

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 March 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 the use of strip searches in custody from the Metropolitan Police Service (the "MPS"). The MPS refused to provide the requested information, citing section 22 (Information intended for future publication) of FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 22 of FOIA. No steps are required.

Background

3. The MPS has explained to the Commissioner:

"The request relates to the monitoring of the use of strip-searches in particular searches involving the Exposure of Intimate Parts of the Body (EIP searches), this is where an individual is required to remove all or most of their clothing, the most intrusive form of search permitted under stop and search powers.

An emotive and sensitive subject which has received much media attention¹, recently concerning juveniles², matters relating to the discipline of MPS officers³ and the Independent Office for Police Misconduct's (IOPC) recommendations⁴ to the MPS.

The MPS have since been developing a report which in effect details our analysis and findings but also helps us to understand the impact and volume of strip searches amongst adults/juveniles and more importantly make sure our rationale and decision making is consistent i.e. our stop and search powers are used fairly, responsibly, with respect for the people/children being searched and without unlawful discrimination".

Request and response

4. On 4 October 2022, the complainant wrote to the MPS and requested the following information:

"I write to request information and records under the Freedom of Information Act (FOIA) 2000 regarding your force's monitoring of the use of strip-searches (Exposure of Intimate Parts (EIP)) in custody, and the development of models in relation to this monitoring."

1. Is your force piloting or developing a model, or otherwise conducting analysis, to monitor officer decisions to conduct strip-searches (Exposure of Intimate Parts searches) on individuals, including children? If yes, please provide
 - a. Available information or details of this monitoring or analysis, including the aim behind this monitoring or analysis, whether it is in operational use, the criteria and/or data used in this

¹ <https://www.bbc.co.uk/news/uk-england-london-64042302>

² Met Police officers investigated after strip search of 15-year-old girl | Evening Standard

³ <https://www.policeconduct.gov.uk/news/met-police-officer-given-final-written-warning-relating-strip-search-woman>

⁴ IOPC recommendations to Met over strip searches of children | Independent Office for Police Conduct

monitoring or analysis, and the outcomes that can follow from the monitoring or analysis.

- b. The criteria used for assessing whether an individual should be strip-searched
 - c. The criteria used for assessing an officer decision to strip-search
 - d. What impact this monitoring or analysis is intended to have on individual officer decisions
 - e. Was an equality impact assessment carried out? If yes, please provide this".
5. On 6 December 2022, the MPS responded. It provided a response to all parts of the request and also advised him:

"We are not piloting or developing a model to monitor officer decisions, but - as part of our efforts to understand and monitor the operational use of strip search in custody - we have analysed strip-search data involving adults and juveniles (note: this analysis does not include More Thorough searches with Intimate Parts Exposed (MTIP searches) conducted outside custody). The MPS will publish a report detailing the findings from this work. In view of the impending publication of this information, I have refused to release the information located and have claimed the exemption set out by Section 22 (information intended for future publication) of the Act".

6. The complainant requested an internal review on 23 December 2022, saying:

"The 2020 report that you refer has been awaiting publication for more than two years now, and you suggest it will not be published until mid-2023. More than 2.5 years is not a reasonable or justifiable delay to deny publication of an entire report under s.22 FOIA 2000. As a completed document, the contents of said report could surely not be misconstrued, and it does appear that not to publish it after this request is obstructive. There is a very strong public interest in the publication of this information, given the previously published information about the racist use of strip search by police and the resulting public outcry".

7. The MPS provided an internal review on 25 January 2023, in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 9 February 2023, to complain about the way his request for information had been handled. His grounds of complaint reflected his views above, when requesting an internal review. He also added:

“The MPS have also said they are concerned that the data could be misconstrued. However, as a completed document, the contents of said report could surely not be misconstrued, and it does appear that not to publish it after this request is obstructive.

There is a very strong public interest in the publication of this information, given the previously published information about the racist use of strip search by police and the resulting public outcry”.

9. The Commissioner will consider the citing of section 22 below.

Reasons for decision

Section 22 - Information intended for future publication

10. Section 22(1) of FOIA says that information is exempt if:
- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) the information was already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
11. Section 22 of FOIA allows a public authority to withhold information that it is already intending to publish if it is reasonable in the circumstances to wait until the anticipated publication date.
12. In order to engage the exemption, the public authority does not need to have set a specific publication date, but it must have already had a settled intent to publish the information before the request was made and it must be intending to publish all the withheld information – not just parts of it.
13. The MPS explained to the complainant that it had discussed the publication of the report in June 2022 with the National Police Chiefs’

Council. (The MPS has provided a copy of the relevant email correspondence to the Commissioner to evidence its position.)

14. The MPS also told the complainant:

"I have contacted the relevant business area of the MPS and I have been advised that it is hoped that publication of the requested report will be prior to Summer 2023, however consultations with relevant parties are ongoing. We have been developing and reviewing our analytical approach in conjunction with both internal and external stakeholders in order to progress to our planned publication".

15. In the Commissioner's view, the MPS did have a settled intention to publish the information and this pre-dated the request being made.

16. When considering whether it is reasonable for a public authority to withhold information until its anticipated publication date, the Commissioner will take into account the likely delay between the date the request was responded to and the anticipated publication date. The further in the future publication is anticipated to be, the stronger the reason for delaying publication needs to be.

17. In this particular case, the MPS is not certain when it will be in a position to publish the information, but it has stated that it will likely be prior to summer 2023. It has explained:

"Due to the high profile nature and public interest of strip-searches in particular searches involving the exposure of intimate parts of the body it is crucial the MPS maintain the orderly publication of the requested information as planned in order to be available to assist with any enquiries relating to the report at the same time and in a consistent manner meaning the information will be in context and comprehensive. The public value of the report will only be significant once it is complete and published as planned by the MPS".

18. Although the anticipated publication date isn't specific, in the Commissioner's view, it is still reasonable to withhold the information until the report is actually complete and has been signed off by the relevant stakeholders. The Commissioner considers that the public value of the report will only be properly informative once it has been completed and ratified by those concerned.

19. The Commissioner therefore finds that section 22 of FOIA is engaged.

Public interest test

20. Though the Commissioner considers it was reasonable to delay disclosure of the information, he must still consider the balance of the public interest.

Arguments in favour of disclosure

21. The complainant's views are in paragraphs 6 and 8 above.
22. The MPS has argued:

"The MPS acknowledge and recognise the requested information is of interest to the public as strip searches in particular searches involving the exposure of intimate parts of the body have attracted considerable interest in recent times as a result of several high profile incidents therefore by providing the requested information would demonstrate the MPS as open, transparent and accountable".

Arguments in favour of maintaining the exemption

23. The MPS has argued:

"The MPS believes disclosure prior to the planned publication of the report in a piecemeal manner may cause speculation and misunderstanding of the report. There would be little public interest in debating an incomplete report which has yet to be approved and potentially subject to change and causing unnecessary confusion especially if the disclosure differs significantly from the final report.

Due to the high profile nature and public interest of strip-searches in particular searches involving the exposure of intimate parts of the body it is crucial the MPS maintain the orderly publication of the requested information as planned in order to be available to assist with any enquiries relating to the report at the same time and in a consistent manner meaning the information will be in context and comprehensive. The public value of the report will only be significant once it is complete and published as planned by the MPS.

Disclosure at this time (disclosing earlier than expected) would also likely to [sic] cause unnecessary disruption to the MPS by placing unwarranted stress on resources by due to [sic] the spending of additional time and public funds which would be wasteful.

The MPS should be able to publish the report in line with our planned publication and publishing all the facts at the same time in a consistent format which would of greater benefit to the public as a whole".

Commissioner's conclusion

24. The Commissioner considers that there is a strong public interest in the MPS being able to publish the requested report in a controlled manner after it has been fully completed and in line with its planned timetable. Premature disclosure of information on this sensitive issue may cause the public to misconstrue the report, which the MPS would have to divert resources into countering.
25. Whilst the Commissioner accepts there is a general public interest in openness and transparency, and in having access to the requested subject matter, he is mindful that the report will be published once it is finished, as was evidenced in the email trail which he viewed (paragraph 13).
26. Having taken the arguments for and against disclosure into account the Commissioner is satisfied that the balance of the public interest favours maintaining the exemption.

Right of appeal

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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: 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

Carolyn Howes
Senior Case Officer
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