for your response by email to the following relating to paper custody suits. This query is in two parts.

1. Please provide a copy of all reports relating to the use of paper boiler-suits in police custody produced by the Met including the report into the study undertaken on paper boilersuits which looked into the risk associated with their use. I am not entirely certain of the year of publication but believe it may have been sometime in 2006, or in that particular decade. If the reports are already in the public domain, please provide a link to where they can be found.

2. I refer to my previous FOI on the same topic ref 2017/120000480 answered on the 20/01/2018. The Met response in January 2018 indicated that your Force still used the paper boiler-suits in its custody suites (as well as top and bottom separates). Could you please update me as to whether your force still uses paper boiler-suits or whether this practice has now ceased?"

5. On 24 December 2018, the MPS responded. In respect of part (1) of the request, it denied holding the requested information. It provided a response to part (2).
6. On 28 December 2018, the complainant requested an internal review of the response to part (1) of her request. The MPS provided this on 9 February 2019, maintaining its position that the information is not held.
7. During the Commissioner's investigation the MPS identified some information which it considered to fall within the scope of the request, albeit that it was not the specific report which the complainant had requested.

Scope of the case

8. The complainant contacted the Commissioner on 9 April 2019 to complain about the way her request for information had been handled. She asked the Commissioner to consider whether or not the MPS holds the requested information, particularly a report by a named author. The Commissioner will consider this below.
9. 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 FOIA. The FOIA is to do with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other

than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Information identified during investigation

10. In responding to the Commissioner's enquiries, the MPS advised that it had identified some information which it considered to fall within the scope of the request. This was described as:

"... a memo dated 12/07/2001 asking for 'some sort of report' that states whether the items (i.e. Disposable boiler suit and overshoes) being considered for purchase were acceptable for forensic use. The response evaluates the suitability of various options for use by scene of crime officers and/or prisoners".

11. Whilst this is not the specific report which the complainant has referred to, it would still fall within the description of a report *"relating to the use of paper boiler-suits in police custody produced by the Met"*, as per the wording of the request.
12. This should therefore now be provided to the complainant as directed in paragraph 1, above.

Section 1 – general right of access

13. This is being considered in respect of any further information which may be held.
14. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
15. In this case, the complainant suspects that the MPS holds information from which it could answer the request. The MPS's position is that it does not.
16. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant's request.

17. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

The complainant's view

18. When asking for an internal review the complainant explained to the MPS why she believed a particular report existed. She said:

"This is because I have sight of a document created by another UK police force which references such a report, a summary which reads as follows:

Mr [name removed] is the person responsible for delivering initial custody officer training to Custody Sergeants within the East Midlands Criminal Justice Region. [Name removed] has been involved in custody training for over ten years, working with Northamptonshire, Lincolnshire, North Yorkshire, The Met and also British Transport Police. [Name removed] is aware that The Met undertook a study of paper suits and one of the issues with them was that they could be plaited into ligatures.

Consequently, it is my belief that such a report does indeed exist and a thorough search of MPS created reports has not been conducted. The report may not be in a document marked as a report but may take the form of an email or memo. I therefore request that another search be conducted and the appropriate teams and units be consulted.

19. In correspondence with the Commissioner, the complainant provided evidence of an investigating officer's report (from a different police force) where these details had been stated by that force. It is therefore apparent why she considers that the MPS would hold the requested information.

The MPS's position

20. The MPS advised the Commissioner that the following searches had been undertaken:

"Initial enquiries were made via email with an acting Inspector within MO9 Met Detention who was the owner of the MPS custody

policy. MO9 Met Detention is the unit within the MPS with responsibility for custody suites and related matters.

The acting Inspector had no knowledge of any 'reports relating to the use of paper boiler-suits in police custody produced by the Met including the report into the study undertaken on paper boilersuits which looked into the risk associated with their use' and conducted electronic searches of shared 'S: drive' folders relating to Met Detention on the corporate network.

Further enquiries were made with 2 long serving members of staff who may have a corporate memory of the existence of such a report. One of these had previously sat on a 'Safer Detention Working Group' with the potential to have considered issues relevant to the request.

Consideration was given to whether a report would have been produced in relation to health and safety matters. To this end the head of health, safety and wellbeing was contacted who advised that this was not an issue that had come via the Safety and Health Risk Management Team. This individual is a long serving member of staff who was the Acting Head of Safety and Health Risk Management in 2006.

Searches were also conducted on our Records Management System (RMS). Most non-crime records created by the MPS are weeded within 7 years. Given the potential age of the report that the applicant was asking for, it is likely that the if the [sic] information were still held by the MPS, it would have been held within a registered archive file and subject to periodic review.

5 files recorded on RMS were identified as potentially relevant to the request. However, these were deemed to be outside the scope of the request once they had been viewed.

In response to this appeal, these files have been reviewed again and further searches have been conducted on the MPS intranet in addition to open searches on Internet. The MPS intranet publishes policies, notices and other documentation although it is unlikely to hold information dating between 2000-2009.

The MPS also receives a large number of requests for access to the police for research purposes, ranging from academics and institutions who conduct wide-ranging research programmes and projects, to Postgraduate and Doctoral students who wish to undertake research within the organisation to complete their dissertations. The MPS also commissions research activity from academics and institutions and have also established relationships with leading academics, including the UCL Institute for Global City

Policing and the Open University Centre for Policing, Research and Learning. Consequently, I have also contacted the MPS team responsible for dealing with research related enquiries¹.

... Open searches further identified the Guidance on the Safer Detention & Handling of Persons in Police Custody (2006)², produced on behalf of the association of Chief Police Officers and the Home Office by the National Centre for Policing Excellence”.

21. The MPS advised that searches on the RMS had been conducted using the following keywords: 'paper', 'disposable', 'overall', 'white suit' and 'white suits'. These searches had identified several pieces of information, all of which had been further considered and deemed to be out of scope. The MPS provided the Commissioner with a description of their content and she is satisfied that this is the case as the resulting files relate to contracts, tenders, supply / disposal and a fire risk assessment.
22. The MPS also confirmed that it had undertaken a search based on the name of the author provided by the complainant but had been unable to identify any records relevant to the request.
23. The MPS also made reference to many further pieces of research which had been located as a result of internet searches. However, although of a similar subject matter to this request, the Commissioner has not referred to them here as they fall outside its scope as they are not held by the MPS itself.
24. The MPS further added:

"As the request indicated that the requested information may have been published 'sometime in 2006, or in that particular decade' searches were also conducted on the UK Government Web Archive to check archived version of the MPS website. These searches did not identify any information within the scope of the request ..."

¹ Further information regarding the MPS current areas of research interests can be found via the links below:

<https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/areas-of-research-interest/>

<https://www.met.police.uk/SysSiteAssets/media/downloads/met/about-us/mps-areas-of-research-interest-final.pdf>

²https://webarchive.nationalarchives.gov.uk/20060715162338/http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/Safer_Detention_and_Handlin1.pdf?view=Binary

25. Further searches had also been conducted via the College of Policing and the National Police Library websites, to no avail.
26. In respect of the age of any material that might be held, the Commissioner was advised:

"If it was required to be retained for a business purpose then it may be held within a structured record in the form of a registered manual file due to its age. However, it is only possible to search for such files based upon their metadata.

If it were held in electronic format, it is likely that it would be held in an unstructured file".

27. As to whether or not any information had ever been held by the MPS, it advised:

"We have not identified any information to suggest that information within the scope of the requested information was ever held or destroyed by the MPS.

Even if it did exist at one time, there is no evidence to suggest that it would have been retained or formally recorded as a registered file. In any event, it is likely that any documents dated from 2006 would have been weeded by the time of the request.

Therefore, for the document to be retained by the MPS it would have had to be relevant to other investigations and proceedings".

28. In respect of retention of this type of information, the MPS noted that the complainant had advised that: *"the report may not be in a document marked as a report but may take the form of an email or memo".*
29. In respect of emails, the MPS explained to the Commissioner that they are not considered to be a *"corporate repository of information"* and they are not intended to be used for long term storage. It advised that it had a policy (from 2018) to automatically weed emails older than three years. Therefore, any emails from prior to 2015 would have been automatically weeded (unless copies were retained elsewhere within a separate structured or unstructured file).
30. The MPS also explained that, according to its Records Management Policy, information of this type would fall within the *"miscellaneous"* category of information in accordance with the Management of Policing

Information (MoPI)³ rules. Such information would not normally be retained for longer than six years, however, as the exact content of the requested information is not clear, then it was not possible to be more precise.

31. The MPS has also explained:

"Although the MPS records management policy may have changed since 2006 (i.e. when the requested information is believed to have dated from), information created 13 years ago 'should' by now either have been destroyed or retained within an archived registered file. Archived files, when not in use are stored with a third party storage provider, TNT or else within a corporate repository with a view to being transferred to a TNT storage repository. Metadata relating to such files is recorded on the MPS Records Management System which has been searched in relation to this request. The results of these searches have been described elsewhere in this correspondence.

If the requested information was not considered to be a corporate record (i.e. not required to be retained for a specific policing, administrative or legislative purpose) then it is possible that such information may have been deleted locally without any corporate record of the deletion".

And:

"It is unlikely that such information would still be held by the MPS if it existed given the amount of:

- *time that has elapsed*
- *organisational restructuring within this time period which would have included a number of office moves, reduction in storage space, the sale of MPS buildings and significant staff turnover*

This is because there would have been multiple opportunities to weed documents that were no longer required for a business purpose. Where individuals have left the MPS, their IT accounts (which may have retained electronic information) would have been deleted with backups only being retained for 3 years. Similarly any information retained within personal physical storage space would likely have been weeded prior to or shortly after the individuals left the MPS or in preparation for any office moves.

³ <https://www.app.college.police.uk/app-content/information-management/management-of-police-information/retention-review-and-disposal-of-police-information/>

As mentioned earlier, enquiries were made with long serving staff who may have had knowledge of information that may have been held during the relevant time period”.

The Commissioner’s conclusion

32. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
33. The Commissioner initially notes the complainant’s view and the evidence which she provided in support of this. As this is a genuine ‘police’ source, it is apparent to the Commissioner why she would believe that the MPS would be likely to hold the particular report she is trying to locate.
34. In respect of the MPS’s position, the Commissioner considers that it contacted relevant parties to try to ascertain whether or not any information was held in respect of the request. She also notes the additional searches which have been undertaken as a result of this investigation and the type of information that was subsequently retrieved evidencing the suitability of these searches, albeit much of this unfortunately falls outside the scope of this particular request. As such she considers the MPS has evidenced that appropriate, and extensive, searches have been made. She also notes the age of the information sought, the type of information it would most likely be, ie a ‘miscellaneous’ category, and the MPS’s retention policies for this type of information.
35. Based on the information provided, the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. She is therefore satisfied that the MPS has complied with the requirements of section 1 of the FOIA in this case.

Right of appeal

36. 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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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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