

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 March 2013

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps)

1. The complainant has requested information about officer strength in Lambeth Borough. The public authority provided some information but withheld the remainder citing section 31(1)(a) and (b). The Information Commissioner's decision is that the exemption is engaged and that the public interest lies in maintaining it. The Information Commissioner requires no steps to be taken.

Background

2. The complainant's request can be followed on the "what do they know" website¹.
3. Lambeth Borough also has its own web page².
4. The public authority has also provided the following useful information:

"...there is no set figure for the number of officers that should be on duty in Lambeth each day, other than a specific minimum level of staffing in regard to core response teams, i.e. teams that provide early, late and night coverage."

¹ http://www.whatdotheyknow.com/request/removal_of_police_officers_from

² <http://content.met.police.uk/Borough/Lambeth>

"At the time of the request the budgeted workforce total for Lambeth stood at 901 officers ... albeit the number of officers on duty in any 24 hour period will vary each day depending upon a range of factors. Those factors include flexibility in the deployment of resources at recognised periods of quieter demand within the weekly 24 hour timescale for example, Sunday mornings."

"Therefore, the number of officers actually on duty in any 24 hour period is governed by a number of variables, such as; shift patterns, officers on leave, officers that are sick, on training, at court or posted to other duties; (central London Aid) as per [the complainant]'s request. It should also be borne in mind that whilst Lambeth Borough provides officers for central London operations, it is often the case that Lambeth Borough is in receipt of such aid for example the deployment of officers from the Territorial Support Group who provide local assistance for specific crime initiatives.

Police officer numbers is a matter that goes to the heart of policing issues and is regularly commented on in respect of the MPS. Whilst it is very much in the public interest for figures for officer numbers to be provided force wide, the issue of the public interest becomes a little more problematic the lower the denomination becomes ... Clearly in the MPS case monthly Borough police numbers are, and have been published on a regular basis for a number of years... However, in regard to the specifics of this request, (Daily figures for abstractions) and [the complainant]'s subsequent requests for average figures for other months of 2012, the same level of openness and transparency is not apparent as indicated in the disclosures identified. What this evidences is that whilst the MPS is content to provide average figures on a monthly basis, daily figures relating to abstractions and indeed deployments are withheld for operational reasons".

5. At internal review the public authority advised the complainant, subject to some limitations of its resource management system:

"I am able to provide you with some information relating to the month of February as a whole. This level of detail is sufficient to mitigate the harm in disclosure whilst also serving the legitimate public interest in disclosure.

The average number of police officers on duty each day in Lambeth BOCU in February 2012 was 566. This is the total

number over the course of each day, not the number on duty at any one time.

There were 986 instances of Lambeth Officers being on Aid in February 2012. This equates to an average of 34 officers per day”.

Request and response

6. On 12 March 2012, the complainant wrote to the public authority and requested information in the following terms:

“I understand that 160 police officers should be on duty in Lambeth each day, is that correct? If not what is the figure?

Can you also let me know how many officers which should be on duty in Lambeth each day are taken away to perform duties elsewhere?

Can you let me have the figures for each day of February 2012?”

7. The public authority responded on 29 March 2012. It stated that the information was exempt from disclosure by virtue of section 31(1)(a) and (b).
8. On 30 March 2012 the complainant asked for an internal review. Following correspondence with the Information Commissioner, the public authority provided this on 19 October 2012. It varied its previous position saying that no information was held in respect of the first part of the request, providing an explanation about this. The remainder was withheld under the same exemption, although average figures were provided in an attempt to satisfy the request.

Scope of the case

9. On 18 July 2012 the complainant contacted the Information Commissioner to complain about the lack of response to his request for an internal review. On 6 September 2012 the Information Commissioner asked the public authority to respond to the complainant within 20 working days.
10. Having received no response the complainant wrote to the Information Commissioner again on 7 October 2012. The Information Commissioner wrote to the public authority on 15 October 2012 advising that he had accepted the complaint for investigation.

11. The public authority provided an internal review on 19 October 2012.
12. Following correspondence with the Information Commissioner the complainant agreed to withdraw the first part of his request from the scope of his complaint.

Reasons for decision

Section 31(1) – law enforcement

13. Section 31(1) states that:

"Information which is not exempt information by virtue of section 30 [information held for the purposes of investigations and proceedings conducted by public authorities] is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
a) the prevention or detection of crime,
b) the apprehension or prosecution of offenders...."

14. The public authority's arguments are that disclosure *would be likely* to cause this prejudice.

Would disclosure be likely to prejudice law enforcement?

15. In *Hogan v the ICO and Oxford City Council*³ the Information Tribunal stated that:

"The application of the "prejudice" test should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption... Second, the nature of the 'prejudice' being claimed must be considered... A third step for the decision-making concerns the likelihood of occurrence of the prejudice".

16. The relevant applicable interests cited in this exemption are the prevention or detection of crime and the apprehension or prosecution of offenders. The Information Commissioner accepts that the arguments made by the public authority directly address these prejudices.
17. When considering the second step, as set out in the *Hogan* case cited above, the Information Commissioner must be persuaded that the nature of the prejudice is *"real, actual or of substance"* and not trivial

³ Appeal numbers EA/2005/0026 and EA/2005/0030

or insignificant. He must also be satisfied that some causal relationship exists between the potential disclosure and the stated prejudice.

18. The nature of the prejudice argued by the public authority is that disclosure of the figures requested, at a precise daily level, would be likely to adversely affect its law enforcement capability. It identified the following prejudice to the complainant:

"... disclosure of this information would provide the public, including those with criminal intent, the necessary information to disrupt our provision of services by exploiting any perceived weaknesses in specific areas".

19. The public authority has explained to the Information Commissioner:

"... the current local operational commander has commented as follows:

'The borough is frequently asked about 'abstraction' rates, both in public and private forums. While it has been acknowledged in those forums that there are generic abstraction rates for the borough that vary on a day to day basis, to give the level of detail asked for in this request would effectively provide a template of our daily tactical & deployment plans and therefore frustrate the core purpose of policing and our duty to prevent and detect crime in the borough.

There are criminal groups including those that operate at the lower level on a borough who monitor police movements and have some knowledge of our shift patterns. The detail asked for in this request exceeds what is able to be gained by criminals having that knowledge".

20. It has further explained to the Information Commissioner that it has two main concerns about disclosing this information, which are the 'mosaic' or 'jigsaw' effect, and 'setting a precedent'.

21. In respect of the mosaic effect it advised him that:

"It is recognised that there are indeed individuals or organisations (particularly terrorist) that have the necessary intent to utilise such information to their advantage. It is recognised that terrorist groups and criminal gangs 'data-mine' the internet for information such as this as part of their planning process for committing crimes. The MPS contends that daily abstraction information, coupled with information on resources

already in the public domain would provide any individual, especially those with necessary criminal intent, a pattern of available resources not only throughout the week but throughout the year, and through that data identify periods when local resources are likely to be depleted to such an extent that any potential vulnerability could be exploited. It should be noted that apart from specific events ... the level of abstraction and deployment remains relatively consistent.

Such data would allow direct comparisons to be made on a borough by borough basis and by those means work out which borough had the least amount of cover at certain periods. Although this could be done on a speculative basis now, given the current disclosure [that has already been provided to the complainant], regular disclosure of daily staffing levels including abstractions would clearly provide a more detailed picture of the geographic spread of available resources making it likely for those having the necessary intent to exploit for an unlawful purpose.

...

It must be remembered that having an average daily figure, as supplied at internal review and now on additional requests by the same applicant, it does not take much to ... obtain a rough idea of available resources at any given time. By withholding the more detailed information it would be likely to keep those having the necessary intent to exploit such information speculating as to whether or not their attempts to commit crime, or impede police effort to uphold law enforcement, would be met with the likelihood of detection or arrest”.

22. In respect of setting a precedent it advised the Information Commissioner that:

“... The MPS is mindful of the comments made in the First Tier Tribunal Hemsley v Information Commissioner, where they stated; ‘whilst every request must be dealt with on its merits, if this request were granted, it is not hard to envisage the difficulties faced by police authorities in dealing with future requests for such information’. Whilst the Hemsley request related to safety camera sites, the issue of setting a precedent in this instance is of concern. It could be said that given the nature of Lambeth borough and the number of officers engaged, the likelihood of prejudice, is reduced. Whereas for areas of rural England, Wales and Northern Ireland the disclosure of police staffing levels including abstractions on a daily basis, would be

likely to compromise law enforcement efforts, purely on the basis that the number of officers involved is far fewer. This is perhaps an extension of the borough by borough comparison of data in the MPS as illustrated earlier in this response, but done geographically on a national basis allowing for exactly the same deductions to be made in terms of potential organisational, and therefore law enforcement vulnerability”.

23. Having considered the withheld information the Information Commissioner is satisfied that it provides sufficient detail of policing levels to allow a future expected pattern of policing levels to be deduced. He is therefore of the opinion that such information would be likely to provide sufficient knowledge of the levels to calculate peaks and troughs in policing capability in the area. It follows that the Information Commissioner accepts that the outcome of disclosure predicted by the public authority is possible and he is therefore satisfied that the exemptions provided by sections 31(1)(a) and (b) are engaged.

The public interest test

24. Having concluded that sections 31(1)(a) and (b) are engaged, the Information Commissioner has gone on to consider the balance of the public interest.

Public interest arguments in favour of disclosing the requested information

25. The public authority identified the following public interest arguments in favour of disclosure:

“The aim of the Freedom of Information Act is to make government bodies more open and transparent. Releasing officer deployment data would make the MPS openly accountable for officer staffing levels, showing that the police deploy their resources in the most suitable manner with the numbers available.

The release of the requested information would also demonstrate to the public the measures taken by the police to utilise resources where and when they are believed to be most needed”.

26. The complainant has also stated:

“The reason for refusal is that it would assist criminals to know where police resources are below the stated level. It is absurd to say that criminals or anyone else is not aware of the shortage of police officers in Lambeth...”

The issue here is one of public interest and confidence in the statements being given out by the police.

If as I have been reliably informed a large proportion of police officers in Lambeth are being withdrawn on a daily basis to carry out duties elsewhere then the people of Lambeth have a right to know that. Indeed if that is happening it is unclear how the MPS can fulfill [sic] its commitment [sic] to the people of Lambeth which is based on a full compliment [sic] of police”.

Public interest arguments in favour of maintaining the exemption

27. The public authority identified the following public interest arguments in favour of maintaining the exemption:

“To release the requested information about deployment levels on specific dates in a specific borough would be likely to hinder the ability of the Service to prevent and detect crime, as well as hinder our ability to apprehend offenders. If the disclosure of information through FOIA would be likely to cause harm and have such a negative impact on crime levels, the public's fear of crime, or public safety it can not be seen to be in the public interest.

Information regarding police deployment data is a valuable commodity to individuals (and/or organisations) wishing to commit crime, as it provides an insight into tactics and resources available to the MPS. Therefore, those seeking to commit criminality could counter any future policing tactics by seeing patterns in our deployments and thus elude justice. This will ultimately have a detrimental impact on innocent members of the public living or travelling within the MPS district - as the levels of crime would increase, and consequently so would the public's fear. The publication of the number of officers we have available to us on certain days could lead to those with criminal intentions taking 'informed' steps to counter policing, thereby potentially reducing police effectiveness and reducing public confidence.

Releasing the requested information would be likely to leave the MPS vulnerable to criminals utilising the information for malicious intent, including potential terrorist threats. This could lead to an increase in crime if offenders believed they were less likely to be apprehended in certain areas and in certain days or months in the future. This is particularly the case as this request is for Lambeth borough over a sustained recent period, enabling people to 'map' periods of officer deployment in February 2012 and

make informed estimates about similar times during other months.

As crime prevention/detection is in the 'public's interest', any release of information which would be likely to prejudice our ability to prevent and/or detect crime could only be viewed as being harmful to the public interest".

Balance of the public interest

28. The Information Commissioner considers that the 'default setting' of the FOIA is in favour of disclosure. This is based on the underlying assumption that disclosure of information held by public authorities is in itself of value because it promotes better government through transparency, accountability, public debate, better public understanding of decisions and informed and meaningful participation of the public in the democratic process.
29. The Information Commissioner also recognises the complainant's concerns about the perceived shortage of police officers in Lambeth and his understanding that this may well be due to the abstraction of officers from Lambeth to perform duties elsewhere.
30. However, the Information Commissioner notes that the complainant, in his request, understood that there should be 160 police officers on duty each day in Lambeth. In its internal review the public authority advised him that, on average, this was actually 566 officers with an average abstraction of 34 officers a day.
31. The public authority has advised that the patterns of deployment are fairly consistent so disclosure of these would be of value to criminals. Therefore, whilst the Information Commissioner recognises that there is a public interest in knowing that a particular borough is adequately policed at all times he does not consider that this is outweighed by the potential harm that could be placed upon a local community were any potential vulnerabilities placed into the public domain. For example, were the figures particularly low on a Sunday afternoon then this may mean that someone with a criminal intent would be more likely to attempt to perpetrate a crime within this timeframe as they could perceive an increased likelihood of evading capture.
32. The Information Commissioner only places a limited weight on the public authority's position that disclosure of this information may have the potential to lead the way for further disclosure throughout other boroughs and, indeed, potentially on a nationwide scale. However, he must deal with each request on a case-by-case basis, and, in the absence of requests having been made on such a scale (to his

knowledge) he can only give this argument little weight on this occasion. This does not mean that, in the future, similar requests would be considered in the same manner.

Conclusion

33. In conclusion, the Information Commissioner fails to see how the public interest would be better served by revealing precise daily figures. He finds that the figures which have been provided adequately serve the public interest and he accepts the public authority's view that the disclosure would also be likely to inform those wishing to perpetrate crimes, by enabling them to build up a detailed picture about policing levels for particular days of the week and times. He therefore finds in favour of maintaining the exemption.

Other matters

34. Although they do not form part of this decision notice the Information Commissioner wishes to highlight the following matters.

Internal review

35. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*', the Information Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Information Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
36. The Information Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 40 working days for an internal review to be completed. This will be monitored.

Right of appeal

37. 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

38. 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.
39. 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

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