

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 August 2011

Public Authority: Commissioner of the Metropolitan Police Service
Address: Public Access Office
20th Floor
Empress State Building
Lillie Road
London
SW6 1TR

Summary

The complainant asked the Metropolitan Police Service (the “public authority”) to provide information relating to the Royal Wedding and the costs of protecting Kate Middleton. Some of the information was withheld under the exemptions in sections 31(1), 37(1), 40(2) and 41(1) of the Freedom of Information Act (the “Act”); during the Commissioner’s investigation the public authority also sought to rely on section 38(1), and removed 41(1). In respect of any protection costs the public authority relied on sections 24(2), 31(3) and 38(2) to refuse to confirm or deny whether any of the information falling within the scope of the request was held.

The Commissioner’s decision is that some of the information was properly withheld by reference to section 37(1), and the public authority properly refused under section 24(2) to confirm or deny whether any further information was held. Therefore, the complaint is not upheld.

The Commissioner’s role

1. 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 Freedom of Information Act 2000 (the “Act”). This Notice sets out his decision.

Background

2. The complainant made his request on the same day that Clarence House announced that Prince William was to marry Kate Middleton. According to the BBC's website¹:

"The royal engagement was announced in a brief statement released by Clarence House.

It said: "The Prince of Wales is delighted to announce the engagement of Prince William to Miss Catherine Middleton.

The wedding will take place in the spring or summer of 2011, in London. Further details about the wedding day will be announced in due course".

The request

3. On 16 November 2010 the complainant made a request for the following information:

"Copies of any minutes, correspondence, communications or any other information which is held by the Metropolitan Police regarding the wedding of Prince William. This material might come from meetings, discussions or conversations whether in person, by phone, letter, fax or email with HRH, his representatives, Miss Middleton, her family or any other agents.

Additionally the same material from any similar contact, in whatever form, with government departments or any other body.

Also how much money has the Metropolitan Police spent on protecting Kate Middleton since she began a relationship with Prince William?"

4. On 8 December 2010 the public authority provided its response. In respect of the first two parts of the request it withheld the information under the exemptions in sections 37(1), 40(2) and 41(1) and (2) of the Act. It neither confirmed nor denied holding information in respect of the third part of the request by virtue of sections 24(2), 31(3) and 38(2).

¹ <http://www.bbc.co.uk/news/uk-11765422>

5. On 10 December 2010 the complainant sought an internal review.
6. On 7 February 2011 the public authority provided an internal review. It varied its position, now relying on sections 31(1), 37(1), 40(2) and 41(1) in respect of the first two parts of the request; the same exemptions were relied on in respect of the third part of the request.

The investigation

Scope of the case

7. On 9 February 2011 the Commissioner received a complaint from the complainant.

Chronology

8. On 6 April 2011 the Commissioner wrote to the complainant to commence his investigation. At the same time he explained to the complainant that he had previously issued two Decision Notices regarding the way the public authority holds budgetary information concerning protection costs^{[2][3]} and that it was unlikely that protection costs on an individual basis would be disclosable. On the same day the complainant clarified that he wished to have, where any part of the request had been declined, a *“formal, official explanation as to why”*.
9. On 6 April 2011 the Commissioner raised queries with the public authority.
10. During the investigation the public authority withdrew any reliance on section 41.
11. During the investigation the Commissioner also discussed the request with the complainant. He clarified to the complainant that because the final part of the request referred to ‘protecting’ Miss Middleton his investigation was considering ‘close protection’ costs as opposed to any routine policing.

²http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50251014.ashx

³http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50266724.ashx

Analysis

Exemptions

12. Section 37(1)(a) has been cited in respect of the first two parts of the request. The Commissioner will therefore consider this exemption first.

Section 37 – communications with Her Majesty, etc

13. Information is exempt under section 37(1)(a) if it relates to communications with Her Majesty, with other members of the Royal Family or with the Royal Household.
14. The exemption applies to information which relates to communications with the Royal Family or with the Royal Household rather than simply to actual communications with such parties. The Commissioner interprets the term 'relates to' broadly.
15. The Commissioner can confirm the following.
 - All of the information held concerns communications with the Royal Household.
 - The information can be described as notes made at meetings with representatives of the Private Office of the Royal Household and subsequent emails.
 - The information held can be described as being solely related to security arrangements for the Royal Wedding.
16. In view of the actual wording of the first two parts of the request, the Commissioner is satisfied that the information requested clearly falls within the ambit of this exemption given that it consists of communications with the Private Office of the Royal Household.
17. Section 37(1)(a) is a qualified exemption and is therefore subject to the public interest test set out in section 2(2)(b) of the Act, i.e. whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
18. The Commissioner has summarised below the public authority's arguments in favour of and against disclosure – some of these were provided to the Commissioner in the course of his investigation.

Public interest arguments in favour of disclosing the requested information

19. The public authority recognised the public interest in the forthcoming wedding of a future King and the role of the police in relation to the wedding.
20. It also recognised the interest in enabling public scrutiny of Metropolitan Police Service decision-making in this area.

Public interest arguments in favour of maintaining the exemption

21. The public authority submitted that, although there is a public appetite for such information, any information held relates directly, or indirectly, to security matters. In light of this it did not believe there was any public interest in disclosing information which may place the Royal Family or anyone else attending the wedding, including the public and the police themselves, at risk.
22. It further submitted:

“... the MPS gives greater weight to the public interest in maintaining the confidentiality around communications between the MPS and the Royal Household. Particularly, it is the MPS view that an additional expectation of confidentiality exists between the parties in the present case due to the nature of the communications themselves where these concern the subject of security arrangements in respect of the Royal Family. It is the maintenance of this confidentiality that enables free and frank discussions between the parties in respect of the provision of service by the MPS to the Royal Family; this is particularly important here as at the time of the request the Royal Family were the subject of increased media and popular attention due to the announcement of the engagement and the impending wedding. As a result, the MPS believes the strongest public interest factor is in maintaining effective security in respect of an event of the highest profile and one of national and international significance, where the Royal Family are the representatives for and on behalf of the nation itself”.

Balance of the public interest arguments

23. In balancing the public interest in favour of maintaining the exemption, the public authority claimed: *“[T]his decision is based on the understanding that the public interest is not what interests the public, but is what would be of greater good, if disclosed, to the community as*

- a whole*". The Commissioner affords appreciable weight to this argument.
24. The Commissioner also recognises that disclosure of information serves the general public interest in respect of the promotion of better policing through transparency, accountability, public debate, better public understanding of decisions, and the informed and meaningful participation by the public in the democratic process.
 25. However, the Commissioner has to balance the public interest factors in favour of disclosure with the significant public interest which the exemption at section 37(1)(a) seeks to protect.
 26. The information in this case specifically relates to security arrangements. The Commissioner considers that the security of such a significant event has to be of paramount concern to all those parties involved.
 27. Furthermore, the Commissioner recognises the expectation of confidentiality that exists between the Royal Household and the public authority to discuss such matters 'in private'.
 28. The Commissioner has carefully weighed the relevant public interest factors in this case. He accepts the significant public interest in disclosing information concerning Prince William, as second-in-line to the Throne and his forthcoming marriage. However, he considers that the public interest in preserving the confidentiality of communications between the Royal Household and the public authority, as well as the security of all parties involved (be they the individual members of the Royal Family, other Heads of State, wedding guests, the police or the general public watching the celebrations), means that, in all the circumstances of this case, the public interest in maintaining the exemption clearly outweighs that in disclosure.
 29. The Commissioner is satisfied that disclosure of the disputed information would be contrary to the public interest inherent in maintaining the exemption. He accepts that there is a significant and weighty public interest in preserving the operation of the constitutional conventions which apply.
 30. The Commissioner notes that section 37(1)(a) was amended by the Constitutional Reform and Governance Act 2010, with the result that the exemption is now absolute in respect of information relating to the Sovereign, the Heir to the Throne and the second-in-line to the Throne. At the time of the request the amending provision had been enacted but not brought into force. The amendment has therefore had no

bearing on the Commissioner's decision in this case, which has been made on the basis of the law as it applied at the time of the request.

31. Consequently, the Commissioner finds that the disputed information was correctly withheld on the basis of the exemption in section 37(1)(a).

Section 24 – national security

32. This exemption has been cited in respect of the third part of the request which concerns any 'protection costs' which the public authority may, or may not, have incurred in respect of Kate Middleton.
33. Section 24(2) provides an exemption from the duty to confirm or deny imposed by section 1(1)(a) where this is required for the purpose of safeguarding 'national security'. This exemption is also subject to a public interest test. This means that confirmation or denial should be provided if the public interest test favours this despite the requirements of safeguarding national security.
34. The Commissioner has not established whether the public authority holds any information falling within the scope of this part of the request. In the Commissioner's view, his decision can be made without knowledge of the existence (or otherwise) of the information. The Commissioner has focussed, instead, on whether, as a general principle, the public authority's approach is in accordance with the Act.
35. The exemption will only be engaged where it is *required* for the purpose of safeguarding national security. The approach of the Commissioner is that *required* in this context means reasonably necessary. This sets a high threshold for the use of this exemption. It is not sufficient for the information sought simply to relate to national security, there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged.
36. On the issue of the meaning of 'national security', the Commissioner has followed the approach taken by the Information Tribunal in the case *Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045). The Tribunal noted that it had been unable to find an exhaustive definition of 'national security', but referred to a House of Lords decision (*Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153), which made the following observations on this issue:

- "(i) 'national security' means the 'security of the United Kingdom and its people' (para 50 per Lord Hoffman);*
- (ii) the interests of national security are not limited to action by an individual which can be said to be 'targeted at' the UK, its system of government or its people (para 15 per Lord Slynn);*
- (iii) the protection of democracy and the legal and constitutional systems of the state is part of national security as well as military defence (para 16 per Lord Slynn);*
- (iv) 'action against a foreign state may be capable indirectly of affecting the security of the United Kingdom' (para 16-17 Lord Slynn): and*
- (v) 'reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security' (para 17 Lord Slynn)."*

37. In its internal review the public authority provided the following information to evidence prejudice:

"... confirming whether Ms Middleton demands close protection, whether engaged to Prince William or not, would place this individual in a position of direct vulnerability. To do so would by default be a risk to national security, as an attack on those with links to the Royal Family would render security measures less effective if disclosure allows the public to ascertain who the MPS protects. It would therefore also compromise possibly ongoing or future protection arrangements to safeguard the security and infrastructure of the UK.

To routinely disclose a list of individuals who are or are not protected by the service, would increase the risk of harm to the individual concerned as well as other individuals. To disclose which members of the public may or may not be in receipt of protection would provide those seeking to attack the UK and high profile individuals, with the operational knowledge of who is and who is not deemed 'at risk' and in need of protection. This can lead criminals to change their targets based on details disclosed under the Act.

Miss Middleton's links to the inner circle of the Royal family are therefore closely aligned. Any threat to her wellbeing would be likely to involve other family members and were a member of the Royal Family to come to harm this could result in both a constitutional, as well as a national and or international crisis. As previously pointed out, it should be noted that the current

terrorist threat level to the UK, as set by the Home Office, stands at SEVERE, meaning that such an attack is highly likely.

Therefore the MPS considers that the personal safety of members of the Royal family, or those at a given time closely associated, is considered inextricably linked to the national security of the UK and to publicly acknowledge under Freedom of information legislation that we either do or do not protect Miss Middleton in accordance with our duty under Section 1(1)(a), would, it is considered, be likely to prejudice the safeguarding of our national security. This would be particularly pertinent if the MPS were to state that no protection is provided as this acknowledgement alone would be likely to increase the likelihood of criminal activity against a member of the Royal Family, including the threat of or actual physical assault. If the MPS were to confirm that protection was indeed provided in this case, then by a process of elimination you could identify (sic) those individuals that are in receipt of protection and those that are not (with links to the Royal Family) and by this means the threat of or actual physical harm to a particular individual would be more likely to occur”.

38. The public authority later provided a further analysis of its views concerning this part of the request (which were forwarded to the complainant); this is appended to this Notice in a non-confidential annex. The following extract reinforces its position in respect of this exemption:

“Members of the Royal Family are symbols of the United Kingdom. HM The Queen is the Head of State, HRH Prince Charles is the heir to the throne and other members of the Royal Family populate a line of succession. In this instance the request refers to Miss Kate Middleton, the current girlfriend of HRH Prince William, a future King in waiting. Miss Middleton’s links to the inner circle of the Royal Family are therefore closely aligned. Were a member of the Royal Family come to harm [sic] this could result in both a constitutional, as well as a national and or international crisis. It should be noted that the current terrorist threat level to the UK, as set by the Home Office, stands at SEVERE, meaning that such an attack is highly likely”.

39. The first issue to consider is whether the arguments advanced by the public authority suggest that confirmation or denial would lead to a specific and real threat to national security and, therefore, that the exemption is *required* in order to safeguard national security. The Commissioner will therefore consider first whether confirmation or denial would result in any such risk.

40. The Commissioner accepts that any release of information which may put succession to the throne under threat would constitute prejudice to the safeguarding of national security. In this particular case, the risk comes from knowing whether or not a named individual is receiving 'protection'. If the public authority were to deny that Miss Middleton were receiving protection this would obviously put her personal safety under considerably more risk as well as those in her company. Conversely, if it were to confirm that she was receiving protection then this would start to erode doubt as to who is or is not receiving protection. This would eventually result in a 'list' of those who are not protected, thereby putting them, and ultimately national security, at risk. The Commissioner agrees that the arguments presented are relevant to this exemption and that the associated risks are real and specific.
41. Reference to the 'severe' terrorist threat level to the UK has also been cited. It is important to note here that the issue is not whether terrorism already represents a specific and real threat to national security; rather, it is whether a further threat would arise through the confirmation or denial in question. This could include worsening the existing threat from terrorism. The Commissioner agrees that the arguments put forward by the public authority in this respect again demonstrate risks which are real and specific.
42. The Commissioner accepts that any knowledge relating to any potential vulnerability of the Royal Household, or those closely connected to it such as Miss Middleton, would be likely to increase the risk of threat from terrorism; this could in turn threaten the constitution. Furthermore, it could also threaten the safety of others in the vicinity of any member of the Royal Family, or Miss Middleton, who is targeted.
43. The public authority has also provided further relevant arguments to the Commissioner which it has requested he does not divulge in this Notice.
44. The Commissioner is satisfied, on the basis of the arguments presented, that section 24(2) is properly engaged. He will therefore now consider the public interest in confirming or denying whether any information is held.

Public interest arguments in favour of disclosing the requested information

45. The public authority has provided the following arguments.

- Openness and transparency in relation to the use of public money and police resources enables the public to see that deployment of officers is appropriate and proportionate and fosters confidence and respect.
- Disclosure would provide a mechanism for holding a public institution to account.

46. In addition, the Commissioner considers that confirmation could further public debate about the close protection of individuals.

Public interest arguments in favour of maintaining the exemption

47. The public authority has provided the following arguments.

- To confirm or deny holding the information would allow extremists to gauge the level of protection. This would provide anyone with intent to commit acts of terrorism with vital intelligence about police protection afforded to individuals and the level of resistance that may be encountered.
- The knowledge would hinder the ability of law enforcement bodies to protect those individuals.
- The personal safety of senior members of the Royal Family is inextricably linked to national security and any attacks on these individuals, or those closely linked with them, would be an attack on sovereignty and its constitutional arrangements.

Balance of the public interest arguments

48. The Commissioner considers that there is a public interest in knowing that the public authority provides close protection for those who may be vulnerable, such as Miss Middleton in this case. Indeed, this is particularly so at the time of the request as her engagement to a future King has just been made public. However, the Commissioner also understands that by confirming where this protection is being given also means that it becomes apparent where it is not given.

49. As mentioned earlier in this Notice, the Commissioner does not know whether or not Miss Middleton had actually been under any close protection at the time of the request. Whilst there may have been newspaper articles speculating on such matters, the public authority has confirmed that nothing has been formally stated to the press to either confirm or deny this. (The Commissioner would also here reiterate that 'close protection' should not be confused with protection afforded by uniformed officers in their normal course of duty.)

50. Whilst it might seem likely to members of the public that Miss Middleton would be 'protected', the detail of such activity is closely guarded by the public authority and the Commissioner is aware that it considers the withholding of such knowledge to be paramount to its ability to maintain an effective close protection service. The Commissioner accepts its reasons for doing so, as outlined in its arguments above.
51. The public interest in safeguarding national security is very great indeed. Having found that the exemption is engaged in this case the Commissioner considers that this public interest could only be balanced by the presence of equally strong public interest factors in favour of disclosure. Whilst there is some public interest in knowing whether or not Miss Middleton has received close protection during her relationship with Prince William, prior to their engagement, the Commissioner considers that the weightier arguments fall in maintaining the position to neither confirm nor deny whether she has been afforded such protection. He concludes, in line with the arguments provided by the public authority, that the balance of the public interest weighs heavily in favour of maintaining the exclusion of the duty to confirm or deny whether any relevant information is held.
52. Accordingly, the Commissioner finds that the public authority was correct to rely on section 24(2). He has therefore not gone on to consider formally the other exemptions applied.

The Decision

53. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps required

54. The Commissioner requires no steps to be taken.

Right of Appeal

55. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is sent.

Dated the 8th day of August 2011

Signed

Graham Smith
Deputy Commissioner and Director of Freedom of Information

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal annex (Law stated as at the time of the request)

Section 24 provides that –

- (1) 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.
- (2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

Section 37(1) provides that –

Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity.