Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2018

Public Authority: Chief Constable of Thames Valley Police
Address: Police Headquarters
Oxford Road
Kidlington
OX5 2NX

Decision (including any steps ordered)

1. The complainant requested information relating to the wedding of a relative of a member of the Royal Family. Thames Valley Police (TVP) disclosed some of the requested information and refused to confirm or deny whether it held other information, relying on the exemptions provided by sections 23(5) (security bodies), 31(3) (prejudice to law enforcement) and 40(5) (personal information) of the FOIA. It also confirmed that it held some of the requested information, but refused to disclose it, citing the exemptions provided by the following sections of the FOIA:

   24(1) (national security)

   31(1)(a) and (b) (prejudice to prevention or detection of crime and to the apprehension or prosecution of offenders)

   38(1)(a) and (b) (endangerment to health and safety)

2. The Commissioner's decision is that TVP cited section 40(5) to some extent incorrectly, but finds that the remainder of the refusal was correct. In relation to the incorrect citing of section 40(5), TVP is now required to disclose the confirmation or denial.

3. The Commissioner requires TVP to take the following steps to ensure compliance with the legislation.

   - Confirm or deny whether information falling within the scope of request (iii) is held. In relation to any information that is held, this

should either be disclosed to the complainant, or a refusal notice must be sent setting out the grounds under the FOIA as to why this information will not be disclosed.

4. TVP must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 22 May 2017 the complainant wrote to TVP and requested information in the following terms:

"(i) Please detail the resources provided at the above wedding [of Pippa Middleton and James Matthews] (in terms of officers, resources and the relevant costs thereof including expenses and overtime for both the Englefield (church & Englefield House) and Bucklebury locations).

(ii) Were officers deployed for the wedding on normal duty or were they paid overtime?

(iii) Were any extra funds provided to Thames Valley police for this event by the Home Office or any other parties?

(iv) Did the Middleton or Matthews families contribute to the costs of policing?

(v) Did the Royal family contribute to the costs of policing?

(vi) How many meetings did TVP personnel have with the Middleton or Matthews families in advance of this event. What was the nature of these meetings and who attended?

(vii) Who was in charge of policing on the day?"

6. TVP responded on 22 June 2017. Its response to each part of the request was as follows:

i. TVP confirmed it held information within the scope of the request, but refused to disclose it and cited the exemptions provided by the following sections of the FOIA:

24(1) (national security)

31(1)(a) and (b) (prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders)

38(1)(a) and (b) (endangerment to health and safety)

TVP also stated that it could neither confirm nor deny whether it held any further information falling within the scope of this request and cited section 23(5) (information supplied by, or relating to, security bodies).

ii. This request was complied with.

iii. TVP partly complied with this request, but also stated that it could neither confirm nor deny whether it held information relating to any other parties and cited the exemption provided by section 40(5) (personal information).

iv. TVP refused to confirm or deny whether it held this information, citing section 40(5) (personal information).

v. TVP refused to confirm or deny whether it held this information, citing section 40(5) (personal information).

vi. TVP refused to confirm or deny whether it held this information and cited the exemptions provided by sections 31(3) (prejudice to law enforcement) and 40(5) (personal information).

vii. This request was complied with.

7. The complainant responded on 23 June 2017 and requested an internal review. TVP responded with the outcome of the internal review on 20 July 2017. The conclusion of this was that the earlier response was upheld.

Scope of the case

8. The complainant contacted the Commissioner on 1 September 2017 to complain about the part refusal of his information request. The complainant indicated that he did not agree with the reasoning given by TVP for the part refusal of his request.

Reasons for decision

Section 24(1)

9. In relation to the information within the scope of request (i) that TVP confirmed that it did hold, it cited sections 24(1), 31(1) and 38(1) of the FOIA. Section 24(1) provides an exemption from the duty to disclose where such an exemption is required for the purpose of safeguarding national security. There are two stages to consideration of this exemption; first the exemption must be engaged due to the requirements of national security and, secondly, the balance of the public interest must be considered.

10. Covering first whether the exemption is engaged, the approach of the Commissioner to the word "required" as it is used in section 24 is that this means reasonably necessary. This means that the question here is whether it was reasonably necessary for the purpose of national security to refuse to disclose the requested information.

11. Section 24(1) has been cited in this case due to the presence at the wedding in question of members of the Royal Family. Media reports indicate that these included Prince William[1]. The police operation relating to this wedding was for the purpose of providing security for the members of the Royal Family that were present. The reasoning for citing this exemption relates to concerns about disclosing details of the police protection provided for members of the Royal Family.

12. The Commissioner accepts that this reasoning is relevant to section 24(1); undermining the ability of the police to provide security for members of the Royal Family would be harmful to national security. She also notes that the terrorist threat level was at the time of the request classified as "Severe" and that it is reasonable to proceed on the basis that this threat includes members of the Royal Family.

13. The next step is to consider whether there would be a causal link between disclosure of the information in question and the predicted outcome of an undermining of the ability of the police to provide security to members of the Royal Family. This could be, for example, by worsening or extending the threat of a terrorist attack.

[1] http://www.bbc.co.uk/news/uk-39984752

14. The scope of the complainant's request is wide; it asks for the *"resources"* deployed to the event and draws a distinction between police officers and other resources. An objective reading of this request is that it covers both the number of police officers deployed and the equipment used in this operation. The Commissioner accepts that the disclosure of this information would give a genuine insight into how the police approached this event and, by extension, the approach taken by the police to Royal security more widely. The Commissioner further accepts that there is a reasonable likelihood of there being individuals or groups who would seek to exploit this information to plan attacks.

15. In view of the above, the Commissioner finds that it is reasonably necessary for the purpose of national security to withhold this information from disclosure. Her conclusion is, therefore, that the exemption provided by section 24(1) of the FOIA is engaged.

16. Having found that the exemption is engaged, the next step is to consider the balance of the public interest. In forming a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the considerable public interest inherent in the maintenance of the exemption, as well as the specific factors that apply in relation to the requested information.

17. Covering first factors in favour of disclosure, the Commissioner recognises that there is strong public interest in disclosure of this information owing to its subject matter. The Commissioner's view is that any information that details the anti-terrorist efforts being made by the police and in particular the efforts of the police to ensure the safety and security of the Royal Family will be the subject of considerable public interest in order to improve knowledge and understanding of the work being undertaken by the police in this vital area.

18. On the issue of what public interest there is in the particular information in question here, the complainant would argue that there is considerable public interest in disclosure of details of what resources, and hence public money, were expended on policing a private event. TVP would counter this by arguing that those resources were for the purpose of ensuring the security of the event due to the presence of members of the Royal Family and that, had there been no Royal presence, no resource would have been given to this event.

19. The Commissioner's view is that there is a valid public interest in disclosure in order to aid understanding of what resources the police used on this event, but that this is the same argument that would apply in relation to any policing operation. That this was a private event does not add to the weight of this factor as the private nature of the event was incidental to the police attendance.

20. Turning to the public interest in favour of maintenance of the exemption, in any situation where section 24(1) is found to be engaged, the Commissioner must recognise the public interest inherent in this exemption. Safeguarding national security is a matter of the most fundamental public interest; its weight can be matched only where there are also fundamental public interests in favour of disclosure of the requested information.

21. In this case the public interest in the maintenance of the exemption concerns preserving the ability of the police to provide effective security for members of the Royal Family. Clearly that public interest weighs very heavily in favour of maintenance of the exemption.

22. In conclusion, the Commissioner has recognised valid public interest in favour of disclosure given the subject matter of the requested information. She does not, however, believe that it matches the weight of the public interest in avoiding a disclosure that could be detrimental to national security. The finding of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and so TVP was not obliged to disclose the information specified in request (i).

23. Having reached the above conclusion, it has not been necessary to go on to also consider sections 31(1) and 38(1) in relation to request (i).

Section 23(5)

24. This section provides an exemption from the duty to confirm or deny where to do so would mean the disclosure of any information, whether or not already recorded, which was directly or indirectly supplied by, or relates to any of a list of security bodies specified in section 23(3).

25. The question here is whether issuing a confirmation or denial in response to request (i) would mean disclosing information supplied by, or relating to, any section 23(3) body. TVP gave no reasoning to the complainant for the citing of this exemption, and what amounted to no explanation in its correspondence with the Commissioner. It did not explain why there is a likelihood that the requested information could relate to a section 23(3) body, nor which section 23(3) body would be in question. Had the Commissioner relied solely on the representations of TVP, her finding would have been that section 23(5) was not engaged.

26. In the absence of reasoning from TVP, the Commissioner has considered herself what grounds there may be for this exemption to apply. She notes that the wedding referred to in the request was attended by a number of senior members of the Royal Family. Where a policing operation is for the purpose of Royal protection, the Commissioner

recognises that there is a strong possibility that this will involve collaboration with bodies listed in section 23(3). Royal protection is likely to include the counter-terrorism command of the Metropolitan Police Service. As established in a number of previous decision notices, the role of the counter-terrorism command includes frequent interaction with section 23(3) bodies.

27. On the basis that the policing operation at the wedding in question was for the purpose of Royal protection, the Commissioner accepts that this is in the territory of national security and that it is more likely than not, if further information were held, that in the particular circumstances of this case, this would relate to section 23(3) bodies. Her conclusion is, therefore, that section 23(5) is engaged.

Section 40(5)

28. Section 40(5) of the FOIA was cited for requests (iii), (iv), (v) and (vi). This section provides an exemption from the duty to confirm or deny where to do so would involve a disclosure of personal data and that disclosure would be in breach of any of the data protection principles. The questions when considering this exemption are whether provision of the confirmation or denial would involve a disclosure of personal data and, if so, whether that disclosure would be in breach of any of the data protection principles.

29. Covering first whether provision of the confirmation or denial would involve disclosing the personal data of any individual, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

"'personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".

30. In correspondence with the Commissioner TVP focussed on whether any information that was held and that was within the scope of these requests would constitute personal data. That is not the issue in question here, however. Section 40(5) concerns what would be disclosed through provision of the confirmation or denial, rather than the nature of any in scope information that is held.

31. In the absence of relevant representations from TVP, the Commissioner has considered herself what grounds there are for finding that section

40(5) applies. In relation to request (iii) first, the request does not specify any person. Instead, it refers to the Home Office or any other parties. The Commissioner does not agree that confirmation or denial in response to this request would identify any individual or relate to any individual. Without any other reason to regard a confirmation or denial in response to request (iii) as relating to an individual, such a response would be at least as likely to relate to an organisation. Information about an organisation would not constitute personal data. For these reasons, the Commissioner's conclusion on request (iii) is that section 40(5) is not engaged. At paragraph 3 above TVP is required to confirm or deny whether it holds information falling within the scope of this request.

32. Turning to requests (iv), (v) and (vi), it is clearer what can be assumed to be the reasoning of TVP on these requests; that a confirmation or denial would identify and relate to members of the families named in the requests. As to whether this means that the confirmation or denials in response to these requests would constitute personal data, the Commissioner accepts that this response could be taken to identify and relate to members of the families specified in the requests. This information would, therefore, constitute personal data in accordance with the definition given in section 1(1) of the DPA.

33. The next step is to consider whether disclosure of that personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on the first data protection principle, which states that personal data shall be processed fairly and lawfully. In particular, the focus here is on whether disclosure would be, in general, fair to the data subjects.

34. In forming a conclusion on this point the Commissioner has taken into account the reasonable expectations of the data subjects and what consequences disclosure may have. She has also considered what legitimate public interest there may be in disclosure of the information in question.

35. Covering first the reasonable expectations of the data subjects, the Commissioner has considered the Middleton and Matthews families separately from the Royal Family. She is of the view that the Middleton and Matthews families would have regarded this wedding as a private event, despite the link the Middleton family has to the Royal Family necessitating a police operation in relation to the wedding. Given this, the Commissioner accepts that the Middleton and Matthews families would hold a legitimate expectation of privacy in relation to this information.

36. As to the reasonable expectations of members of the Royal Family, the Commissioner has been clear across many cases that it is reasonable for all individuals to hold an expectation of privacy, whatever their position. In this case, the confirmation or denial would relate to members of the Royal Family in a private capacity. Members of the Royal Family did not attend the wedding specified in the request in their official capacity; they were there as a result of their link with the Middleton family. The Commissioner is of the view, therefore, that members of the Royal Family would also hold a legitimate expectation of privacy in relation to this information.

37. Turning to the consequences of confirmation or denial for the data subjects, the Commissioner has already mentioned that her view is that all individuals regardless of position have a right to, and legitimate expectation of, privacy. The Commissioner's view is also that disclosure of the confirmation or denial in contravention of the reasonable expectation of the data subjects would be likely to be distressing to them.

38. Turning to whether there is any legitimate public interest in the confirmation or denial, whilst section 40(5) is not a qualified exemption in the same way as some of the other exemptions in Part II of the FOIA, an element of public interest is necessary in order for disclosure to comply with the first data protection principle. The question here is whether any legitimate public interest that does exist outweighs the factors against disclosure covered above.

39. The complainant would argue on this point that there is a strong public interest in disclosure in order to understand more about the policing operation mentioned in the request and the costs incurred as a result of it. The Commissioner agrees that there is some legitimate public interest in provision of the confirmation or denial on this basis, but that the level of this public interest is reduced due to the requests concerning any engagement with TVP that would have been undertaken by the families mentioned in the request in a private capacity. The Commissioner would not in general expect there to be strong legitimate public interest in disclosing information about engagement between private individuals and the police. She does not believe that, in this case, there is any legitimate public interest in disclosure of the confirmation or denial that would outweigh the factors against disclosure covered above. Her view is, therefore, that disclosure of the confirmation or denial would be unfair and in breach of the first data protection principle.

40. The Commissioner has found that confirmation or denial in response to requests (iv), (v) and (vi) would involve the disclosure of personal data of third parties and that this disclosure would be in breach of the first data protection principle. Her conclusion is, therefore, that the

exemption provided by section 40(5) of the FOIA is engaged and so TVP was not obliged to confirm or deny whether it held the information specified in requests (iv), (v) and (vi).

41. In view of this finding, it has not been necessary to go on to also consider section 31(3) for request (vi).

Right of appeal

42. 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: 0870 739 5836
    Email: GRC@hmcts.gsi.gov.uk
    Website: http://www.justice.gov.uk/tribunals/general-regulatory-chamber

43. 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.

44. 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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