

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 April 2012

Public Authority: The Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps)

1. The complainant has requested a copy of the Theseus Report (the "Report"), which relates to the bombings in London on 7 July 2005. The Information Commissioner finds that the Report is a court record and that it was properly withheld under the absolute exemption at section 32(1)(a). The Commissioner found that the public authority made procedural breaches in providing a late response. The Information Commissioner requires no steps to be taken.

Background

2. During the course of the Information Commissioner's investigation the public authority received the following correspondence:

"... I write on behalf of Lady Justice Hallett, who as you know was appointed as Assistant Deputy Coroner to conduct the Inquest in to the deaths arising from the London bombings on 7 July 2001.

... I can confirm that the report ... was prepared solely for the purpose of the Inquest proceedings at the Coroner's request and that the Coroner does not consent to its publication under FOIA. As you will be aware, it is for a Coroner to decide what evidence she considers it expedient to call. Lady Justice Hallett asked Detective Chief Superintendent [name removed] to give evidence in relation to various matters and he did so orally in open court

on 3 March 2011. The transcript of his evidence is available on the 7/7 Inquest's website¹... The report which is subject to this FOIA request was preparatory to that evidence and accordingly a court record which the Deputy Assistant Coroner did not ever intend to be published. She does not consent to its publication now as she considers that all relevant evidence was called in open court and is recorded on the Inquest's website".

Request and response

3. On 28 June 2011 the complainant wrote to the public authority and requested information in the following terms:

"... the July 7th Truth Campaign request a copy of the full Theseus report - July 7 Inquest ref: INQ11410 - attributed to [name removed] on 3/03/2011..."

4. The public authority wrote to the complainant on 22 July 2011 advising him that it was considering the public interest in disclosure under sections 30 and 38 of the FOIA and gave him a revised response date.
5. On 23 August 2011 the public authority provided its response. It advised the complainant that the information was exempt from disclosure by virtue of section 32(1) of the FOIA.
6. On 11 September 2011 the complainant sought an internal review.
7. On 11 November 2011 the public authority wrote to the complainant. It maintained its previous position.
8. At a late stage in the investigation the public authority wrote to the complainant and the Information Commissioner to advise that it also wished to rely on the exemptions at sections 23(1), 24(1), 40(2) and 31(1)(a)(b).

¹ www.7JulyInquests.independent.gov.uk

Scope of the case

9. On 9 January 2012 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled.

10. The complainant also advised the Information Commissioner that:

"At the end of the proceedings J7 (the campaign group of which I am a member) were informed by the Coroner:

However, once the Coroner's records have been transferred to a place of deposit, following the conclusion of the inquests, they become subject to the Freedom of Information Act, 2005. Some information will be transferred to The National Archives within a few months but records provided to us for the purposes of disclosure by other organisations will be retained by them and Freedom of Information requests can be made directly to the organisation concerned".

Reasons for decision

Procedural breach

11. The public authority extended the time in which to provide its initial response to the complainant stating that it wished to consider the public interest in disclosure under sections 30 and 38 of the FOIA, which it is entitled to do. However, it subsequently relied on section 32 which does not have such a provision.

12. Although it responded within 20 working days indicating that it did hold the requested information, in failing to issue a valid refusal notice within 20 working days the public authority breached sections 17(1)(b) and (c).

Section 32 – court records, etc

13. Section 32(1) provides that –

"Information held by a public authority is exempt information if it is held only by virtue of being contained in-

(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter...".

14. In its letter dated 23 August 2011 the public authority advised the complainant that:

"The report requested was compiled by the MPS in their capacity as Coroner's Officer solely for the purpose of the inquest proceedings".

15. Additionally, as evidenced by Lady Justice Hallett above, the Report:

"was prepared solely for the purpose of the Inquest proceedings at the Coroner's request".

16. From the information provided by both the public authority and Lady Justice Hallett, the Information Commissioner concludes that the public authority does not hold the Report for its own purposes. He finds that the Report is a court document, prepared specifically for the Inquest, and that it therefore falls under the exemption in section 32(1)(a). This is an absolute exemption so no further consideration is necessary.
17. As the Information Commissioner has concluded that section 32(1) is engaged he has not found it necessary to consider the other exemptions which the public authority sought to rely on.

Right of appeal

18. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. 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.
20. 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

Jon Manners
Group Manager
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