

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2020

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 an alleged investigation from the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny holding any information, citing the exemptions at sections 30(3) (Investigations and proceedings) and 40(5) (Personal information) of the FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 40(5) to neither confirm nor deny holding the requested information. No steps are required.

Request and response

3. On 26 February 2020, the complainant wrote to the MPS and requested information in the following terms:
 - *Please disclose the name given to the investigation into claims of sexual assaults by [name redacted] in London and the UK;*
 - *Please disclose the name of the SIO;*
 - *Please disclose all known costs of the investigation, including expenses incurred by the SIO in 2019;*
 - *Please disclose how many officers are currently working on the investigation and their ranks.*

4. On 6 March 2020, the MPS responded. It refused to confirm or deny whether the requested information was held, citing sections 30 and 40 of the FOIA.
5. The complainant requested an internal review on 11 March 2020.
6. The MPS provided an internal review on 6 April 2020. It maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 6 April 2020, to complain about the way his request for information had been handled.
8. The complainant asked the Commissioner to consider the application of the exemptions to the request. The Commissioner will consider these below.

Reasons for decision

Section 40 – personal information

9. Section 40(5B)(a)(i) of the FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the General Data Protection Regulation EU2016/679 ('GDPR') to provide that confirmation or denial.
10. Therefore, for the MPS to be entitled to rely on section 40(5B) of the FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, the following two criteria must be met:
 - confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - providing this confirmation or denial would contravene one of the data protection principles.

Would confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?

11. Section 3(2) of the Data Protection Act 2018 ('the DPA') defines personal data as:-

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

12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. 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.
14. Clearly the request concerns a named, living individual and therefore confirmation or denial as to whether or not the requested information is held would reveal something about that person.
15. For these reasons, the Commissioner is satisfied that if the MPS confirmed whether or not it held the requested information this would result in the disclosure of a third party's personal data. The first criterion set out above is therefore met.
16. The MPS has also argued that confirming or denying whether it holds the requested information would result in the disclosure of information relating to criminal convictions and offences of a third party.
17. Information relating to criminal convictions and offences is given special status in the GDPR. 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 of the disposal of such proceedings including sentencing.
18. The request clearly relates to an alleged criminal investigation into a named party. Whilst the complainant is of the opinion that the MPS's response to his request is "*totally untenable*" as it "*has previously confirmed it has received allegations of sexual assaults by [name removed] against several complainants*", the MPS denies that this is the case. Whilst the complainant advises that information already in the public domain, via the media, indicates that the named party is under investigation, the MPS advised him in its internal review that:

"There is no official confirmation or denial by the MPS of an investigation into the matter described in your request. Of relevance to this point, is the MPS Media Policy which states:

*We should protect any personal and confidential information we hold, including information about victims, witnesses, and suspects. **We should release only that which is approved at the appropriate level as being necessary for a bona-fide***

policing purpose, including the maintenance of public confidence.

...

In summary, disclosure of information related to specific investigations is done on a case by case basis. The [MPS] will only put information into the public domain relating to investigations at a time when it considers that disclosure will not be prejudicial to investigations or cause harm to the interests of individuals.

Additionally, if held, the MPS has to be mindful of the impact of disclosure of personal information of all individuals involved not just the subject of your request”.

19. It added to the Commissioner:

“It is also pertinent to note that newspaper articles do not constitute an ‘official’ disclosure and are not necessarily accurate”.

20. The MPS has made no formal statement to the media about the named party. Therefore, it is clear to the Commissioner that confirming or denying whether the requested information is held would result in the disclosure of information relating to criminal convictions and offences of a named third party which has not already been formally placed in the public domain by the MPS.

21. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming or denying whether the information is held in response to a FOI request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA can be met.

22. The Commissioner therefore asked the MPS to consider each of these conditions and whether any of them could be relied on to confirm or deny whether it held criminal offence data falling within the scope of this request. The MPS has informed her that none of the conditions can be met. Having regard for the restrictive nature of the Schedule 1, Parts 1 to 3 conditions, the Commissioner considers this to be entirely plausible.

23. As none of the conditions required for processing criminal offence data are satisfied, there can be no legal basis for confirming whether or not the requested information is held; providing such confirmation or denial would breach data principle (a) and therefore the second criterion of the test set out above is met. It follows that the MPS is entitled to refuse to confirm or deny whether it holds the requested information on the basis of section 40(5)(B) of the FOIA.

24. As she has concluded that section 40(5) of the FOIA is properly engaged, the Commissioner has not gone on to consider the citing of section 30(3).

Right of appeal

25. 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

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

26. 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.
27. 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
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