

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2023

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 information about an entry on its gifts and hospitality register from the Metropolitan Police Service (the "MPS"). The MPS provided some information but refused the remainder, citing sections 24(1) (National security), 27(1)(a) and (c) (International relations), 31(1)(a) (Law enforcement), 38(1)(b) (Health and Safety) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 27 of FOIA. No steps are required.

Background

3. The entry on the register referred to in the request was published by the MPS in June 2022¹. As per the published register, the monies were received by a Sergeant working in Royalty and Specialist Protection ("RaSP").

¹ <https://www.met.police.uk/foi-ai/af/accessing-information/published-items/?q=gifts+and+hospitality+register+june+2022>

Request and response

4. On 11 July 2022, the complainant wrote to the MPS and requested information in the following terms:

"In a June entry of the force gifts and hospitality register there was an entry about £12,500 being received in cash in envelopes by a police sergeant from an overseas partner.

Please can you identify when this payment was made and who the police sergeant was.

Please also identify which country the overseas partner was from.

Please identify which overseas partner provided the money and what the reason was given for the money being provided.

Please also identify any and all charities/benevolent funds which received the money".

5. On 27 July 2022, the MPS responded. It stated that the donation was entered on the register on 22 April 2022 and explained that the money was donated by the MPS to The Commissioners Fund and The Metropolitan Police Benevolent Fund. It refused to provide the remaining information, citing sections 24(1), 27(1)(a) and (c), 31(1)(a), 38(1)(b) and (40(2) of FOIA. It argued:

"To provide the full details requested would reveal individuals or country representatives who have engaged with RaSP whilst within the UK. Protection is provided by the MPS to a number of people where it is in the national interest or where intelligence (information) suggests protection is necessary. Specific protection arrangements are applied in order to safeguard national security by ensuring that appropriate safety and security is provided to key figures such as the Queen and the Prime Minister.

The disclosure of any other information relating to the role of RaSP, including with overseas partners, would ultimately increase the risk of harm to those afforded personal protection and to the general public within their vicinity. This would therefore, not only undermine our law enforcement functions, but also hinder international relations and could negatively affect national security".

6. The complainant requested an internal review on 2 August 2022. When doing so he said:

"Please do an internal review of this partial disclosure -I am of the opinion that you could release details of which country the overseas

partner represented without falling foul of any of the exemptions cited - there has to be a potential risk to national security etc for the exemption to apply and that has not been demonstrated. It would also be in the public interest to say which country they were from".

7. The MPS provided an internal review on 19 August 2022 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 21 November 2022, to complain about the way his request for information had been handled. He said:

"They used anm [sic] international relations exemption to not provide the country from which a person who paid cash to MPS employees came from - I do not believe that minimal information would be exempt. They have said that disclosing the name of the country would damage international relations, but it is just the name of a country and we should not have a system where this sort of thing can go on in secret the public interest in transparency trumps the weak argument put forward that it would damage international relations and there is no evidence to support this claim. Also if the individual who provided the cash is a public figure fulfilling a public function (as per our FOIA) then the individual should be named as well".

9. The Commissioner will consider the citing of exemptions below.
10. The MPS has disclosed the name of the country and the relevant partner to the Commissioner; the actual name of the person who made the donation is not recorded and the receiving officer does not know what it was. The Commissioner has also been provided with the MPS' rationale for applying the exemptions 'in confidence', and so this cannot be shared in this notice.

Reasons for decision

Section 27 – International relations

11. The MPS relied on section 27(1)(a) and (c) which states that information is exempt if its disclosure would, or would be likely to, prejudice:
 - (a) relations between the United Kingdom and any other State,
 - (c) the interests of the United Kingdom abroad.

12. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., that disclosure 'would be likely to' result in prejudice or disclosure 'would result' in prejudice.

13. In its internal review the MPS explained:

"Disclosing the requested information in full would likely lead to a lack of trust and undermine relations and / or law enforcement agreements with overseas partners.

The effective conduct of international relations depends upon maintaining trust and confidence between the government and authorities. If the UK does not maintain trust and confidence with other countries, its ability to protect and promote UK interests through international relations will be disadvantaged. It remains the case that the disclosure of information detailing relationships and engagement with other countries could potentially damage bilateral relationships between the UK and other states. This would reduce the UK government's ability to protect and promote UK interests through its relations with those other states.

The ICO guidance on Section 27² advises that "information likely to prejudice the interests of the UK abroad will include information held by a public authority, which if disclosed, would harm UK interests in relation to...its dealings with another state."

² https://ico.org.uk/media/for-organisations/documents/1184/awareness_guidance_14_-_international_relations.pdf

To put the above considerations into perspective, it is the case that the MPS is a public authority, which carries out functions, which relate directly to, and have the potential to affect, the international relations of the UK. It remains vital that the MPS does not prejudice relations between the UK and any other state”.

14. The MPS has also explained:

“To disclose full details of the identity of those who interact with RaSP would undermine relations between the UK and others. If the United Kingdom does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered. The disclosure of information detailing our relationship with other countries could potentially damage the bilateral relationship between the UK and other states. This would reduce the UK government's ability to protect and promote UK interests through its relations with those other states”.

15. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the MPS believes would be likely to occur if the information was disclosed is applicable to the interests protected by sections 27(1)(a) and (c).

16. With regard to the second and third criteria, the Commissioner accepts that effective international relations depend upon trust and confidence between partners. In this context the Commissioner accepts that the country concerned would not expect the withheld information to be published. He also accepts that disclosure would be likely to impact on relations between the UK and that country, and that such an outcome would meet the description of prejudice described above. That is to say, disclosure would be likely to make relations more difficult with not only the country in question but with other countries that MPS’ RaSP officers deal with. The Commissioner is therefore satisfied that there is a real and significant risk of prejudice occurring and that such prejudice is clearly one of substance.

17. In view of his conclusions above, the Commissioner is satisfied that disclosure would be likely to result in the prejudice envisaged by the MPS.

Public interest test

18. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemptions contained at section 27(1)(a) and (c) outweigh the public interest in disclosing the information.

Public interest considerations favouring disclosure

19. The complainant has argued that it would be in the public interest to disclose the information, he has not explained what this interest is.

20. The MPS argued:

“The release of information would allow the public to be satisfied that Gifts & Hospitality received from individuals or organisations are appropriately managed. Disclosure could also provide the public with an insight into how the MPS interacts with overseas partners.

In addition, disclosure would allow the public to be better informed and would be in the interests of open government and public accountability. To release information could increase understanding on international matters and participation in the public debate of the issues raised”.

Public interest arguments in favour of maintaining the exemption

21. The MPS has argued that disclosure may hinder and undermine the partnership approach between countries in respect of law enforcement and international cooperation. It said:

“The effective conduct of international relations depends upon maintaining trust and confidence between Governments. To disclose full details of the identity of those who interact with RaSP would undermine relations between the UK and others. If the United Kingdom does not maintain this trust and confidence, its ability to protect and promote UK interests through international relations will be hampered. The disclosure of information detailing our relationship with other countries could potentially damage the bilateral relationship between the UK and other states. This would reduce the UK government's ability to protect and promote UK interests through its relations with those other states”.

22. The MPS further argued:

“It is in the public interest that the UK retain strong lines of communication and dialogue with other states. To harm international relationships based on an adverse FOIA disclosure would not be in the public interest, as this is likely to detrimentally impact on the security of the UK should the international relationships diminish”.

Commissioner's conclusion

23. In carrying out the statutory balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the

public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to international relations. Clearly, it is not in the public interest to disclose information that may compromise the MPS' ability to accomplish its international duties.

24. In that respect, the Commissioner recognises that there is a very strong public interest in protecting the MPS' RaSP duties, both at home and abroad, and he considers that appropriate weight must be afforded to the public interest inherent in the exemption.
25. The Commissioner also recognises the need to ensure transparency and accountability on the part of the police. In this case, that need is met, to some degree, by the initial declaration of the gift itself and confirmation of where it was donated to.
26. However, he finds that there is a stronger public interest in ensuring that precise details regarding the role of MPS' RaSP officers abroad should not be revealed. Whilst the complainant does not consider the limited data requested to be sensitive, the Commissioner understands the MPS' concerns about the mosaic approach that those seeking to commit criminal acts will take when trying to source any information to their advantage. Knowing that a particular country provided a sum of money as a donation may reveal details about the work RaSP officers were engaged with around the time the donation was made. Such vital work may be undermined were the country revealed and that country may no longer wish to co-operate with the UK. This may have a significant impact not only on the country concerned but on other countries in a similar situation.
27. In the circumstances of this case, the Commissioner considers that the public interest in maintaining the exemption readily outweighs the public interest in disclosing the information. It follows that the MPS was entitled to rely on sections 27(1)(a) and (c) of FOIA to refuse to disclose the requested information.
28. In light of his findings, the Commissioner does not consider it necessary to consider the other exemptions cited.

Right of appeal

29. 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

30. 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.

31. 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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SK9 5AF