

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2019

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 police officers deployed to police UK ports for the 2018 football world cup from the Metropolitan Police Service (the "MPS"). The MPS initially refused to confirm or deny holding any information citing sections 40(5) (personal information), 31(3) (law enforcement) and 24(2) (national security) of the FOIA. During the Commissioner's investigation the MPS revised its position. It disclosed some information, advised some was not held and refused the remainder, citing section 31(1). The complainant disagreed with the application of 31(1) in respect of part (1) of his request.
2. The Commissioner's decision is that section 31(1) is not engaged. She requires the MPS to take the following steps to ensure compliance with the legislation:
 - disclose the figure requested at part (1) of the request.
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 Act and may be dealt with as a contempt of court.

Background

4. The requested information relates to policing at UK ports in respect of the football world cup of 2018 which was held in Russia.

5. According to the National Police Chiefs' Council's website¹:

"In the UK, 1800 fans subject to football banning orders surrendered their passports as part of the police operation to prevent known troublemakers travelling to the competition. A nationally coordinated policing operation at ports is also in place with experienced officers deployed to identify and prevent high-risk individuals from travelling before and during the tournament. Officers will also be there to engage with genuine fans as they set off".

Request and response

6. On 18 July 2018 the complainant wrote to the MPS and requested information in the following terms:

"Please provide the following information.

1. How many officers did you deploy for the World Cup Ports Operation

2. How many man hours were collectively worked by your officers at the ports

3. How many individuals were stopped and questioned before boarding

4. How many individuals were detained and prevented from travelling

5. How many of those individuals were taken to court for football banning order proceedings

6. How many of those individuals successfully challenged proceedings

7. What was the overall cost of your Ports Operation including costs of any FBO proceedings".

7. On 31 July 2018 the MPS responded. It would neither confirm nor deny (NCND) that it held the requested information. It cited the following

¹ <https://news.npcc.police.uk/releases/uk-police-chief-leads-world-cup-team-in-england-and-russia>

exemptions of the FOIA as its basis for doing so: 40(5) (personal information), 31(3) (law enforcement) and 24(2) (national security).

8. Following an internal review, the MPS wrote to the complainant on 21 August 2018. It maintained its position.
9. During the Commissioner's investigation this position was revised. The MPS provided some information and advised that some was not held. It refused to provide the information at parts (1) and (2) of the request citing sections 31(1)(a) and (b) of the FOIA.
10. The Commissioner is aware of the withheld figure in this case.

Scope of the case

11. The complainant contacted the Commissioner on 26 October 2018 to complain about the way his request for information had been handled. He initially asked the Commissioner to consider the application of the NCND exemptions cited to the request.
12. Following the MPS's revised position, as outlined above, the Commissioner contacted the complainant again. He advised that he remained dissatisfied with the response to part (1) only. The Commissioner will consider the withholding of this information below.

Reasons for decision

Section 31 – law enforcement

13. The MPS has cited sections 31(1)(a) and (b). These state:

"Information which is not exempt information by virtue of section 30 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. Section 31 is a prejudice based exemption and is subject to the public interest test. This means that not only does the information have to prejudice one of the purposes listed, but also that it can only be withheld if the public interest in the maintenance of the exemption outweighs the public interest in disclosure.
15. In order to be engaged, the following criteria must be met:

- the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption (in this case, the prevention or detection of crime and the apprehension or prosecution of offenders);
 - the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
16. The MPS provided the following arguments to support its citing of these exemptions:

"Although under the Freedom of Information Act we cannot and do not request the motives of any applicant, we must consider that a disclosure under FOIA is a disclosure to the world. To provide information under the Act shows a willingness to provide that same information to any other person requesting it. We must therefore always consider the harm that could be caused to our law enforcement capabilities if we were to disclose information to individuals or a group of individuals with criminal intentions. Whereas we have no doubt the vast majority of applications under the Act are legitimate and do not have any ulterior motives, we must be open to the fact that FOIA requests are not a private transaction.

The deployment data would be a valuable commodity to those individuals (and/or groups) wishing to commit crime as it provides an insight into the resources and operational strength available to World Cup ports operations. If we were to disclose all of the requested data under FOIA we would be inadvertently providing details of our strength for future world cup/ports operations. A piecemeal approach to the disclosure of this valuable information could enable those with ill intention to build up a picture of the numbers of officers available for World Cup ports operations and hours collectively worked at the ports. Such a disclosure could potentially seriously inhibit the ability of the MPS to prevent and detect crime and apprehend or prosecute offenders who would be

able to use the number of officers and hours worked to deduce who may be working on the ports and when.

The requirement to exempt the information is based on concerns the MPS have in respect of any such disclosure undermining our operational capability, methodology by possibly allowing individuals to consider whether the MPS have any operational limitations and potential vulnerability. This would have a determinate impact on the ability of the MPS to conduct its role of law enforcement, which in turn place the public at greater risk of harm should a disclosure be used by those with the necessary negative intent to hinder the prevention and detection of crime”.

17. The complainant disputed that section 31 could be applied to withhold this information on the following grounds:

“The information I requested was about the past deployment of police resources not the future deployment and it is difficult to see how this could realistically help people in the future who might wish to engage in criminal activity.

This is because it will be known to such people as it is to the rest of us, that the overall resources available to the police vary over time, as do the priorities of the police depending on the circumstances at the time, as do the volume of supporters passing through ports and therefore the demands made upon those resources. Taken together, these realities mean that no meaningful inference for future levels of deployment or its likely effectiveness could be drawn from the historical information I am requesting”.

18. The first point for the Commissioner to consider is whether the arguments provided by the MPS relate to the relevant applicable interests, namely the prevention or detection of crime and the apprehension or prosecution of offenders.
19. The withheld information in this case is a figure, namely the number of officers deployed by the MPS for this operation. The MPS has argued that its provision would provide an insight into the resources and operational strength available and could reveal details for how it would police future world cup ports operations. It has also argued that its ability to prevent and detect crime and apprehend or prosecute offenders could be seriously inhibited as those intent on crime would be able to deduce who may be working on the ports and when.
20. The arguments provided by the MPS to relate to the applicable interests stated, so the first limb of the three part test outlined above is met.

21. Furthermore, the actual harm which the MPS alleges could occur if the figure was disclosed does relate, albeit tentatively, to the applicable interests in that it would reveal policing levels for a specific event.
22. The MPS also advised the Commissioner:

"The concern of releasing a figure is that it may force other forces to release a number which would identify the level of resourcing at different ports and therefore potentially expose vulnerabilities for future policing events. It would also set a precedent for future requests and potentially expose changes in resourcing which could also expose vulnerabilities".
23. As stated above, the MPS must be able to demonstrate that a causal relationship exists between the disclosure of the figure in question and the prejudice envisioned. Furthermore, this alleged prejudice must be real, actual or of substance.
24. The arguments provided in relation to future requests or requests being made to other forces for similar information do not hold much weight. Had the Commissioner received complaints about multiple requests to all forces where it was clear that a 'mosaic' approach was being attempted and that there was a genuine possibility of harm then she may have taken a different view. However, she has received one complaint, in respect of the UK's largest force, which concerns an overall deployment figure for all UK ports. The argument about setting a precedent is also of little weight as complaints are dealt with by the Commissioner on a case-by-case basis.
25. It is not clear whether the envisaged harm relates to the deficit of officers at the MPS for the relevant time period or whether it is only in respect of the volume of officers who were deployed at UK ports for the operation, although the latter seems more likely.
26. It is initially noted that this request only concerns the MPS rather than all forces who may have provided officers, so the total figure of deployed officers from the whole police service is not under consideration. It is therefore unclear how disclosure of the MPS's figure in isolation will be harmful as this still does not reveal how many officers were on duty at any UK port at any given time. Furthermore, the figure would not indicate whether they were all on duty together, working in shift patterns or deployed over several days.
27. In the Commissioner's view, any possible weakness at any particular port would not be revealed by the disclosure of the figure requested and it would be of little use to those with criminal intent as it is only an indication of the additional officers provided by one force without any further detail, at a particular point in time. It is not known – or under consideration here – how many officers were provided by the other UK

forces which could augment the total considerably. (There are 43 police forces in England and Wales, along with the separate police forces of Scotland and Northern Ireland.)

28. The Commissioner also notes that the request concerns policing specifically in respect of the football world cup, an event which only occurs every four years. It can be hosted anywhere in the world and is unlikely to be in Europe for the foreseeable future having just being held there – the next venue in 2022 is Qatar. Therefore, the very earliest that the MPS may realistically be called upon to provide police officers for port duties in respect of the football world cup would be 2026 – and it is unlikely that a European country will be selected to host at that time, in which case the earliest date would be 2030. Furthermore, a determining factor in the level of police presence is intelligence received about specific threats, and this is something which will clearly be subject to change over time.
29. The Commissioner does not agree that disclosure of a figure for 2018 could realistically be used to gauge the likely levels of policing necessary for the next European-based world cup. Even if it were possible, the figure for the MPS in isolation does not reveal how many officers were deployed at a particular port at any given time.
30. The Commissioner does not consider that the arguments provided in this case demonstrate that the harm in disclosure of the requested figure is real, actual or of substance. She finds them to be largely generic and also dependent on other variables such as multiple or future requests. She therefore concludes that this exemption is not engaged.
31. Since her finding is that the exemption was not engaged, it has not been necessary to go on to consider the balance of the public interest.

Right of appeal

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

33. 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.
34. 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
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