

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 July 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 a copy of a report from the Metropolitan Police Service (the "MPS"). The MPS refused to disclose the report citing sections 23(1) (Information supplied by, or relating to, bodies dealing with security matters), 27(1) (International relations), 24(1) (National security), 30(1) (Investigations and proceedings) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 23 of FOIA to refuse the request.
3. The Commissioner requires no steps as a result of this decision.

Background

4. The request refers to a 400 page report. Further reference to this report can be found in a press release on the All-Party Parliamentary Group on Extraordinary Rendition (APPG) website¹.

¹ <https://www.extraordinaryrendition.org/documents/send/29-2018/371-2018-press-release-belaj-operation-lydd.html>

5. The Commissioner has located four 'question and answer' items on the Mayor of London's website which provide some limited background about the subject matter of this request:

<https://www.london.gov.uk/questions/2016/3927>

<https://www.london.gov.uk/questions/2016/3928>

<https://www.london.gov.uk/questions/2016/3589>

<https://www.london.gov.uk/questions/2016/3590>

6. These questions and responses advise that Operation Lydd investigated "the UK's alleged role in the kidnap and forcible transfer of two Gaddafi opponents and their families to Libyan prisons in 2004" and "British involvement in the CIA's extraordinary rendition programme".
7. In addition, the Intelligence and Security Committee of Parliament made the following media statement on its website²:

"Further Inquiry into the role of the UK Government and Security and Intelligence Agencies in relation to detainee treatment and rendition:

Operation Lydd Announcement

The Rt. Hon. Dominic Grieve, QC, MP, Chairman of the Intelligence and Security Committee of Parliament, said on behalf of the Committee:

"Following the announcement today by the CPS regarding Operation Lydd I can confirm that the ISC will be examining this case as part of our current Inquiry in relation to detainee treatment and rendition. I cannot pre-judge the outcome of our investigation: this is a wide-ranging and detailed Inquiry and I expect it to continue for some time"."

Request and response

8. On 6 March 2021, the complainant wrote to the MPS and requested information in the following terms:

"Please provide the 400 page report you referred to:

² https://isc.independent.gov.uk/wp-content/uploads/2021/01/20160609_ISC_statement_CPS_Lydd.pdf

"The court ordered the disclosure of a 400-page report that is the product of a four-year Metropolitan Police investigation (codenamed 'Operation Lydd') into UK involvement in the alleged rendition to Libya and ill-treatment of Abdul Hakim Belhaj and his wife, Fatima Boudchar, and Sami Al Saadi and his wife and children. As well as the report, the Government was ordered to hand over evidence given by 75 witnesses. The ruling came on 12 April 2018 as part of civil proceedings brought by Mr Belhaj and Ms Boudchar against former Foreign Secretary Jack Straw, MI6 and the government, claiming they participated in the rendition".

9. On 19 May 2021 (with a letter dated 29 April 2021), the MPS responded. It refused to provide the requested information. It cited sections 23(1) (Security bodies) and 27(1) (International relations) as its basis for doing so.
10. On 19 May 2021 the complainant requested an internal review.
11. The MPS provided an internal review on 16 July 2021 in which it revised its response. It maintained reliance on sections 23(1) and 27(1) and added reliance on sections 24(1) (National security), 30(1) (Investigations and proceedings) and 40(2) (Personal information).

Scope of the case

12. The complainant initially contacted the Commissioner on 13 July 2021 to complaint about the non-receipt on an internal review; this was provided on 16 July 2021.
13. On 16 July 2021, the complainant wrote to the Commissioner again saying:

"I apply for a s50 DN. The complaint refers on to [sic] the 400 page report requested on 6.3.21. The original exemption claimed is that the document relates to MI6. Please confirm this... Please tell me how many pages do not relate to MI6. These should be released".
14. The Commissioner has first considered the application of section 23 to the information in its entirety below.

Reasons for decision

Section 23 - Information supplied by, or relating to, bodies dealing with security matters

15. This exemption has been applied to the report in its entirety.
16. Section 23(1) of the FOIA states: "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)".
17. To successfully engage the exemption at section 23(1), a public authority need only demonstrate one of the following:
 - that the information was supplied by any of the named security bodies, either directly or indirectly;
 - or that the information relates to any of the named security bodies.
18. The 'named security bodies' are listed at section 23(3)2 of FOIA.
19. If the requested information falls within either of the above classes, it is absolutely exempt from disclosure under FOIA. There is no requirement for the public authority to demonstrate that disclosure would result in harm and the exemption is not subject to the public interest test.
20. Engaging the exemption only requires that information be supplied by, or relate to, a named security body. Because of the sensitivity of the requested report, the MPS has provided submissions to the Commissioner 'in confidence' and he is unable to disclose these in this decision notice. However, they have been taken into account in his decision making.
21. Furthermore, it is of note that the articles in the 'Background' section above that the Commissioner located online, variously include references which would align the content of the report with work which would likely involve security bodies, eg reference to the American Central Intelligence Agency 'CIA' and the Intelligence and Security Committee.
22. The MPS explained:

"The test of whether a provision would relate to a security body is decided on the normal civil standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the provision would relate to a security body then the exemption would be engaged which we believe do in this case.

We have obtained a written letter from a police officer with the relevant experience to provide assurances about the provenance of the requested information stating that the information to which this exemption has been applied does either relate to, or was supplied by, one of the bodies specified in Section 23(3) which we believe validates the provenance of the information held within scope of the request is exempt and confirms Section 23(1) is indeed engaged”.

23. The Commissioner has had sight of this letter and can confirm that it is as described. The police officer worked on Operation Lydd and the Commissioner considers they are well placed to know the report’s content and sources. Furthermore, the Commissioner is advised that the officer has again read the report to ensure that section 23 is properly engaged. The letter confirms which section 23 body is concerned.

24. The MPS has further argued:

“The MPS does not dispute the valid public interest arguments in favour of disclosure identified by the complainant. However ... section 23(1) is a class based exemption. If information falls within the scope of the exemption, it is exempt from disclosure. There is no need for a public authority to demonstrate that prejudice would occur if the information was disclosed in order for section 23(1) to be engaged. Furthermore, as also noted above, the exemption is an absolute one and therefore not subject to the public interest test. Therefore, the withheld information is exempt from disclosure on the basis of section 23(1) of the Act.

The MPS therefore finds that the withheld information in it’s entirety 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)“.

The Commissioner’s decision

25. When the Commissioner investigates complaints about the application of section 23(1), he needs to be satisfied that the information was in fact supplied by a security body or relates to such a body. The term ‘relates to’ is interpreted widely and includes any information concerning or linked to the activities of a security body. However, the Commissioner expects public authorities to consider whether the withheld information could be disaggregated in order to separate any information that is too remotely connected to a security body and which may be suitable for disclosure.

26. Due to the government security classification of the withheld information the MPS was unable to facilitate the Commissioner’s viewing of it.

27. In this case, based on the submissions provided by the MPS along with information which is available in the public domain (as shown in the 'Background' section above), the Commissioner is satisfied that the withheld information was either supplied by, and/or relates to, one or more of the security bodies listed in section 23(3) of the FOIA, in its entirety. The MPS's submission on why the report as a whole relates to the work of one or more named security bodies is particularly strong.
28. Consequently, the Commissioner is satisfied that the MPS was entitled to rely on section 23(1) of the FOIA to withhold the report in its entirety.
29. As the Commissioner is satisfied that section 23 applies to the report in its entirety, it has not been necessary to consider the application of the other exemptions cited. However, he is mindful that had he found section 23 did not apply to all the information, he would also have considered these additional exemptions.

Right of appeal

30. 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

31. 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.
32. 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
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