

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 January 2020

**Public Authority:** Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

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1. The complainant has requested video footage from the Metropolitan Police Service (the "MPS") of an incident it attended. The MPS refused to provide this, citing the exemptions at sections 30 (investigations and proceedings) and 40 (personal information) of the FOIA.
2. The Commissioner's decision is that section 40 is engaged. No steps are required.

### Background

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3. Some information about the incident referred to in the request can be found on the BBC website<sup>1</sup>. According to that article:

*"In a statement, the Metropolitan Police said:*

*"At 00:24 on Friday 21 June, police responded to a call from a local resident in the SE5 area of Camberwell.*

*"The caller was concerned for the welfare of a female neighbour.*

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<sup>1</sup> <https://www.bbc.co.uk/news/uk-politics-48721211>

*"Police attended and spoke to all occupants of the address, who were all safe and well. There were no offences or concerns apparent to the officers and there was no cause for police action"*.

4. Although invited to do so, the Commissioner has not viewed the video footage which is held by the MPS as she did not consider it necessary to do so in order to reach her conclusion. The MPS has confirmed to the Commissioner that it has recordings of 6 body worn videos, the longest of which is just over 4 minutes. She has been provided with the following information about the content:

*"The general footage shows six police officers attending the address in question. It is quiet on the arrival of police. No screaming, shouting or disturbance can be heard. The officers checked the premises then left. The outcome of police attendance was no cause for police action"*.

## **Request and response**

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5. On 24 June 2019 the complainant wrote to the MPS and requested the following information in relation to an incident it had attended in the early hours of 21 June 2019:

*"Please disclose all police car dash cam and body cam footage from the attendance of the Metropolitan Police to the home of Carrie Symonds, due to the domestic disturbance between Ms Symonds and Boris Johnson, in the early hours of the morning of Friday 21st June.*

*In this case, both parties are public figures, and do not have the same expectation of privacy as an ordinary member of the public, as per section 40 of FOIA. As such, the release of this material would be fair, lawful, and in the legitimate interest of the public. It is necessary to release this footage, under the meaning of section 40, to assess how Mr Johnson engaged with police as a consequence of their attending the property, as dealing with stressful situations is a crucial determinant of fitness for highest office. Given that Mr Johnson wishes to be our Prime Minister, this has the strongest public interest.*

*While this material is covered by section 30 of FOIA as it is material collected in the line of an investigation, both parties were found to be safe and well, there is no ongoing investigation (as per section 31), and this material is not relevant for any other police matter.*

*Moreover, release of this information would not have any impact on wider police operations. Similar footage is often released for police television shows to illustrate how police forces deal with potential domestic violence incidents, and so there would be no compromising of police tactics or anything similar.*

*Moreover, as stated above, there is a very strong public interest in seeing how Mr Johnson dealt with this situation, to assess his fitness for highest office. As such, the public interest in disclosure outweighs that in withholding the information.*

*As such, this information should be released in full”.*

6. On 8 August 2019 the MPS responded. It refused to provide the requested information citing sections 30 and 40 of the FOIA as its basis for doing so.
7. The complainant requested an internal review on 18 August 2019.
8. The MPS provided an internal review on 23 September 2019 in which it maintained its position.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 24 September 2019 to complain about the way his request for information had been handled.
10. The complainant asked the Commissioner to consider the application of both exemptions to the request. His grounds in respect of each exemption were as follows.
11. In respect of section 40, he considered that neither of the parties could have a reasonable expectation of privacy as:

*“It is not clear that this information concerns Mr Johnson's private life. As the likely next prime minister at that time had been involved in a domestic incident of such significance that it alerts neighbours, the activity ceases to be private by definition.*

*Moreover, the line between a PM's private life and public life is not the same as that for a normal member of the public. If the PM acts poorly in his private life, this reflects on his character, and this becomes a public concern, given his role making life and death decisions about the future of our country.*

*The understanding and trusting the character of the PM is thus strongly in the public interest, not just of interest to the public, and*

*the disclosure of this information, documenting his reaction to the incident, would give the public this crucial information in a way his media appearances do not. This would allow the public to vote at general elections with full information. This is both necessary and proportionate.*

*On a side note, officer identity could be easily redacted from this video. While Ms Symonds, as effectively first lady, likewise does not seem to have the same reasonable expectation of privacy, if the ICO ruled Mr Johnson does while she does not, footage including her actions could be redacted”.*

12. In respect of the citing of section 30 he argued:

*“On section 30, the department sets out reasons why the exemption might apply, but does not give specific harms that would come from the disclosure of this specific information. The public interest in understanding Mr Johnson's character, I would argue, overcomes any general concerns about interrupting police process, especially given no charges have been filed in this case”.*

13. The Commissioner will consider the application of exemptions below.

## **Reasons for decision**

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### **Section 40 – personal information**

14. 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 one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

15. In this case, the relevant condition is contained in section 40(3A)(a)<sup>2</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (‘the DP principles’), as set out in Article 5 of the General Data Protection Regulation (‘GDPR’).

16. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection

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<sup>2</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.

17. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

*Is the information personal data?*

18. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual".*

19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
20. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
21. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
22. Clearly the two parties who are the subject of the request are both named and the complainant is seeking information about them personally. Therefore, the Commissioner is satisfied that the information withheld by virtue of section 40(2) constitutes information that falls within the definition of 'personal data' in section 3(2) of the DPA. In other words, she is satisfied that it relates to living individuals who may be identified from that data and that it constitutes their personal data.
23. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
24. The most relevant DP principle in this case is principle (a).

*Would disclosure contravene principle (a)?*

25. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

26. In the case of an 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 lawful, fair and transparent.
27. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.
28. In addition, if the requested data is criminal offence data, in order for disclosure to be lawful and compliant with principle (a), it must also meet the requirements of Article 10 of the GDPR.

*Is the information criminal offence data?*

29. Although the MPS did not itself refer to criminal offence data, the Commissioner considers it appropriate to do so on this occasion.
30. Information relating to criminal convictions and offences is given special status in the GDPR.
31. Article 10 of the GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA personal data relating to criminal convictions and offences includes personal data relating to:
  - (a) *The alleged commission of offences by the data subject; or*
  - (b) *Proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings including sentencing.*
32. Therefore, information which is used to establish whether or not a criminal offence has been committed will be 'criminal offence data'.
33. Having considered the wording of the request, and a description of the withheld information, the Commissioner finds that the requested information does consist of criminal offence data. She has reached this conclusion on the basis that the police were called out in response to a report of the alleged commission of an offence by the data subject. Albeit no such offence was evident, and no further police action was taken in this case, nevertheless the police attended in a formal capacity to consider whether any action was warranted. Had any criminal offence been evident, then the data captured by the videos would have been used as part of any subsequent investigation. Therefore, although the videos do not contain any evidence of an offence, the reason for their use was to capture data to assist with such a determination were it deemed necessary. It is therefore clear to the Commissioner that the content of the videos is to establish, and evidence, whether an offence has been committed by the party concerned.

34. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.
35. The Commissioner considers that the only Schedule 1 conditions that could be relevant to a disclosure under the FOIA are the conditions at Part 3 paragraph 29 (consent from the data subject) or Part 3 paragraph 32 (data made manifestly public by the data subject).
36. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to the FOIA request or that they have deliberately made this data public.
37. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data would therefore breach principle (a) and so this information is exempt under section 40(2) of the FOIA.

## Right of appeal

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38. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

39. 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.
40. 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**  
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**SK9 5AF**