

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 May 2014

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested the name of the officer/s who authorised the detention of David Miranda at Heathrow Airport. The Metropolitan Police Service (the "MPS") refused to provide the information citing sections 23(5)(security services), 24(1) (national security), 30(1) (investigations and proceedings) and 40(2) (personal information). The Commissioner's decision is that the MPS was entitled to rely on section 40(2); he does not require any steps.

Background

2. The request can be followed on the "What do they know?" website¹.

Request and response

3. On 21 August 2013, the complainant wrote to the MPS and requested information in the following terms:

¹ https://www.whatdotheyknow.com/request/detention_of_mr_miranda

"Please reveal data which shows who made a decision about detaining Mr. Miranda on Heathrow Airport.

Please note: preferably please reveal the decision notice itself (if one was made), alternatively please reveal any other document clearly indicating decision maker".

4. The MPS acknowledged this on 27 August 2013. On 19 September 2013 the MPS advised the complainant that it was extending the time for responding as it was considering the public interest in sections 27 and 30 of the FOIA.
5. By way of clarification, on 20 September 2013 the complainant reminded the MPS: *"Thank you for your update. Please note I have requested ANY document revealing the decision maker, not the specific one - please take it into account"*.
6. On 29 October 2013, the MPS provided its response. It refused to provide the requested information citing sections 23(5), 24(1), 30(1) and 40(2).
7. On the same day the complainant asked for an internal review saying:

"I fail to see how revealing the name of decision maker would harm the national security. I would also like to point out that Information Commission in it's guideline clearly says:

'some senior managerial/ executive staff work in a context of direct personal public accountability. The names of such individuals will very likely fall to be disclosed, as will those of junior staff who deal with the public directly.'

Person who made this decision should be publicly accountable for it - and public has right to know who this person was".

8. Following an internal review the MPS wrote to the complainant on 7 March 2014. It provided links to information which had been placed in the public domain at a date later than the original request, albeit by other parties. It maintained its own reliance on the exemptions previously cited, clarifying in respect of section 23(5):

"The MPS appreciate Section 23(5) and Section 24(1) cannot apply to the same information. Therefore I wish to clarify it should have been made clear that Section 23(5) does not apply to the recorded name of the individual who ordered the detainment of Mr Miranda. Instead, Section 23(5) is engaged in respect of any other information which may or may not be held that may be captured within the scope of your request".

Scope of the case

9. The complainant contacted the Commissioner on 8 January 2014 to complain about the way his request for information had been handled; this was before the MPS had conducted its internal review.
10. Following the belated results of the internal review, the complainant confirmed he wished the Commissioner to consider the application of exemptions to his information request.

Reasons for decision

Section 40 – personal information

11. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

Is the requested information personal data?

12. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the Data Protection Act 1998 (DPA). If it is not personal data, then section 40 cannot apply.
13. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to an individual and that individual must be identifiable from that information.
14. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
15. The second part of the test is whether the withheld information identifies any individual.
16. The requested information in this case requires the naming of an officer/officers at the MPS who made a particular decision. In the Commissioner's view it is clear that the withheld information 'relates' to a living person, they are the focus of the request and it is therefore their 'personal data'.
17. Having accepted that the requested information constitutes the personal data of a living individual/s other than the applicant, the

Commissioner must go on to consider whether disclosure would breach one of the data protection principles.

18. The MPS advised that it believes disclosure would breach the first data protection principle.

Would disclosure contravene the first data protection principle?

19. The first data protection principle states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 is met.
20. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.
21. The Commissioner has first considered whether disclosure would be fair.
22. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
- the individual's reasonable expectations of what would happen to their information;
 - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
23. In consideration of these factors, the MPS provided the following arguments to the complainant:

"It is appreciated that there has been a media interest and would could therefore be considered a legitimate public interest in the examination of this individual under Schedule 7 of the Terrorism Act 2000. However, the MPS has considered that disclosure of the information you have requested is not necessary, particularly as the MPS has disclosed information through press statements pertinent to this matter as well as the fact the decision to detain Mr Miranda was being considered within the High Courts at the time your request was received".

And:

"In the context of disclosing the personal information you have requested under FOIA, the MPS have considered the possible consequences of disclosure on the individual(s) that disclosure would affect. It is believed that disclosure under the Act would have an unjustified adverse effect on the individual(s) concerned.

The MPS have worked to be as forthcoming and accountable as possible in regards to information disclosed in press statements. Publishing any further information at the time of your request would have been unfair, particularly as the decision to detain Mr Miranda was already being considered within the High Court.

In considering fairness in disclosure, the MPS has taken into account the reasonable expectations of the data subject(s) whose information is held. Whilst it is appreciated that there is an interest in the names of individuals, there is no reasonable expectation on the part of interested parties or connected individuals for their personal information to be disclosed. The information could in fact be used to try and identify living individuals with the intention of causing harm and distress.

Additionally, taking into account the personal information relates to national security and sensitive security matters there is a strong expectation to withhold the relevant information.

In considering the principle of fairness the MPS has balanced the rights of the data subjects and the legitimate interest in disclosure. It could be considered there is a strong public interest in disclosing the identities. However as explained, to meet this public interest the MPS has already disclosed appropriate information through the fitting media channels and was being considered by the High Court at the time. The MPS therefore conclude that the legitimate interest in disclosure does not outweigh the rights of the data subjects on this sensitive matter".

24. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible data controller, will not disclose certain information about them and that they will respect their confidentiality. For example, he considers that information relating to an ongoing court case will carry a strong general expectation of privacy for those parties concerned. Therefore, the reasonable expectation of the related data subject is that such

information would not be disclosed and that the consequences of any disclosure could be damaging or distressing to them.

25. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. He will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions. With respect to the consequences of disclosure in this case the MPS has advised above that the information could be *"used to try and identify living individuals with the intention of causing harm and distress"*. In view of the sensitivity of the case at the time of the request, and the media interest in the subject matter, the Commissioner accepts that any related party who was identified could well be sought out by the media, or that their friends and family could also be approached. As such he accepts that disclosure could cause damage and distress to any party concerned.
26. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
27. In considering these 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
28. The Commissioner acknowledges that the issue under consideration in this case raises issues in relation to accountability and transparency. However, he also notes the MPS's arguments above which show that it has provided some information to the media in order to keep the public informed regarding events. The MPS has also drawn attention to the fact that issues relating to this request were already being considered at High Court at the time. In the Commissioner's view, the MPS has therefore provided sufficient information to meet the legitimate interest of the public without infringing the rights of the parties connected to this sensitive matter.
29. In light of the nature of the information and the reasonable expectations of the individual(s) concerned, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subject(s). He considers these arguments outweigh any legitimate interest in disclosure. He has therefore concluded that it would be unfair to disclose the withheld information - in other words, disclosure would breach the first data protection principle. He therefore upholds the MPS's application of the exemption at section 40(2).

30. As disclosure would not be fair, the Commissioner has not gone on to consider whether disclosure is lawful or whether one of the schedule 2 DPA conditions is met. However, his initial view is that no such condition would be met.
31. Having concluded that section 40(2) is properly engaged, the Commissioner has not considered the other exemptions cited.

Other matters

32. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters.
33. The Commissioner notes that the MPS has now provided the complainant with some links to information which identify those relevant parties caught by the request. It is however important to note that this disclosure was not made by the MPS itself. Furthermore, as this was put into the public domain after the request was made the Commissioner is not able to take it into consideration.

Internal review

34. 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 Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the 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.
35. Whilst he does accept that this case may be considered to be exceptional in light of the sensitivities involved, the Commissioner is nevertheless concerned that it took approximately 4 months for an internal review to be completed.

Right of appeal

36. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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
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