

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2021

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 from the Metropolitan Police Service (the "MPS") information about a case in which a decision was made to take no further action. The MPS refused to disclose the requested information, citing section 30(1)(a)(i) (Investigations and proceedings) of the FOIA. During the Commissioner's investigation, the MPS revised its position, adding reliance on sections 40(2) (Personal information), 38(1)(a) (Health and safety), 27(1)(a)(b) (International relations) and 42(1) (Legal professional privilege) of the FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 30(1)(a)(i) of the FOIA to withhold the information. No steps are required.

Background

3. The MPS has confirmed these following 'press lines' in respect of the subject matter in this case:

"IF ASKED: *Can confirm that the Metropolitan Police Service (MPS) received an allegation of non-recent trafficking for sexual exploitation. The MPS reviewed the available evidence and the decision was made that this will not progress to a full investigation. As such, the matter will now be closed".*

And:

"IF ASKED: *As we have previously said, the Metropolitan Police Service (MPS) did receive an allegation of non-recent trafficking for sexual exploitation. Having closely examined the available evidence, the decision was made that this would not progress to a full investigation. As such, the matter was closed. We acknowledge the considerable interest and concern around this case and have revisited that decision making and believe it remains entirely appropriate. Therefore no further action is being taken. The Met will always take seriously any allegation concerning sexual exploitation".*

4. There is a lot of information in the media about this case. Some examples can be found via these links^{1,2,3}, which were provided by the MPS.
5. Further press lines, issued more recently, were provided to the complainant in an effort to informally resolve the complaint. These are referred to in the analysis below.
6. The delays in this case are largely due to Covid-19. This is because the Commissioner was required to travel and view the information *in situ* which was not possible during the associated travel restrictions.
7. The withheld information consists of two documents. The first, entitled "*NPCC decision (along with an operational name)*", was undated but it is understood to have originated in November 2016 and that the 'NPCC' reference reflects the seniority of the author. It consists of two and a quarter sides of A4 sized paper. The second document, entitled "*Review of NPCC decision (along with an operational name)*", again reflects the seniority of the author. It was written on the 21 August 2019 and consists of one side of A4 paper.
8. Jeffrey Epstein, the subject of the request, died on 10 August 2019.

¹ <https://www.telegraph.co.uk/news/2019/08/26/met-police-reveal-epsteins-london-links-revisited-insist-investigation/>

² <https://news.sky.com/story/whos-who-in-the-jeffrey-epstein-scandal-11796254>

³ <https://www.townandcountrymag.com/society/money-and-power/a28352055/jeffrey-epstein-criminal-case-facts/>

Request and response

9. On 24 September 2019 the complainant wrote to the MPS and requested information in the following terms:

"I write with a request for information under the FOIA as follows:

- *Please disclose the name of the officer/s who investigated / reviewed an allegation of non-recent trafficking for sexual exploitation relating to Jeffrey Epstein;*
- *Please disclose a copy of the recorded decision-making in relation to the allegation;*
- *Please disclose who 'revisited' the decision making (the Met acknowledged the decision making was revisited in a press statement in August);*
- *Please provide a copy of all information held showing the fresh decision not to take any further action".*

10. On 8 October 2019, the MPS responded. It provided some information within the scope of the request (the names at the first and third bullet points) but refused to provide the remainder, citing section 30(1)(a)(i) (Investigations and proceedings) of the FOIA as its basis for doing so.

11. On 9 October 2019, the complainant requested an internal review.

12. The MPS provided an internal review on 4 November 2019 in which it maintained its position.

13. During the Commissioner's investigation, the MPS revised its position adding reliance on sections 40(2) (Personal information), 38(1)(a) (Health and safety), 27(1)(a)(b) (International relations) and 42(1) (Legal professional privilege) of the FOIA.

14. The Commissioner has viewed the withheld information.

Scope of the case

15. The complainant contacted the Commissioner on 4 November 2019, to complain about the way his request for information had been handled. His grounds of complaint were as follows:

"This request is related to decision by the MPS not to pursue an investigation into serious claims of sex trafficking. A recent Channel 4 Dispatches series prompted serious questions over why the MPS failed to investigate. [Name removed], a former head of royal protection, said it was in the public interest to investigate the allegations. The MPS has refused to investigate serious crime, yet

has refused to release the recorded reasons why. As has been shown from previous failures to investigate serious crime, victims have to fight for years, sometimes decades to obtain justice. It follows there is a pressing and compelling public interest in understanding why the MPS chose not to investigate”.

16. During this investigation, following the MPS’s citing of further exemptions, the Commissioner contacted the complainant again to ask whether he wished to make any further representations. These were provided and will be considered as part of the analysis below.
17. Having viewed the information, and in an attempt to informally resolve the case, the Commissioner asked the MPS to disclose some press lines to the complainant which further evidenced its position in this case. The press lines post-date the request, having been issued in June 2021.
18. With the agreement of the MPS, the Commissioner disclosed these press lines to the complainant on 25 August 2021 for his consideration, and asked whether they satisfied his request. She also indicated that the press lines reflected the withheld information with regard to Jeffrey Epstein and that her preliminary view was that the actual documentation was not suitable for further disclosure.
19. The complainant advised that he considered the exemptions had been cited in a ‘blanket fashion’ and he asked for a decision notice so that he could consider an appeal to the First-tier Tribunal.
20. The Commissioner will consider the citing of exemptions in respect of the second and fourth bullet points of the request below.

Section 30 – investigations and proceedings

21. The MPS cited section 30(1)(a)(i) to withhold the information at parts two and four of the request.
22. Section 30(1)(a) of the FOIA states:

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of:

 - (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-*
 - (i) whether a person should be charged with an offence”.*
23. The phrase “*at any time*” means that information can be exempt under section 30(1) if it relates to an ongoing, closed or abandoned investigation.

Is the exemption engaged?

24. Section 30 is a 'class based' exemption and it is not necessary to show that disclosure would, or would be likely to, result in any prejudice, for it to be engaged. It is enough that the information sought by the request falls within the particular class of information described by the exemption.
25. In order for the exemption to be engaged, any information must be held for a specific or particular investigation and not for investigations in general.
26. The Commissioner's guidance on section 30⁴ describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the guidance says:

"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged. Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it. It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence..."
27. The withheld information in this case relates to an allegation of a criminal offence which was the subject of a police investigation. As a police force, the MPS has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. The Commissioner is therefore satisfied that it has the power to carry out investigations of the type described in section 30(1)(a) of the FOIA and that the information was held in connection with a specific investigation. She is therefore satisfied that the exemption provided by section 30(1)(a) is engaged.

Public interest test

28. Section 30(1)(a) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

⁴ <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

Public interest arguments in favour of disclosure

29. When requesting an internal review, the complainant argued:

"There is a compelling public interest in transparency surrounding this case. It relates to claims that a girl was trafficked to the UK by Jeffrey Epstein and forced to have sexual relations.

The MPS decided there would not be a full investigation and a later review agreed.

There is a compelling public interest in disclosure of the requested information. It is capable of showing why the MPS decided not to launch a full investigation into the very serious claims it had been passed and why a review agreed. This case concerns someone who is now dead and cannot now be brought justice [sic] for his alleged crimes. The MPS had an opportunity to fully investigate this matter and potentially bring proceedings against Epstein, so it stands to reason that there is a compelling public interest in disclosing why a decision was made not to launch a full investigation. Transparency will improve public confidence in the MPS - something which has been seriously dented by the revelations surrounding failings in Operation Midland. On that occasion, the MPS was forced to disclose its decision-making. It has an opportunity to explain why such serious matters as sex trafficking by an extremely powerful individual were not fully investigated".

30. In his further submission to the Commissioner, in respect of section 30 he added:

"The Met has considered case options and reached its decision away from external interference and scrutiny - that is exactly why I have now requested the information: to understand why the Met decided not to investigate allegations of sexual trafficking in London. The victim in the case has said she can't understand why the case was closed and has alleged a cover-up. It follows that there is a compelling public interest in the Met disclosing its decision-making in this specific case.

The Met's argument that this could mean decision [sic] could routinely be disclosed which could have an inhibiting effect on witness participation and loss of frankness and candour and lead to poorer decision-making must be discounted. As the ICO states, each case must be dealt with on its specific merits. This request is not concerned about opening up all MPS decisions - but to understand why in this specific case it did not investigate allegations of sexual trafficking in London. The Met's decisions have caused widespread anger and distrust in the police - the victim cannot understand why they didn't investigate and senior public

figures, including a former head of royalty protection, have questioned why the Met decided not to investigate this case. No coherent response has been provided by the Met, which has spent millions of pounds of public money investigating an alleged crime over which it has no jurisdiction whatsoever - the disappearance in Portugal of Madeleine McCann. The Met claims that its scoping exercise identified that related crimes may have been committed overseas and that it wasn't the best authority to pursue Epstein. This makes no sense whatsoever, when it has pursued numerous cases overseas".

31. The MPS recognised that:

"... FOIA requires public authorities to be held accountable and transparent for their actions and thus the public have a right to know how that public authority conducts itself in their business. Disclosure would demonstrate openness and transparency with regards to the scoping exercise".

32. The MPS also argued:

"In consideration of the high profile nature of any non-historic sexual trafficking allegations, the MPS recognises there is likely to be an increased public interest in obtaining information held pertinent to these types of investigations. Disclosure would therefore have the effect of enhancing transparency and accountability, which in turn would enhance public confidence regarding decisions made by the MPS. It would also increase public understanding of the decision-making process involved and reason why a full criminal investigation was not launched by the MPS".

Public interest arguments in favour of maintaining the exemption

33. In its submission to the Commissioner, the MPS argued:

"The MPS believes there is strong public interest in safeguarding the decision making process. The MPS as a law enforcement agency should be able to consider case options and reach decision away from external interference and scrutiny. The expectation that decisions could routinely be disclosed could have an inhibiting effect on witness participation in future investigation and the loss of that frankness and candour could damage the quality of information and deliberation, and lead to poorer decision-making.

It is imperative the MPS maintain confidentiality between communications with the CPS [Crown Prosecution Service] as well as other public bodies as it is an essential part of the process. It is important for officials to be able to freely justify and maintain their thought process when making decisions on criminal cases without

the fear of the routes leading to those decisions later being disclosed in the public domain. It is also pertinent to note that to release case information will potentially dissuade witnesses in assisting in future investigations. Witnesses are a vital part of the prosecution process and it is crucial they are able to provide information / statements without the fear that one day they may be placed in the public domain”.

34. Although the Commissioner generally accepts the importance of confidentiality between police forces and the CPS, on this occasion she has afforded these arguments little weight. This is because the reason for not proceeding with the investigation has been disclosed by the MPS by way of press statements, for example:

“... the MPS had received an allegation of non-recent trafficking for sexual exploitation against a US national, Jeffrey Epstein, and a British woman in 2015 relating to events outside of the UK and an allegation of trafficking to central London in March 2001.

Officers assessed the available evidence, interviewed the complainant and obtained early investigative advice from the Crown Prosecution Service. However, following the legal advice, it was clear that any investigation into human trafficking would be largely focused on activities and relationships outside the UK.

Officers therefore concluded that the MPS was not the appropriate authority to conduct enquiries in these circumstances and, in November 2016, a decision was made that this matter would not proceed to a full criminal investigation.

In August 2019, following the death of Jeffrey Epstein, officers reviewed the decision making from 2016 and concluded that the position should remain unchanged”.

35. The Commissioner can confirm that this accurately reflects the withheld information which refers only to jurisdiction issues with regards to any allegations about Epstein.

36. The MPS has further argued:

“Individuals would be less likely to come forward, or co-operate with the police if they believe information they provide to the police will be disclosed in circumstances outside of the criminal justice process. For this reason, I propose disclosure of the recorded decision-making and information held concerning this decision could restrict the flow of information to the MPS in future, as various potential sources of information may be discouraged to come forward if they anticipate the information they provide could later

be disclosed in response to requests made under the Act. Sexual trafficking / offences as a crime is largely under reported. Disclosure could further dissuade victims of these offences to come forward”.

37. Whilst she recognises the general arguments and rationale provided here, the Commissioner has also afforded little weight to these on this occasion. This is because the case remains of a particularly high profile and there is already much information in the media which reveals the reasoning for the decisions taken, which weakens the arguments for withholding the information in this particular instance. There is no evidence to suggest that the formal press statements have had such a detrimental effect, and statements such as these may also mean that further victims may come forward.

38. The MPS also told the Commissioner:

“It is also pertinent to note that even when investigations and proceedings appear to have been concluded or closed, there is often a realistic possibility of an investigation being reopened in order to investigate new lines of enquiry or review existing evidence. The scope of an investigation being broadened or narrowed but more importantly in this case new investigations being carried out that relate to, or overlap with earlier enquiries. For example due to the media attention currently surrounding high profile figures there has been a renewed focus on Mr Epstein’s friends and associates which could potentially instigate further criminal and / or civil investigations against these individuals therefore we need to be careful of the potential harm any disclosure under the Act could do.

... It has been well documented that American and French police continue their investigations. These ongoing investigations could further link or overlap the pre-investigation (scoping exercise) carried out by the MPS. Numerous women have made allegations against Mr Epstein and his associates, which may result in further victims coming forward. Therefore, the public interest would be in maintaining the exemption as the pre-investigation could be re-opened in light of current revelations and further victims coming forward.

If the MPS were to disclose information, which could later adversely affect one of these investigations, it may have a negative impact on the co-operative relationship between us and other agencies in the future, as there may be concern that confidentiality would not be maintained by the MPS. This would have an adverse impact on discussions around investigations in the future, which would not be in the public interest”.

Balance of the public interest test

39. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in the MPS disclosing the requested information. She has also considered whether disclosure would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.
40. The purpose of section 30 is to preserve the ability of relevant public authorities to carry out effective investigations. Key to the balance of the public interest in a case where this exemption is found to be engaged is whether disclosure could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively, and in turn, increase the risk of harm to members of the public from offenders.
41. Set against this, the Commissioner recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. The FOIA is a means of helping to meet that public interest, as confidence will be increased by allowing scrutiny of how they discharge their functions.
42. The Commissioner also recognises the public interest in transparency and accountability with regard to the conduct of high profile figures who are subject to serious allegations, and in the public being able to reach an informed view as to whether they have been investigated appropriately by the police. The information under consideration here relates to the alleged commission of a particularly serious trafficking offence by a wealthy person who regularly featured in the media, and also had influential friends and acquaintances
43. However, the alleged human trafficking offence did not take place in the UK and the legal advice provided drew attention to an issue of jurisdiction. This is why the case was not pursued at the time and why the review, undertaken after Epstein's death, did not affect the MPS's position at the time. As per the press statement above: "*the MPS was not the appropriate authority to conduct enquiries in these circumstances*". However, that is not to say that the situation may not change in the future.
44. The withheld information shows why the MPS reached the conclusions that it announced, and its reasons are now largely in the public domain. The Commissioner considers that what has been disclosed is sufficient to satisfy the public curiosity over the case, and that full disclosure of the information itself has the potential to harm the ability of the police to carry out any effective future investigations which may ensue. As stated

in its submissions above, whilst it is no longer possible to investigate Epstein, this does not mean that the requested information is no longer relevant - it may be necessary for any future, related investigations. This goes to the heart of what the exemption at section 30 is designed to protect.

45. The Commissioner has also looked at the significance of the information. It relates to both the subject of the investigation (and any other named parties) and what it reveals about the steps taken by the MPS in respect of the case. If the information revealed some faults with the decision made – that it was demonstrably flawed or inadequate - this would increase the weight of the public interest in disclosure. However, the Commissioner has seen no evidence that was the case here.
46. Taking all the above into account, and having given due consideration to the arguments put forward by both parties, whilst the Commissioner accepts that disclosing the withheld information would be likely to promote transparency, she considers that the public interest in disclosure is outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined. That no criminal offence was pursued in respect of Epstein does not mean that the information may not be of use to future investigations.
47. The Commissioner is therefore satisfied that the MPS was entitled to rely on section 30(1)(a) of the FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
48. As the Commissioner has concluded that this exemption is properly engaged in respect of all of the information she has not considered the other exemptions cited.

Right of appeal

49. 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

50. 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.

51. 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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