

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 15 March 2018

**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 information about a police Operation from the Metropolitan Police Service (the "MPS"); to date he has not received a substantive response. The Commissioner's decision is that, although it has complied with section 17(1) (refusal of request) of the FOIA in stating which exemption is to be relied upon, by failing to complete its public interest test considerations within a reasonable time period the MPS has breached section 17(3). She also finds that the MPS has breached section 10(1) (time for compliance) of the FOIA in failing to provide a valid response to the request within 20 working days.
  2. The Commissioner requires the MPS to take the following steps to ensure compliance with the legislation:
    - issue a substantive response to the complainant's request, either disclosing the requested information or issuing a refusal notice which includes the outcome of any public interest considerations.
  3. The MPS 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

---

4. On 14 September 2017 the complainant made the following information request:

*"On 4th February 2013 the Metropolitan Police received a public complaint from the family of [name removed], a young boy who had died in the 1970s. An undercover officer working for the National Public Order Intelligence Unit (NPOIU) had stolen this child's identity for use in his undercover persona.*

*This matter was referred to the IPCC [Independent Police Complaints Commission]. The matter was returned to the Met and was the subject of a 'local investigation'.*

*Can you release the final report, or as much of it as is possible without breaching confidentiality and your duty of care to the officer?"*

5. Having acknowledged the request, on 12 October 2017 the MPS wrote to advise the complainant that it needed an extension to the 20 working day time limit in which to consider the public interest in disclosure. It advised him that it was considering the exemption at section 30 of the FOIA, and gave a revised response date of 9 November 2017.
6. On 10 November 2017 the complainant chased a response and was given an extended response date of 7 December 2017. Having received no response the complainant wrote to the MPS again on 8 December 2017.
7. The MPS did not respond to his correspondence so he wrote again on 11 January 2018. On the same day he was given a fuller explanation as to the reasons for the delay and given a revised response date of 31 January 2018. His dissatisfaction was also considered as a request for an internal review into the handling of his request which was subsequently provided to him on 16 January 2018.

## Scope of the case

---

8. The complainant contacted the Commissioner on 2 February 2018 to complain about the lack of response to his information request.
9. On 20 February 2018 the Commissioner wrote to the MPS. She asked it to respond to the request within 10 working days and advised the complainant accordingly.

10. On 6 March 2018 the complainant confirmed that he had still not received a response. The Commissioner contacted the MPS again and was updated regarding the situation. It advised that it had again contacted the complainant and that a response should be provided no later than 16 March 2018. To date a substantive response remains outstanding.
11. The Commissioner will consider whether the MPS has responded to the request of 14 September 2017 in line with the provisions of the FOIA.

## **Reasons for decision**

---

### **Section 10 - time for compliance**

### **Section 17 – refusal of request**

12. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
13. Section 17(1) of the FOIA states that where a public authority refuses a request for information it must provide the applicant with a refusal notice explaining the exemption(s) relied upon. This notice must be provided within the timescale set out in section 10(1), ie 20 working days.
14. Section 17(3) of the FOIA states that, if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is "*reasonable in the circumstances*", and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosure.
15. Although FOIA does not define what a reasonable time is, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days - which means that the total time spent dealing with the request should not exceed 40 working days. Any extension beyond 40 working days would require there to be exceptional circumstances fully justified by the public authority.
16. The Commissioner accepts that there are extenuating circumstances in this case and understands that the requested report has had to be carefully considered and that this has incurred delays. However, even in providing its latest response date to the complainant it has stated: "*At the time of writing, I anticipate that a substantive response will be provided to you by Friday 16<sup>th</sup> March 2018 or shortly thereafter*", which

still leaves an open-ended date. Furthermore, the request was made six months ago so the Commissioner considers that the MPS has had plenty of opportunity to consider its position.

17. In the circumstances of this case, the total time taken by the MPS has significantly exceeded 40 working days. As the Commissioner does not consider this to be a reasonable timescale, despite the extenuating circumstances, she finds that the MPS has not complied with section 17(3) FOIA.
18. The Commissioner also finds that the MPS has breached section 10(1) of the FOIA.
19. The MPS is required to conclude its consideration of the public interest test and either disclose the requested information or explain why the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

### **Other matters**

---

20. As well as finding above that the MPS is in breach of the FOIA, the Commissioner has also made a record of the delay in this case. This may form evidence in future enforcement action against the MPS should evidence from other cases suggest that there are systemic issues within the MPS that are causing delays.

## Right of appeal

---

21. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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 .....**

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**