

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 October 2022

**Public Authority:** Commissioner of Police of the Metropolis  
**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

---

1. The complainant has requested information concerning the costs of paying Covert Human Intelligence Sources ('CHIS') from the Metropolitan Police Service (the 'MPS').
2. The MPS would neither confirm nor deny ('NCND') whether it held any information citing the exemptions at sections 23(5) (Security matters), 24(2) (National security), 30(3) (Investigations and proceedings) and 38(2) (Health and safety) of FOIA.
3. The Commissioner's decision is that the MPS was entitled to rely on section 23(5) or, in the alternative, section 24(2) to refuse confirm nor deny whether it held the requested information. No steps are required.

### Request and response

---

4. On 8 September 2021, following an earlier request, the complainant wrote to the MPS and requested information in the following terms (numbering adjusted for clarity):  
  
"1. How much money has the force paid to Covert Human Intelligence Sources (CHIS) providing information about Extinction Rebellion since the start of 2019?"

2. How much money has the force paid to Covert Human Intelligence Sources (CHIS) providing information about Black Lives Matter (protests and organisations) since the start of 2020?

As I noted before, police forces have in the past released, under FOI rules, totals spent on Covert Human Intelligence Sources (CHIS)".

5. On 20 October 2021 the MPS responded. It refused to confirm or deny holding the requested information, citing sections 23(5) (Information supplied by, or relating to, bodies dealing with security matters), 24(2) (National security) and 30(3) (Investigations and proceedings) of FOIA.
6. The complainant requested an internal review on 27 October 2021.
7. The MPS provided an internal review on 23 November 2021 in which it revised its position, adding reliance on section 38(2) (Health and safety) of FOIA.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 7 December 2021 to complain about the way his request for information had been handled. He said:

"The Met should release the overall totals spent on CHIS in Extinction Rebellion and Black Lives Matter... This information should be the subject of informed public debate - not kept in the dark on spurious grounds. State spying on peaceful protest movements is rightly a matter of considerable public concern".

9. The Commissioner will consider the application of exemptions to the request below.

### **Reasons for decision**

---

#### **Neither confirm nor deny ("NCND")**

10. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
11. 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.

12. 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.
13. The MPS has taken the position of neither confirming nor denying whether it holds any of the requested information in its entirety, citing 23(5) (Security matters), 24(2) (National security) and 30(3) (Investigations and proceedings) and 38(2) (Health and safety) of FOIA. 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.
14. 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 use of CHIS in connection with Extinction Rebellion and/or Black Lives Matter.
15. 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 exemptions cited.
16. The MPS has confirmed that each exemption is applied to the entirety of the request.

The MPS has formally acknowledged that it uses CHIS. It has also confirmed total costs for its use of CHIS generally. However, it:

“... would never confirm nor deny whether information has been received from an individual relating to specific subject area”.

**Section 23 – Information supplied by, or relating to, bodies dealing with security matters**

**Section 24 – National security**

17. Sections 23(5) and 24(2) exclude the duty of a public authority to confirm or deny whether it holds information which, if held, would be exempt under section 23(1) or 24(1) respectively.
18. Information relating to security bodies specified in section 23(3) is exempt information by virtue of section 23(1). Information which does not fall under section 23(1) is exempt from disclosure under section 24(1), if it is required for the purpose of safeguarding national security.
19. By virtue of section 23(5) the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which

was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3).

20. By virtue of section 24(2) the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.
21. The Commissioner does not consider the exemptions at sections 23(5) and 24(2) to be mutually exclusive and he accepts that they can be relied on independently or jointly in order to conceal whether or not one or more of the security bodies has been involved in an issue which might impact on national security. However, each exemption must be applied independently on its own merits. In addition, the section 24 exemption is qualified and is therefore subject to the public interest test.
22. The test as to whether a disclosure would relate to a security body is decided on the normal standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
23. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
24. The MPS has advised that payments to CHIS would be within in areas of work specified in section 23. The Commissioner agrees that, on the balance of probabilities, information about this subject matter, if held, could be related to one or more bodies identified in section 23(3).
25. With regard to section 24(2), the Commissioner again considers that this exemption should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security.
26. In relation to the application of section 24(2) the Commissioner notes that the First Tier Tribunal (Information Rights) has indicated that only a consistent use of a NCND response on matters of national security can secure its proper purpose. Therefore, in considering whether the exemption is engaged, and the balance of the public interest, regard has to be given to the need to adopt a consistent NCND position and not simply to the consequences of confirming whether the specific requested information in this case is held or not.

27. In the context of section 24, the Commissioner accepts that withholding information in order to ensure the protection of national security can extend to ensuring that matters which are of interest to the security bodies are not revealed. Moreover, it is not simply the consequences of revealing whether such information is held in respect of a particular request that is relevant to the assessment as to whether the application of the exemption is required for the purposes of safeguarding national security, but the need to maintain a consistent approach to the application of section 24(2).
28. On this occasion the Commissioner is satisfied that complying with the requirements of section 1(1)(a) would be likely to reveal whether or not the security bodies were in any way involved in the subject matter which is the focus of this requests. The need for a public authority to adopt a position on a consistent basis is of vital importance in considering the application of an NCND exemption.
29. The Commissioner is satisfied that the MPS was entitled to rely on sections 23(5) and 24(2) in the circumstances of this case. He accepts that revealing whether or not information is held about the requested subject matter would be likely to reveal whether information is held relating to the role of the security bodies. It would also undermine national security and for that reason section 24(2) also applies because neither confirming nor denying if additional information is held is required for the purpose of safeguarding national security.
30. As noted above section 24 is a qualified exemption. However, the Commissioner considers that there is a significant public interest in protecting information required for the purposes of safeguarding national security. Therefore, in the circumstances of this case the public interest in maintaining the exemption at section 24(2) outweighs the public interest in complying with the duty imposed by section 1(1)(a).
31. As the Commissioner has found that sections 23(5) and 24(2) of FOIA are properly engaged he has not found it necessary to consider the other exemptions cited.

**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: 0203 936 8963

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)

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  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**