

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 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 information relating to Prince Andrew from the Metropolitan Police Service (the "MPS"). The MPS refused to confirm or deny holding the information, citing the exemptions at sections 24(2) (National security), 31(3) (Law enforcement), 38(2) (Health and safety) and 40(5) (Personal information) of the FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 24(2) of the FOIA to refuse the request. No steps are required.

Request and response

3. On 2 August 2020, the complainant wrote to the MPS and requested information in the following terms:

"... I would like to see the logs for the Royal Protection Officers who accompanied Prince Andrew from 1 Jan 2000 to 31 Dec 2009, giving specific locations and times".

4. On 1 September 2020 the MPS responded. It refused to confirm or deny that the requested information was held, citing the following exemptions: 24(2) (National security), 31(3) (Law enforcement), 38(2) (Health and safety) and 40(5) (Personal information) of the FOIA.
5. The complainant requested an internal review on 1 September 2020.

6. The MPS provided an internal review on 16 September 2020 in which it maintained its original position.
7. During the course of the Commissioner's investigation the MPS sought further clarification regarding the wording of the request. The complainant confirmed that:

"As I understand it, the logs record the officers on duty, including start and finish times and details of what happened. I am particularly interested in locations of where they went and therefore where Prince Andrew went".

Scope of the case

8. The complainant wrote to the Commissioner on 3 October 2020 to complain about the way his request for information had been handled. He asked the Commissioner to consider the application of exemptions to the request, citing the following grounds:

"... it is absurd to invoke a Neither Confirm Nor Deny reason when it is public knowledge, confirmed by Met officers themselves in the public press, that the activity about which I have requested information has taken place.

Secondly, the information I have requested relates to a period between 15 and 20 years ago and it would be irrational to believe that the level and nature of protection afforded to any particular person then has been frozen in time and unchanged since then.

Thirdly, because each member of the Royal family given protection by the Met has their needs assessed on a case by case basis, there can be no sensible read across from what was provided for Prince Andrew at that time to any other royal family member today. Furthermore, if the public press is to be believed, Andrew has had his protection largely or wholly withdrawn as he is now no longer a working Royal, and in any case his circumstances have changed, so there cannot even be any read across to his situation today".

9. Whilst the complainant may be of the view that the MPS has already advised the media regarding its protection of Prince Andrew, it has told the Commissioner that this is not the case:

"Although media articles may refer to the protection of Prince Andrew the MPS would never confirm if an individual has police protection or not with the exception of the Her Majesty the Queen or the Prime Minister. For avoidance of doubt, the MPS have never

confirmed or commented on police protection concerning Prince Andrew.

Media articles do not constitute as 'official' confirmation and may be wholly or partially inaccurate as these articles are "unofficial in nature" and not formally disclosed or ratified by the MPS itself".

10. The Commissioner will consider the citing of exemptions below.

Reasons for decision

Neither confirm nor deny ("NCND")

11. Section 1(1)(a) of the FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
12. The decision to use a NCND response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point, and main focus for NCND in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
13. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
14. The MPS has taken the position of neither confirming nor denying whether it holds any of the requested information in its entirety, citing sections 24(2) (National security), 31(3) (Law enforcement), 38(2) (Health and safety) and 40(5) (Personal information). The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether or not the MPS is entitled to NCND whether it holds any information of the type requested by the complainant.
15. Put simply, in this case the Commissioner must consider whether or not the MPS is entitled to NCND whether it holds any information about the protection of Prince Andrew during the time period given.
16. The Commissioner has not established whether the MPS holds any information falling within the scope of this part of the request. In her view, a decision can be made without knowledge of the existence (or otherwise) of the information. She has focussed, instead, on whether, as a general principle, the MPS's approach is in accordance with the FOIA.

17. The MPS has said that the information described in the request, if it was held, would be fully exempt from disclosure by virtue of the sections cited.

Section 24 – National security

18. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security.
19. The FOIA does not define the term national security. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman [2001] UKHL 47*, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:
- 'national security' means the security of the United Kingdom and its people;
 - the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
 - the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
 - action against a foreign state may be capable indirectly of affecting the security of the UK; and,
 - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
20. The approach that the Commissioner takes to the term 'required' as it is used in this exemption is that this means 'reasonably necessary'. In effect this means that there has to be a risk of harm to national security for the exemption to be relied upon, but there is no need for a public authority to prove that there is a specific, direct or imminent threat.
21. Therefore, section 24(2) is engaged if the exemption from the duty to confirm or deny is reasonably necessary for the purpose of safeguarding national security. The Commissioner considers that section 24(2) should be interpreted so that it is only necessary for a public authority to show that *either* a confirmation *or* a denial of whether requested information is held would be likely to harm national security.
22. In its refusal notice, the MPS explained the following in respect of its taking an NCND stance:

"This request attracts a Neither Confirm Nor Deny response, as to confirm or deny that information is held in relation to your request

may reveal whether Protection was afforded to any named individual. This could undermine the safeguarding of national security allowing those with terrorist intent to gain an operational advantage over UK Policing. It is a necessary principle of counter-terrorism to deny those who would seek to do us harm any information that might further their attack planning capability. Were the identities of those persons who receive protection placed in the public domain the risks to those individuals would increase as it would to their protection officers and the wider public”.

23. It further explained its position saying:

“... by confirming or denying any policing arrangements, which refer to the personal protection of specific individuals, would render security measures less effective. Personal protection is provided by the MPS to a number of people where it is in the national interest or where intelligence (information) suggests protection is necessary. Specific protection arrangements are applied in order to safeguard national security by ensuring that appropriate safety and security is provided to key figures such as the Queen and the Prime Minister. The disclosure of any other information would ultimately increase the risk of harm to those afforded personal protection and to the general public within that vicinity.

... Persons / groups would be able to ascertain which individuals the MPs considers to be currently at most harm, and therefore which threats or campaigns to undermine UK security the police believed to be most pertinent”.

24. It added:

“The use of NCND in a consistent manner is recognised in the ICO guidance which states “It can be important to use a neither confirm nor deny response consistently, every time a certain type of information is requested, regardless of whether the information is actually held or not. For this reason public authorities need to be alert to the possibility of receiving future requests for the same type of information when handling very specific or detailed requests”.

This consistent approach is further commented upon by the ICO who states, “There are situations where a public authority will need to use the neither confirm nor deny response consistently over a series of separate requests, regardless of whether it holds the requested information. This is to prevent refusing to confirm or deny being taken as an indication of whether information is held. Before complying with section 1(1)(a), public authorities should consider both whether any harm would arise from confirming that

information is held and whether harm would arise from stating that no information is held. Otherwise, if the same (or same type of) requests were made on several occasions, a changing response could reveal whether information was held.

... the review considers that the factors against confirmation or denial far outweigh those in favour”.

25. Whilst the complainant is of the view that it is widely known that Prince Andrew used to receive royal protection during the time frame of his request, the MPS have advised that it has never made any such formal statement. In responding to the Commissioner’s enquiries it advised that it had:

“... contacted the Royalty and Specialist Protection Command (RaSP) within the MPS to progress this appeal afresh. RaSP are responsible for protecting the Sovereign and other persons of importance including visiting dignitaries.

RaSP have confirmed, with the exception of Her Majesty the Queen and the Prime Minister, the MPS do not confirm or deny protection regarding other individuals”.

26. The Commissioner accepts that the disclosure of this information would give a genuine insight into how the police approached security of the Royal Family and, by extension, the approach taken by the police to Royal security more widely. Whilst the request may refer to events that took place 15 to 20 years ago, the level of security afforded to various ‘ranks’ of the Royal Family has never been confirmed by the MPS and to do so by way of an FOI request would place unknown information into the public domain. Such confirmation would affect not only Prince Andrew personally but, by extension, could lead to inferences being made regarding other members of the Royal Family and whether or not they also receive police protection.
27. The Commissioner accepts that this reasoning is relevant to section 24; undermining the ability of the police to provide security for members of the Royal Family would be harmful to national security. She also notes that the terrorist threat level was at the time of the request classified as “Severe” and that it is reasonable to proceed on the basis that this threat includes members of the Royal Family.
28. The next step is to consider whether there would be a causal link between disclosure of the information in question and the predicted outcome of an undermining of the ability of the police to provide effective security to members of the Royal Family. This could be, for example, by worsening or extending the threat of a terrorist attack. The Commissioner accepts that there is a reasonable likelihood of there

being individuals or groups who would seek to exploit this information to plan attacks.

29. The Commissioner recognises, for example, that terrorists can be highly motivated and may go to great lengths to gather intelligence. She acknowledges that gathering information from publicly available sources may be a strategy used by those planning terrorist activities or other criminal attacks.
30. In reaching her conclusion in this case, the Commissioner does not dispute the very real risks which exist around the protection of the Royal Family and other high profile individuals. In cases involving the section 24 exemption the Commissioner recognises that, depending on the circumstances, there may be grounds for withholding what seems harmless information. For example it may be necessary to withhold it on the basis that it may assist terrorists or lone individuals when pieced together with other information they may obtain from other sources. Furthermore, were an attack planned on a member of the Royal Family this would obviously have wider ramifications on the wider general public depending on the location of such an attack.
31. In view of the above, the Commissioner finds that it is reasonably necessary for the purpose of national security for the MPS to NCND whether or not the requested information is held. Her conclusion is, therefore, that the exemption provided by section 24(2) of the FOIA is engaged.

The public interest test

32. Having found that the exemption is engaged, the next step is to consider the balance of the public interest. In forming a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the considerable public interest inherent in the maintenance of the exemption, as well as the specific factors that apply in relation to the requested information.

Public interest test in favour of confirming or denying whether information is held

33. The MPS has recognised the following arguments in favour of confirming or denying whether any information is held:

"The MPS understands that the public have an interest in police protection, particularly where the public are likely to believe/assume those individuals have received protection. Due to the high profile nature of certain individuals, there is an increased public interest in protection. There is therefore always going to be a public interest in knowing whether certain individuals acquire protection by the MPS, in the interest of national security.

Confirmation or denial would provide an accurate picture of any MPS engagements in this area, allowing scrutiny of MPS actions and decisions within their national security remit”.

Public interest test against confirming or denying whether information is held

34. The MPS has recognised the following arguments against confirming or denying whether any information is held:

“It remains the case that the MPS has a duty to fulfil its national security functions. To confirm to [sic] deny that this information is held would increase the risk to the safety of the Royal family. The personal safety of the Royal family is inextricably linked to national security and any attacks on these individuals would be an attack on the sovereignty of the United Kingdom and its constitutional arrangements. Whilst the safety of the members of the Royal family is indeed linked to national security, it would be extremely irresponsible to continually confirm what security arrangements may or may not be in place at particular times for particular individuals within the Royal family.

Confirming or denying any policing arrangements which refer to the personal protection of any specific individual would render security measures (in general) less effective. Personal protection is provided by the MPS to a number of people where it is in the national interest or where intelligence (information) suggests protection is necessary. Specific protection arrangements are applied in order to safeguard national security by ensuring that appropriate safety and security is provided to key figures such as certain member(s) of the Royal family, certain Government ministers and foreign dignitaries. It remains the case that the disclosure of any information, even relating to this one individual, would ultimately increase the risk of harm to those afforded personal protection and to the general public within that vicinity.

To enable criminals to gain operational knowledge on which individuals acquire protection would risk harming individuals who may or may not be in receipt of police protection. Placing individuals at such risk by naming those who are (and by default are not) protected, would risk undermining current or future safety measures in place to protect the national security and infrastructure of the UK.

In allowing would-be extremists to ascertain the level of protection afforded to members of the Royal family who may or may not receive protection, we would be providing anyone with intent on committing acts of terrorism with vital intelligence as to the level of

police protection afforded to each individual(s) and therefore the level of resistance that they may encounter. It may also be possible to work out if there are likely to be occasions when that individual is subject to lower levels of protection and thus in a position of increased vulnerability. This would hinder the ability of law enforcement bodies to protect these individuals.

Confirming or denying whether information is held in regards to this individual would enable persons or groups to ascertain which individuals the MPS considers to be currently at most risk, and therefore which threats or campaigns to undermine UK security the police believe to be most pertinent. It would not be in the public interest to enable all members of the public (including those who may wish to act with criminal intent against certain individuals), to provide intelligence as to who is (and who is not) likely to receive police protection in a given situation.

Placing individual(s) at such risk by naming those who have (and by default those who have not) received police protection, would risk undermining current or future safety measures in place to protect the national security and infrastructure of the UK.

Confirmation or denial that the requested information is held would provide would-be criminals with intelligence which would assist them in planning their activities; this would occur because to consistency [sic] confirm or deny whether information is held in relation to a particular area via an FOIA disclosure would prejudice the work of the MPS to counter threats to national security as it would identify areas where police activity is or is not focused to the personal protection for individuals.

The maintenance of the MPS stance to neither confirm nor deny the existence of the requested information is therefore vital, as it enables the MPS to efficiently and effectively employ or maintain policing tactics to counter any such threat to the security of any person.

Confirming or denying the requested information would render security measures less effective by revealing levels of personal protection afforded to members of the Royal family. Such a disclosure under the Act would mean that in order to counter this prejudice the MPS would need to employ additional resources to protect individuals from harm. In this case there is a strong public interest in preserving the MPS ability to disrupt any such threats.

It has been recognised that there have been a number of attempted attacks on the Royal family over the years for example the

attempted kidnap of Princess Anne in 1974:

<https://www.independent.co.uk/life-style/royal-family/princess-anne-kidnap-gunman-1974-ian-ball-documentary-royal-family-a9645336.html>

The intrusion into Buckingham Palace by Michael Fagan in 1982:

<https://www.biography.com/news/michael-fagan-queen-elizabeth-buckingham-palace-intruder>

To most recently (21/4/21) when a woman was detained under the mental health act after police responded to a trespasser at Prince Andrew's home: <https://www.bbc.co.uk/news/uk-56831815>

Any such attack was characterised not only as a criminal offence but also as the cause of endangering an individual(s) as well as constituting matters of national security.

The Royal family is at the heart of the UK's legal and constitutional system therefore the role of RaSP extends to the protection of UK citizens directly relates to safeguarding national security.

It is recognised that members of the Royal family or those closely connected to them are likely to be subject of attention, some warranted and appreciated, other not so. The unwarranted attention can take several forms and does include harassment through excessive correspondence or stalking to the more serious threat of physical harm from the terrorist threat or individual criminal acts. There is also the threat from those individuals who are considered to be fixated, that is an individual abnormally preoccupied with certain ideas or persons and it is this group of fixated individuals who are more likely to pose a direct threat to prominent individuals and in this case, specifically of the Royal family (Prince Andrew). Therefore the perception of security as recounted in the next paragraph is best left as being 'uncertain' rather than definite.

It was also emphasised during the Summers¹ case that when it came to preventing attacks on those persons who received protection, confidence and perception were often much more important than an accurate picture of the situation, i.e. a potential attacker was very often deterred because he or she might not regard the chances of success as being particularly attractive. Any

¹<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i685/20120224%20Decision%20corrected%2013032012%20EA20110186.pdf>

such confidence that might otherwise be felt had therefore to be minimised; that could only be achieved by the attacker remaining uncertain about the levels of protection.

Disclosure of the requested information places pieces of intelligence – one that would be of use to those with terrorist or criminal intent into the public domain where it may be easily accessed and used to inform and plan terrorist or criminal activities. While it cannot be stated with absolute certainty that this will occur, the FOIA does not require such a level of certainty and the MPS's view that prejudice at the level of 'would be likely' can be strongly supported by analysis of statements issued and reporting in respect of a number of previous terrorism convictions, where it was identified that 'open source' research was undertaken by individuals to identify targets as part of the planning of their activities. The collection of 'open source' material gathering information from publicly available sources and analysing it to produce intelligence to compile profiles and identify targets is one of a number of recognised strategies employed by those planning terrorist activities".

The Commissioner's view

35. Covering first those factors in favour of confirmation or denial, the Commissioner recognises that there is a public interest in disclosure of this information owing to its subject matter. The Commissioner's view is that any information that concerns the efforts of the police to ensure the safety and security of the Royal Family will be the subject of public interest in order to improve knowledge and understanding of the work being undertaken by the police in this vital area.
36. Furthermore, any such protection would be paid for by the public purse. Accordingly, the Commissioner's view is that there is a valid public interest in confirming or denying whether any information is held in order to aid understanding of what resources the police use in protecting members of the Royal Family.
37. Turning to the public interest in favour of maintenance of the exemption, in any situation where section 24(2) is found to be engaged, the Commissioner must recognise the public interest inherent in this exemption. Safeguarding national security is a matter of the most fundamental public interest; its weight can be matched only where there are also fundamental public interests in favour of confirmation that the requested information is held.
38. In this case the public interest in the maintenance of the exemption concerns preserving the ability of the police to provide effective security for members of the Royal Family and the wider public which may be put

at risk were its security arrangements widely known. Clearly, that public interest weighs very heavily in favour of maintenance of the exemption.

39. In conclusion, the Commissioner has recognised the valid public interest in favour of disclosure given the subject matter of the requested information. She does not, however, believe that it matches the weight of the public interest in avoiding a disclosure that could be detrimental to national security. The finding of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure and so the MPS was not obliged to confirm or deny whether the requested information is held.
40. Having reached the above conclusion, it has not been necessary to go on to also consider the other exemptions cited.

Right of appeal

41. 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

42. 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.
43. 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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