

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 October 2013

Public Authority: The Home Office
Address: 2 Marsham Street
London SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested a number of files over 30 years old about the activities of the Special Branch. These have been retained by the Home Office rather than transferred to the National Archives. The Home Office initially relied on section 31 (law enforcement exemption) and upheld this at internal review. During the Commissioner's investigation, it revised its position and argued that it could rely on section 23(1) (security bodies), and section 24(1) (national security) in the alternative, as a basis for withholding the requested information. It also introduced reliance on section 27 (international relations) and section 40(2) (unfair disclosure of personal data). It also continued to argue that the information was exempt under section 31.
2. The Commissioner's decision is that the Home Office is entitled to rely on section 23(1), and section 24(1) in the alternative, as a basis for withholding the requested information.
3. No steps are required.

Request and response

4. On 29 November 2012, the complainant wrote to the Home Office and requested information in the following terms:

"I would like these files to be released. These documents are from the catalogue at the National Archives

The link to it is: <http://discovery.nationalarchives.gov.uk/SearchUI/>

HO 325/41 Role and activities of police special branches in industrial matters: meeting between Home Secretary and some Members of Parliament; minutes of meeting.

HO 325/35, Review of Special Branch work in provincial police forces: information reports from regions; subsequent questionnaire to police forces; paper by H M Inspector of Constabulary.

HO 325/39, Minister's Case: involvement of Hampshire Constabulary Special Branch in industrial unrest; police authorities suspected subversive elements in an organisation in Hampshire

MEPO 38/160 Naturalisation enquiries: Special Branch procedures

HO 325/33 Security measures: review of division of responsibilities between Security Service and Metropolitan Police Special Branch

MEPO 38/166 Lympne Airport Special Branch

MEPO 38/143 Anti-Communist propaganda distributed during the Silver Jubilee celebrations: return of material to Special Branch by the Commissioner

HO 325/52 Visit of Prime Minister to Liverpool in February 1972: Metropolitan Police Special Branch report requested in light of major incident in Londonderry, Sunday 30 January 1972 ('Bloody Sunday')

HO 325/30/1 Closed extracts: Special Branch reports dated 6/1/1960 (pages 1 and 4) and 18/1/1960 (page 3) [repeated below]

HO 325/115/1 Retained extracts: Three extracts (Special Branch reports)

MEPO 38/79 Foreign influences on the General Strike: telegrams to and from the USSR in relation to sympathetic strike action and other matters concerning events in Great Britain

MEPO 38/129 Rt. Hon. David Lloyd GEORGE: protection

MEPO 38/76 National Unemployed Workers Movement (NUWM): meetings outside Labour Exchanges (Camden Town)

MEPO 38/128 Ramsay MacDONALD: protection

MEPO 38/11 National Council for Civil Liberties: reports and correspondence

MEPO 38/121 Jim LARKIN: Labour Leader: record file

MEPO 38/73 National Unemployed Workers' Movement (NWCM): action against the Commissioner relating to a search carried out in November 1932

MEPO 38/82 Foreign influences on the General Strike: reports

MEPO 38/83 General Strike: emergency regulations

MEPO 38/32 Daily Worker: history and organisation

MEPO 38/166 Lympne Airport Special

HO 287/1876 Deployment of Special Branch officers at ports: policy [repeated below]

HO 325/30/1 Closed extracts: Special Branch reports dated 6/1/1960 (pages 1 and 4) and 18/1/1960 (page 3) [repeated above]

HO 287/186 Special branch: employment of officers at ports

HO 45/25479 POLICE: Police Special Branch: operational strength; augmentation during Coronation Year, 1936

HO 287/1876 Deployment of Special Branch officers at ports: policy
[repeated above]

HO 287/976 Special Branch: employment at ports; organisation and staffing

MEPO 38/77 Doritt Press: seditious literature

MEPO 38/32 Daily Worker: history and organisation

MEPO 38/12 Dennis Nowell Pritt QC: leading left wing lawyer and prospective parliamentary candidate: record file, reports and press cuttings

HO 45/11000/223532 POLICE: Reorganisation and augmentation of Criminal Investigation Department and Special Branch, Metropolitan Police".

5. The Home Office responded on 24 January 2013. It stated that some of the records were held by The National Archives (HO 325/52, HO 45/25479 and HO 45/11000/223532) and that it did not hold files with a MEPO prefix. It explained that MEPO was prefix for files belonging to the Metropolitan Police. It argued that the remainder was exempt from disclosure under section 31(1)(a), (b) and (c) (law enforcement exemptions). It further explained that retained files (that is, older files that remain withheld) were subject to regular review for disclosure.
6. The files which it said it was withholding were therefore:

HO 325/41, HO 325/35, HO 325/39, HO 325/33, HO 325/30/1 Closed extracts, HO 325/115/1 Retained extracts, HO 287/1876, HO 287/186 and HO 287/976.
7. The complainant had duplicated two files in his request, namely HO 325/30/1 Closed extracts and HO 287/1876. Deployment of Special Branch officers at ports: policy. The Home Office did not appear to notice this until it had completed its internal review.
8. The complainant requested an internal review on 24 January 2013. He explained that the following four files were the most important to him: HO 325/41, HO 325/35, HO 325/39 and HO 325/33. He also listed the other files that remained withheld as part of this request for review, namely: HO 325/30/1 Closed extracts, HO 325/115/1 Retained extracts, HO 287/1876, HO 287/186 and HO 287/976.
9. The Home Office sent the outcome of its internal review on 22 February 2013. It upheld its original position although noted the duplication. It refers to eight files as remaining in dispute (taking the duplication into account) although, by the Commissioner's reckoning, at this stage of the correspondence, it should have been nine.

Scope of the case

10. The complainant contacted the Commissioner on 18 March 2013 to complain about the way his request for information had been handled.
11. At the start of his investigation, the Commissioner noted that according to the website of The National Archives, HO 287/186 is available upon request from that body although it is not available in electronic form. He therefore excluded this document from further consideration and listed the eight documents which remained under consideration namely:
 - HO 325/41;
 - HO 325/35;
 - HO 325/39;
 - HO 325/33;
 - HO 325/30/1 Closed extracts: Special Branch reports dated 6/1/1960 (pages 1 and 4) and 18/1/1960 (page 3);
 - HO 325/115/1 Retained extracts: Three extracts (Special Branch reports);
 - HO 287/1876; and
 - HO 287/976.
12. The public description of the content of each of these files is listed in an Appendix to this Notice.
13. When the Home Office responded to the Commissioner's request for its full and final arguments about the requested information it introduced reliance on additional exemptions as follows:
 - section 23(1) (Security Bodies' information) and section 24(1) (National Security) in the alternative;
 - section 27 (Prejudice to international relations); and
 - section 40(2).
14. It told the complainant about this on 9 August 2013. It had set out its arguments for the Commissioner on 17 July 2013 and the Commissioner prompted it to write directly to the complainant about this. The complainant disputed the application of these exemptions.
15. The Commissioner has therefore considered whether the Home Office is entitled to rely on section 23(1) (and section 24(1) in the alternative for seven of the eight requested documents), section 27, section 31 and section 40(2) as a basis for withholding the information listed in the Appendix to this Notice.

Reasons for decision

Section 23(1) and section 24(1) in the alternative

16. Section 23(1) states;

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."

17. Section 24(1) states ;

"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."

18. This means that section 23(1) and section 24(1) are mutually exclusive. However, the fact that section 24(1) can only be applied to information that is not protected by section 23(1) can present a problem, if a public authority does not want to reveal whether a section 23 security body is involved in an issue. If it could only cite section 24(1) in its refusal notice, this would disclose that no section 23 body was involved. Conversely, if only section 23(1) was cited, this would clearly reveal the involvement of a security body. To overcome this problem the Commissioner will allow public authorities to cite both exemptions 'in the alternative' when necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice. The Commissioner is prepared to accept such an argument where it is correctly made.

HO 325/33

19. In the case of one of the document listed in the Appendix to this Notice, namely, HO 325/33, it is self-evident from the published title - "Security measures: review of division of responsibilities between Security Service and Metropolitan Police Special Branch)" - that it contains information relating to one or more of the security bodies. The Home Office has cited section 23(1) on its own in relation to the information in this document. Given the obvious inclusion in it of information relating to one or more of the security bodies, the Commissioner is satisfied that it is exempt from disclosure under the Act by virtue of Section 23(1).

Could the Home Office rely on section 23(1) in relation to the seven other documents?

20. It would be nonsensical for the Home Office to refuse to confirm or deny holding the remaining seven documents because the website of the National Archives clearly states that each document is retained by the

Home Office (see Appendix). The Home Office has therefore submitted arguments in support of its view that it can rely on section 23(1), and section 24(1) in the alternative, for the information contained in the seven remaining documents.

21. Insofar as the Commissioner is able to do so on the face of this Notice, he will now set out his decision as to whether the Home Office can rely on section 23(1), and section 24(1) in the alternative.
22. The exemption at section 23 captures information supplied directly by a security body and information originating from a security body that is provided by a third party. In this way, the exemption can protect intelligence as it is disseminated through different channels. It is a class-based absolute exemption. This means that if the requested information falls within the class described in the request it is absolutely exempt from disclosure under the Act. This exemption is not subject to a balance of public interests test.
23. Section 24(1) can only be applied to information that does not fall within section 23(1). This means it cannot be applied to the same information, but, for reasons explained above, it can be cited in the alternative.
24. Dealing first with section 23(1), the Home Office asked the Commissioner to consider his own findings in his decision notice ref: FS50258193 which observed that:

“...there will be very few instances where information held by Special Branch is not also held by a section 23(3) body, even if it was not directly or indirectly supplied by them, as the nature of the work of special branches involves very close working with security bodies and regular sharing of information and intelligence...”¹
25. As set out in the Appendix to this Notice, the Special Branch is referred to specifically in the public description of each of the seven remaining documents.
26. The complainant has argued that the Home Office has applied section 23 too broadly to documents which are now too old to adversely affect factors prevalent in the modern world. Although the Commissioner notes the complainant's concern about the age of the information (and he will consider it again later in this notice) he does not think it is relevant in relation to this exemption. Section 23(1) is not subject to a balance of public interests test where the question of the age of requested

¹ http://www.ico.org.uk/~media/documents/decisionnotices/2011/fs_50258193.pdf

information could be relevant. The question for the Commissioner is:
Could the information in the seven remaining documents fall within the description of information set out in section 23(1)?

27. The Commissioner is satisfied that there is a clear link between the Special Branch and the security bodies listed at section 23 because of the nature of the work of the Special Branch. As an example, the Commissioner notes the description of its work at the Metropolitan Police where it has now been merged with the Anti-Terrorist Branch to form Counter-Terrorism Command.² The historic connection between the work of Special Branch and the work of the security bodies is acknowledged:

“The Command was formed in October 2006, with the merger of its two predecessor units; the Anti-Terrorist Branch (SO13) and Special Branch (SO12).

It continues their legacy of expertise and brings together intelligence, operations and investigations functions. It also engages with a range of partners to prevent terrorist related activity, including the British Security Service and Secret Intelligence Service.”

28. The recruitment pages of the Greater Manchester Police website refer to a similar description of the Special Branch in that region (now part of the Greater Manchester Police Counter Terrorism Unit’s framework).³
29. Given that each document in the request is publicly described as concerning the Special Branch and given the clear link between the Special Branch and the security bodies, he agrees that the Home Office could rely on section 23(1) in relation to the information in the seven remaining documents.

Can the Home Office rely on section 24(1) in the alternative?

30. As noted above, information is exempt under section 24(1) if it is required for the purpose of safeguarding national security. There is no definition of national security in the Act. However, in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords

² <http://content.met.police.uk/Article/Counter-Terrorism-Command/1400006569170/1400006569170>

³

<http://www.gmp.police.uk/live/recruitv2.nsf/WebPages/774C56D5D9C5C95C802574B00049007D?OpenDocument>

case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

'- "national security" means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- action against a foreign state may be capable indirectly of affecting the security of the UK ; and
- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

31. The exemption applies where withholding the information is "required for the purposes of safeguarding national security". Required is taken to mean that the use of the exemption is reasonably necessary. "Required" is defined by the Oxford English Dictionary as 'to need something for a purpose' which could suggest the exemption can only be applied if it is absolutely necessary to do so to protect national security. However, the Commissioner's interpretation is informed by the approach taken in the European Court of Human Rights where interference to human rights can be justified where it is 'necessary' in a democratic society for safeguarding national security. 'Necessary' in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable, so the Commissioner interprets 'required', in this context, as meaning 'reasonably necessary'.

32. It is not necessary to show that disclosing the information would lead to a direct or immediate threat to the UK. In a time of global terrorism our national security can depend on cooperating with others. This can involve protecting allies, cooperating with other countries in the fight against terrorism, as well as building relations with other prospective allies. This means that the exemption can be engaged to prevent a disclosure that would have adverse consequences for one of these partners even if disclosure would not result in a direct or immediate risk of attack on the UK or its citizens.

33. Support for this approach is taken from *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, the case concerning the deportation of a foreign national. Lord Slynn found that:

"To require the matters in question to be capable of resulting 'directly' in a threat to national security limits too tightly the discretion of the

executive in deciding how the interests of the state, including not merely military defence but democracy, the legal and constitutional systems of the state need to be protected. I accept that there must be a real possibility of an adverse effect on the United Kingdom for what is done by the individual under inquiry but I do not accept that it has to be direct or immediate.”

34. Safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent.

35. The Home Office set out arguments which the Commissioner cannot reproduce on the face of this notice without disclosing detail of the information that has been withheld. It also argued:

“Disclosure of general information relating to special branches strategies and tactics in seeking to prevent serious threats to the public and in assisting with security at British ports would undermine legitimate police objectives and hamper future police activity. This would also provide valuable intelligence and specific insight to anyone wishing to circumvent tactics or assets for protecting the UK. The passage of time is not considered to have reduced this prejudice”.

36. In light of the above and with regard to the information described in this request, the Commissioner is satisfied that section 24(1) can be engaged in the alternative in relation to the information described in the seven remaining documents. The Commissioner has reached this view having taken into account the age of the information and the detailed submissions of the Home Office.

Section 24(1) – Balance of public interest test

37. As noted above, section 24(1) is qualified by a balance of public interests test. This means that even if the exemption is engaged, the Home Office can only rely on it in the alternative to section 23(1) if the public interest in doing so outweighs the public interest in disclosure.

Public interest arguments favouring disclosure

38. The complainant has given particular emphasis to the age of the requested information. He has argued that there can be little harm done to security matters given the age of the information in question.

39. He also submitted arguments showing controversy about the work of the Special Branch which, in his view, added weight to the public interest in disclosure:

“In Christopher Andrew's book "The Defence of the Realm: The Authorized History of MI5", In 1930, Some of Special Branch responsibilities were transferred to MI5. MI5 responsibilities were the

monitoring of individuals who are Communists or Trotskyists. The Special Branch however kept profiles on unemployed matchers and atheist including people who conspired to commit mutiny, but again Special Branch only had profiles on people who actually could be violent. One person worked for MI5 was very angry and shocked that the Special Branch would do this as it was more broad than MI5 responsibilities. In the 1970's, MI5 refused to monitor industrial activity. Special Branch monitored subversive industrial activity in Hampshire in the 1970's, as shown in HO 325/39⁴. There is a document that I received from the Home Office that the Special Branch monitored Communists in Student Unions, but a Special Branch officer stated in a response in questions asked about the role in Trade Unions. He said that the Special Branch does not monitor trade unions, only individuals in the Trade Unions. Both Special Branch and MI5 have rules and guidelines they have to follow, and they have to obey these rules. The information that I can gather is that the Special Branch only cares about subversive activity. There is a document I found online that stated they are not a "Political Police Force" and political beliefs are not important to them, only subversive activity."

40. The Home Office did not identify any specific factors which favour the public interest in disclosure.

Public interest arguments against disclosure

41. The Home Office explained that "the value of future tactics and assets would be undermined by disclosure. Any disclosure that would prejudice national security would be contrary to the public interest".

Balance of public interest

42. The Commissioner thinks that where section 24(1) is engaged, there will always be a compelling argument in favour of maintaining the exemption given the severity of the harm that is likely to arise. Whilst the public interest inherent in this exemption will not always be a determinative factor, in practice, for the public interest to favour disclosure where section 24(1) has been found to be engaged in a particular case there must be specific and clearly decisive factors in favour of disclosure. Although section 24(1) is a qualified exemption, clearly it would not be appropriate for the Commissioner to recognise anything less than the most weighty public interest in favour of maintenance of this exemption.

⁴ One of the requested documents listed in the Appendix to this Notice

43. The Commissioner recognises that there is a public interest in learning more about the work of the Special Branch in matters that are now more of historical interest than of current concern. Learning about how covert law enforcement agencies tackled national security challenges of the past may be of assistance today. The question of how we balance civil liberties concerns with national security concerns is as important today as it was over 30 years ago.
44. He recognises that the passage of time may weaken the public interest in maintaining the exemption in section 24 in some circumstances, but it does not in this case. The Commissioner is satisfied that the work of covert law enforcement agencies should remain confidential in this case. He does not agree that the public interest arguments put forward by the complainant add great weight to the public interest in disclosure. Perhaps inevitably, given that the complainant does not have the advantage of knowing the content of the withheld information, his arguments are generalised and not specific. However, they do not point to a sufficiently weighty countervailing argument in favour of disclosure.
45. The Commissioner has recognised that there is a valid public interest in the disclosure of this information on the basis of its subject matter. However, his view is that this public interest is outweighed by the public interest in avoiding disclosure that could harm the safeguarding of national security. The conclusion of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure. The Commissioner is satisfied that the Home Office can rely on section 24(1) in the alternative as a basis for withholding the requested information.
46. Given the Commissioner's conclusions regarding section 23(1) and section 24(1) in the alternative, he has not gone on to consider the other exemptions cited by the Home Office.

Right of appeal

47. 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

48. 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.
49. 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

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

Appendix - Public description of each of the requested documents

Reference number	Description
HO 325/33	Security measures: review of division of responsibilities between Security Service and Metropolitan Police Special Branch
HO 325/41	Role and activities of police special branches in industrial matters: meeting between Home Secretary and some Members of Parliament; minutes of meeting
HO 325/35	Review of Special Branch work in provincial police forces: information reports from regions; subsequent questionnaire to police forces; paper by H M Inspector of Constabulary
HO 325/39	Minister's Case: involvement of Hampshire Constabulary Special Branch in industrial unrest; police authorities suspected subversive elements in an organisation in Hampshire; details of 'sit-in' leaked to the press
HO 325/30/1	Closed extracts: Special Branch reports dated 6/1/1960 (pages 1 and 4) and 18/1/1960 (page 3)
HO 325/115/1	Retained extracts: Three extracts (Special Branch reports)
HO 287/1876	Deployment of Special Branch officers at ports: policy

HO 287/976	Special Branch: employment at ports; organisation and staffing
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These descriptions can be obtained by entering the reference number into a search engine on the website of The National Archives

<http://discovery.nationalarchives.gov.uk/SearchUI/>