# Freedom of Information Act 2000 (FOIA)

## Decision notice

**Date:** 27 January 2020

**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 three named parties from the Metropolitan Police Service (the "MPS"). In compliance with a First-tier Tribunal ruling, the MPS confirmed holding relevant information. However, it refused to disclose it citing sections 23(1) (information supplied by, or relating to, bodies dealing with security matters) and, in the alternative, 24(1) (national security), as well as sections 27(1)(a) (international relations) and 31(1)(a) (law enforcement) of the FOIA.

2. The Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of section 23(1) or, in the alternative, section 24(1) of the FOIA. The Commissioner requires no steps to be taken as a result of this decision.

## Background

3. This request relates to a case previously investigated by the Commissioner in which the complaint was not upheld[1].

4. The complainant appealed that decision notice and was successful in her appeal (EA/2018/0071) which required the MPS to confirm or deny whether any information is held. This notice relates to that response.

5. On 15 January 2020, the Commissioner's investigating officer visited the MPS on her behalf and viewed the withheld information *in situ*.

## Request and response

6. The request was originally made on 29 June 2017 and sought the following information:

> *"A copy of the correspondence between the US DoJ* [Department of Justice] *and the Met Police on* [three named parties] *from June 2013 to June 2017".*

7. As explained above, in compliance with a First-tier Tribunal direction (EA/2018/0071), on 20 November 2018 the MPS was required to confirm or deny holding information in respect of this request. It did so on 30 January 2019 and confirmed holding information. However, it refused to provide it citing the following sections of the FOIA: 23(1), 24(1), 27(1)(a) and 31(1)(a).

8. On 3 April 2019, the complainant requested an internal review.

9. The MPS provided an internal review on 12 June 2019 in which it maintained its position.

## Scope of the case

10. The complainant contacted the Commissioner on 31 October 2019 to complain about the way her request for information had been handled. Although it fell outside the guideline time limit for accepting complaints, being made more than four months after her receipt of the internal

[1] https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258395/fs50717400.pdf

review, the Commissioner, exceptionally, agreed to undertake an investigation.

11. The Commissioner advised the complainant that she would consider whether the MPS was entitled to rely on the exemptions cited as a basis for refusing to provide the withheld information. She invited any further grounds from the complainant but none were received. This decision notice therefore considers the exemptions cited by the MPS.

## Reasons for decision

12. The Commissioner has first considered the citing of section 23(1) with 24(1) of the FOIA in the alternative[2]. The MPS has explained to the Commissioner:

> *"In the circumstances of this case it is not appropriate to provide any information that would undermine national security or reveal the extent of any possible involvement (or non-involvement) of any security body in connection with the held information.*
>
> *The MPS is therefore applying Sections 23(1) and Sections 24(1) in the alternative, which means only one of the two exemptions, is actually engaged but it is not appropriate to say which one".*

13. The Commissioner notes the complainant's detailed submission regarding the citing of these exemptions. Unfortunately she is limited in what she is able to say in response to these arguments as she cannot reveal the MPS's position without disclosing withheld information. However, she will comment that, in her experience of investigating complaints against the MPS, it does not 'default' to citing section 23 in the manner suggested by the complainant and only does so when it considers it necessary. Furthermore, the source of the requested information is the DoJ and the Commissioner therefore considers it entirely reasonable to consider that any correspondence caught within

[2] Citing these two exemptions 'in the alternative' means that although only one exemption is engaged the other one is also cited so as to disguise which exemption is in fact being relied upon. This approach may be necessary in instances where citing one exemption would in itself be harmful. Further information on this issue is contained on page 9 of the following guidance issued by the Commissioner: https://ico.org.uk/media/fororganisations/documents/1196/how_sections_23_and_24_interact_foi.pdf

the scope of the request has the potential to be of interest to a UK security body.

14. The Commissioner would also like to confirm that, having viewed the withheld information, she is satisfied that no exemption has been cited in a 'blanket' fashion.

**Section 23 – information supplied by, or relating to, bodies dealing with security matters**
**Section 24 – national security**

15. Section 23(1) of FOIA provides an exemption which 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)".*

16. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3)[3].

17. Section 24(1) states that:

> *"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security".*

18. FOIA does not define the term 'national security'. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

- 'national security' means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;

[3] http://www.legislation.gov.uk/ukpga/2000/36/section/23

action against a foreign state may be capable indirectly of affecting the security of the UK; and,

- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

19. Furthermore, in this context the Commissioner interprets 'required for the purposes of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.

20. As is clear from the wording of section 24(1), the exemptions provided by sections 23(1) and 24(1) of the FOIA are mutually exclusive. This means they cannot be applied to the same request.

21. However, the Commissioner recognises that the fact that section 24(1) can only be applied to information that is not protected by section 23(1) can present a problem if a public authority does not want to reveal whether or not a section 23 security body is involved in an issue. To overcome this problem, as referred to above at footnote 2, the Commissioner will allow public authorities to cite both exemptions 'in the alternative' when necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice.

22. As the Commissioner's guidance on this issue explains, a decision notice which upholds the public authority's position will not allude to which exemption has actually been engaged. It will simply say that the Commissioner is satisfied that one of the two exemptions cited is engaged and that, if the exemption is section 24(1), the public interest favours withholding the information.

23. Based on submissions provided to her by the MPS, and having also reviewed the content of the withheld information, the Commissioner is satisfied that the withheld information either falls within the scope of the exemption provided by section 23(1) of FOIA or falls within the scope of the exemption provided by section 24(1) of FOIA, and that if the exemption engaged is section 24(1) then the balance of the public interest favours maintaining the exemption.

24. The Commissioner cannot elaborate further on the reasoning behind this finding without compromising the content of the withheld information itself or by revealing which of these two exemptions is actually engaged.

**Right of appeal**

25. 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

26. 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.

27. 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**
**Senior Case Officer**
**Information Commissioner's Office**
**Wycliffe House**
**Water Lane**
**Wilmslow**
**Cheshire**
**SK9 5AF**