Reference: IC-85093-T2R1

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 April 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, from the Metropolitan Police Service (the "MPS"), information about services it has provided overseas. The MPS disclosed some information but cited 27(1)(a)(b) (International relations) and 31(1)(a)(b) (Law enforcement) of FOIA in respect of the remainder. During the Commissioner's investigation, the MPS revised its position. It said that some information was not held (which was not disputed) and that the remainder of the request was burdensome, citing section 14(1)(Vexatious requests) of FOIA.

2. The Commissioner's decision is that the MPS was entitled to rely on section 14(1) FOIA. However, it breached sections 10(1)(Time for compliance) and 1(1)(a) and (b)(General right of access) of FOIA. No steps are required.

Background

3. The MPS has explained that:

> "The International Police Assistance Board (IPAB) - process is designed to support and coordinate the provision of non-operational overseas policing assistance and assist the delivery of HMG [Her Majesty's Government]'s national security and overseas development objectives. The process applies to all UK police forces and policing organisations. The IPAB process provides advice and

guidance to project leads by providing a consultation mechanism across HMG, policing, law enforcements and other relevant partners to ensure that due consideration is given to proposals from each perspective. It also helps to de-conflict and maximise the benefits of proposed activity through coordination and collaboration. IPAB is owned and managed by the Joint International Policing Hub and referrals are endorsed by the National Police Chiefs' Council [NPCC] Lead for International Policing[1].

The Joint International Policing Hub (JIPH) - relates to overseas assistance. It is a single, internationally recognisable gateway for all requests from international and overseas agencies for assistance from the wider UK policing community[2].

Section 26 (Police Act 1996) - Prescribes the procedure to be followed when police officers are deployed to provide assistance overseas. Section 26 proforma is a Home Office form that is completed by all serving police officers/staff from police forces in England & Wales who are deployed overseas (or working remotely in the same capacity) to provide any advice or assistance to an international organisation, foreign government or police service, and require authorisation from their Police and Crime Commissioner and the Home Secretary[3].

JIPH manage and advise upon the NPCC IPABs. Before submitting a Section 26, the JIPH must be consulted on all non-operational and non-CT [counter terrorism] assistance projects to determine whether an IPAB referral is required.

IPAB [The IPAB process] is required for the delivery of any "substantial or sensitive":
A) Non-operational international policing assistance (this includes the delivery of training, sharing of best practice, monitoring, mentoring or advising) and any,
B) Non-UK operational international assistance i.e. International Policing Assistance – includes where we provide operational assistance which is not part of a UK investigation/operation i.e.

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[1]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/512537/international-police-assistance.pdf

[2]https://www.npcc.police.uk/NationalPolicing/JointInternationalPolicingHub/JIPH.aspx

[3]http://policeauthority.org/metropolitan/committees/hrremuneration/2011/0913/12/index.html

providing investigative support to overseas, joint patrols, supplementary/replacement policing missions including Humanitarian Assistance and Disaster Response (HADR) or Peace Support Operations (PSOs)".

4. Since being provided with this background information, and at a late stage of the investigation, the Commissioner had a helpful meeting with staff who deal with this area of work in the International Police Assistance Service at the Home Office. He was advised as follows:

> "The JIPH was founded in 2015. Funding for the JIPH was provided by the Stabilisation Unit (SU) via the Conflict Security & Stability Fund (CSSF) under the stewardship of the NPCC International Police Lead.
>
> The Home Office International Police Assistance Service (IPAS) replaced the JIPH in January 2022 and continues to act as the central coordination point for overseas, non-operational policing deployments, working under the authority of the National Police Chiefs' Council (NPCC) and the Home Office.
>
> IPAS is responsible for the authorisation, coordination, and oversight of non-operational international policing deployments and engagement via the Section 26 (governed by the Section 26 Police Act 1996) and International Police Assistance Brief (IPAB) processes.
>
> The International Police Assistance Board no longer exists and has been replaced by an IPAB platform, where all IPAB referrals are electronically processed, managed and stored.
>
> If an IPAB application is required, IPAS will provide the applicant with an IPAB creator account. Once the IPAB is submitted, it will be circulated to relevant stakeholders for awareness and comment. The referral is then submitted to the NPCC International lead for final consideration and endorsement of the IPAB application. Section 26 requests are completed via a Section 26 pro forma which can be obtained via the NPCC intranet or by contacting IPAS".

Request and response

5. On 24 March 2020, the complainant wrote to the MPS and requested information in the following terms:

"Under the Freedom of Information Act 2000, I would be grateful if you could provide the following:

1. Please state how many forms were submitted to the International Police Assistance Board (IPAB) or Joint International Policing Hub (JIPH) with respect to the Force's activities between 1 January 2018 – 20 March 2020?

2. For each form please state:
a. The date of its submission;
b. The names of the contracting parties in the forms;
c. Description of the services to be provided;
d. Whether the proposed activities took place.

3. Please state how many requests for authorisation under Section 26 of the Police Act 1996 were made by the Force between 1 January 2018 – 20 March 2020.

4. For each of these requests please state:

e. The date of the request;
f. The country receiving overseas and assistance
g. Description of the services to be provided;
h. Whether the proposed activities took place".

6. On 6 August 2020, the MPS responded. provided some information within the scope of the request but refused to provide the remainder. cited the following exemptions as its basis for doing so: 27(1)(a)(b) (International relations) and 31(1)(a)(b) (Law enforcement) of FOIA. also refused to confirm or deny holding any further information, citing sections 23(5) (Information supplied by, or relating to, bodies dealing with security matters) and 24(2) (National security) of FOIA.

7. The complainant requested an internal review on 6 October 2020. The MPS provided the outcome of its internal review on 29 October 2020. clarified some points raised but maintained its original position regarding the exemptions cited.

8. During the Commissioner's investigation, and having liaised further with the complainant, the MPS revised its position. In respect of parts (1) and (2) it advised that the information is not held, adding that it may be held by the JIPH as IPABs are hosted on an online platform which is

managed by JIPH[4]. In respect of parts (3) and (4), the MPS had already provided a response in respect of part (3) as well as (4) (e) and (h). In respect of parts (4) (f) and (g), it advised that it considered these to be vexatious on account of burden in compliance, and cited section 14(1) (Vexatious complaint) of FOIA.

9. The Commissioner has viewed the withheld information in this case which consists of 782 requests for authorisation under section 26 of the Police Act 1996.

Scope of the case

10. The complainant initially contacted the Commissioner on 29 January 2021 to complain about the way her request for information had been handled. The complaint was on the basis of the original exemptions cited, although no reference was made to the citing of sections 23(5) and 24(2) so the Commissioner did not consider these any further at that time.

11. Following the MPS's revised position, it wrote to the complainant on 11 November 2021. The Commissioner approached the complainant for her views on the same day.

12. On 22 February 2022, the complainant provided her revised grounds of complaint.

13. The complainant advised that she had made substantively identical requests to a number of other UK police forces and had received responses to parts (3) and (4) from several of these.

14. The complainant asked the Commissioner to consider the MPS' reliance on section 14 FOIA and its handling of the information request in the context of its general obligations. She advised:

> "a. The MPS also accepts that disclosure of the information, in the form sought by [complainant], is not the reason why the Request is considered vexatious. The "grossly oppressive burden" does not stem from the simple provision of information to [complainant], rather the burden comes from identifying whether information falls within an exemption or not.

[4] The Commissioner understands that this now falls under the remit of the Home Office

b. The MPS does not know whether or not the information it holds falling within the scope of questions 3 and 4 is exempt under any section of the FOIA. The MPS must therefore accept that it did not have a proper basis to rely upon section 27 and section 31 of FOIA in its initial response (upheld at internal review).

c. The information is sufficiently high-level and generic such that the MPS cannot itself determine whether or not an exemption is engaged. Rather, it must rely upon third parties to do so.

d. The MPS considers that in order to determine whether or not an exemption is engaged, it "**would need to be absolutely sure no harm could be caused in disclosure**" (emphasis added).

e. The MPS has not estimated the time it will require to contact the relevant third parties.

f. The MPS relies upon the burden caused to third parties when assessing whether or not the request is vexatious".

15. The complainant added that she: "does not accept that its Request can properly be described as 'vexatious' because the MPS has not shown that the burden caused to it by the Request outweighs the legitimate purpose and value of the Request itself". She said: "the primary question is the nature and extent of the burden placed on the MPS and whether that is justified by the value and purpose of the request".

16. The complainant did not dispute the revised response in respect of parts (1) and (2) of this request so this has not been further considered.

17. The Commissioner will consider timeliness and the citing of section 14(1) of FOIA to parts (3) and (4) of the request below. Further comments are included in "Other matters" at the end of this notice.

Reasons for decision

Section 1 – general right of access
Section 10 - time for compliance

18. Section 1(1) of FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.

19. Section 10(1) of FOIA provides that a public authority should comply with section 1(1) within 20 working days. Section 1(1)(a) initially requires a public authority in receipt of a request to confirm whether it holds the requested information.

20. The request was submitted on 24 March 2020 and the complainant did not receive a response, which confirmed that the MPS was in possession of relevant information, until 6 August 2020. The Commissioner therefore finds that the MPS has breached section 10(1) by failing to comply with section 1(1)(a) within the statutory time period; late disclosure of some information at this stage was a breach of section 1(1)(b) FOIA.

21. Also, in failing to confirm that some of the information was not held by the time of completion of the internal review, the MPS made further breaches of sections 10(1) and 1(1)(a) of FOIA.

Section 14 – Vexatious or repeated requests

22. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. The section is not subject to a public interest test.

23. The term 'vexatious' is not defined in FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield (Dransfield). The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

24. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and, (4) harassment or distress of and to staff.

25. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the: "… importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

26. The Commissioner has recently published revised guidance on dealing with vexatious requests[5]. All the circumstances of the case will need to

[5] https://ico.org.uk/for-organisations/dealing-with-vexatious-requests-section-14/

be considered in reaching a judgement as to whether a request is vexatious.

27. A single request taken in isolation, as in the case here, may be vexatious solely on the grounds of burden. This approach was confirmed in Cabinet Office vs Information Commissioner and Ashton [2018 UKUT] 208 (AAC)[6] in which, at paragraph 27, the Upper Tribunal agreed with the ICO that:

> "In some cases, the burden of complying with the request will be sufficient, in itself, to justify characterising that request as vexatious, and such a conclusion is not precluded if there is a clear public interest in the information requested. Rather, the public interest in the subject matter of a request is a consideration that itself needs to be balanced against the resource implications of the request, and any other relevant factors, in a holistic determination of whether a request is vexatious."

28. A public authority needs to take account of the public interest in the subject of the request. There is no predetermined cost above which any request becomes vexatious.

29. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it.

Advice and assistance

30. The Commissioner considers that, in cases such as this, where a public authority considers that compliance with a request would impose a grossly oppressive burden for tasks not covered by the section 12 cost limit, it should consider contacting the requester before claiming section 14(1), to see if they are willing to submit a less burdensome request.

31. It is noted that, prior to revising its position and citing section 14 in this case, the MPS did contact the complainant in an effort to make some headway.

32. Unfortunately, no alternative approach was considered viable on this occasion and section 14(1) was subsequently relied on.

[6]https://assets.publishing.service.gov.uk/media/5b57139a40f0b6339963e8cf/GIA_2782_2017-00.pdf

33. is further noted that, in revising its response, the MPS also suggested to the complainant that a possible way forward may be to submit a request for "subject related applications to specific countries as this would only involve in approaching the named countries and subject matters experts". To the Commissioner's knowledge, a revised approach has not been made.

Does the request have value or serious purpose?

34. The Commissioner's guidance states that "the key test is to determine whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress". In doing so, a useful starting point is to assess the value or purpose of the request.

35. When considering this, the Upper Tribunal in Dransfield asked itself, "Does the request have a value or serious purpose in terms of there being an objective public interest in the information sought?" (paragraph 38). did not go on to clarify what it considered that interest to be, but the Commissioner's view is that the public interest can encompass a wide range of values and principles relating to what is in the best interests of society, including, but not limited to:

- holding public authorities to account for their performance;
- understanding their decisions;
- transparency; and
- ensuring justice.

36. In this case, the complainant has included her views on the importance of disclosure of the information requested, such as:

> "The information requested will allow us to work with Parliamentarians, policymakers and victims of grave rights abuses to strengthen the safeguards around UK security assistance overseas, in order to protect against UK assistance contributing to torture, the death penalty and other grave abuses".

37. The Commissioner accepts that there is a genuinely serious purpose behind the request with a wider value to the public at large. He also accepts that understanding the types of training / services that the MPS has offered, and to which countries, would ensure transparency and aid the public in understanding how it has employed its resources.

Factors which may reduce the value or serious purpose

38. Where a request does have a value or serious purpose, as is the case here, there may still be factors that reduce that value. Such examples include where a matter has already been comprehensively investigated and reports regarding this are already in public domain, thereby diminishing the value in disclosure.

39. Whilst the complainant may already have received similar information from similar sources to the MPS, the services which the MPS is able to offer as the largest UK force are likely to be far more wide-ranging. The information sought here is therefore not available elsewhere.

40. The Commissioner does not consider that there are any factors which reduce the value or serious purpose in this case.

Burden

41. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.

42. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the MPS in this case.

43. The Upper Tribunal in Dransfield advised that the following factors of previous requests may be relevant when assessing burden:

- number;
- pattern;
- duration; and
- breadth.

44. Having considered these factors, the only one which is relevant in this case is that of breadth. This is on the basis that the MPS considers that compliance with these parts of the request would impose a "grossly oppressive burden" due to the breadth of information sought, and that they are vexatious when weighed against the value or purpose behind them.

45. The Commissioner believes that there is a high threshold for refusing a request on such grounds. A public authority is most likely to have a viable case where:

- the requester has asked for a substantial volume of information and
- the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner and

- any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

The complainant's views

46. The complainant's views have been included earlier in this notice. She generally refers to the MPS' reliance on burden in respect of redacting any potentially exempt information. She also refers to the MPS liaising with third parties, which she does not consider to be appropriate when finding a request to be vexatious.

47. She has also provided her views regarding the genuine purpose behind her request which the Commissioner has taken into consideration.

The MPS' views

48. The MPS explained to the complainant:

> "In response to Q3 & Q4 within our initial response the MPS disclosed a list of 1,443 requests for authority under Section 26 from 1st January 2018 – 20th March 2020. Of the 1,443 requests some applications related to more than one person and units registered under the same URN [unique reference number]. 782 were live and cancelled applications (759 live applications and 23 cancelled applications).
>
> Therefore, the MPS would need to consider **782** applications in scope of **Q3 & Q4** relevant to this appeal. This would require us to review 782 applications individually which would result in us liaising with each relevant business area/stakeholder and each country in order to establish whether the information held is suitable for disclosure as we would need to be absolutely sure no harm could be caused in disclosure or whether any exemptions would be required to be considered.
>
> To go through the information held in scope of this appeal would require a member of staff to be abstracted from normal duties for a period of time. This burden would extend further to contacting each individual business area, country and police officer who submitted the form for them to take the time to identify and report back whether we would be able to disclose the information and the harm/or prejudice disclosure may cause. The officers themselves are then likely to have to make several enquiries with internal and/or external stakeholders with further consultation.
>
> The applications relate to separate and varying incidents and issues. Therefore it would be insufficient to determine any harm in disclosure. The MPS would have no choice but be required to go

through a significant amount of information and for the business areas/countries required to view the related information to varying degrees. would be inappropriate to make judgements not only regarding the applications in question but also about what police forces in different countries (and the countries themselves) will feel about potential disclosure of the information without consulting with them".

49. added that, although minimal, it would also need to consider removal of any officers' names, operation names and any details referring to investigations. Consequently, it considered that there was "a large number of variables potentially requiring consultation with multiple stakeholders, research regarding the circumstances pertinent to each application, time to carry out the redactions as the physical process of redacting information would also be time consuming" and that this would "all add to the strain on time and resources which further contributes to the burden".

50. The MPS further explained that there are 95 countries referred to within the withheld information and it would be required to consult with each of these to ensure that it did not compromise international relations; it would need to establish whether or not there may be any harm in disclosure for the relevant country. argued that, if it failed to do so, an adverse FOIA disclosure may harm international relationships, not only for itself but also potentially on the security of the UK should any international relationships diminish as a result. said:

> "The fact that the MPS co-operates with law enforcement organisations overseas is in the public domain. Section 26 of the Police Act 1996 enables police authorities to provide advice and assistance to an international organisation or institution and/or to law enforcement organisations outside the UK and the UK has a number of treaties with other countries mutual or reciprocal assistance. However for the MPS to confirm the countries and the specific services provided without consulting all the relevant countries would risk impairing international relations and/or future co-operation between the UK and foreign countries especially so as some/if not all countries would not expect the MPS to disclose information that may be sensitive to that country this would not be in the public interest.
>
> Often countries or forces will request assistance for various reasons from training in sensitive business areas, or for help with specific cases or operations. Disclosing this information would prejudice work in these areas which would likely to result in less confidence and co-operation in future. Any breakdown in trust between authorities would have a negative impact upon policing in all fields.

> This would have a significant impact on law enforcement and public safety".

51. The MPS also advised the complainant that it had carried out a sampling exercise of the 782 applications and that, at the time of writing, it had:

> "… spent over a week going through the applications in order to establish the amount and countries involved, viewing the details of the applications' summary for harm and business areas. Excluding all CT operationally sensitive related applications this would result in 376 applications potentially for consideration which would still be burdensome for the MPS".

52. The MPS also provided further rationale 'in confidence' which the Commissioner has not reproduced here. However, it has been taken into consideration.

The Commissioner's views

53. The Commissioner initially notes that the request has a genuine value to the complainant. She is trying to build a 'bigger picture' and has already had positive responses from similar requests she has made to other forces. This has included a partial disclosure which was ordered as a result of an earlier case which the Commissioner investigated[7]. However, whilst this case had a partially positive outcome for the complainant, it did not set a precedent as the circumstances were considerably different. In that case, the police force only held 7 records which cannot be compared the amount of data here.

54. A further complaint from the complainant, for the same information held by a different party, was informally resolved so there is no published decision notice. In that case, the public authority voluntarily disclosed the requested information following liaison with the Commissioner. Whilst there was more information than in the case referred to above, it was still significantly less than the case under consideration here with only 14 requests falling within the remit of part (3). Again, the Commissioner does not consider this disclosure to have set a precedent.

55. Furthermore it is also of significance that over half of the MPS' data is CT-related so this is highly likely to require further considered attention.

[7] https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4017915/ic-63959-l6b6.pdf

56. The MPS has advised that it would need to contact all the countries listed to ascertain their views on disclosure and that this in itself would be particularly burdensome. The Commissioner notes these concerns, as disclosure of some of the information may affect those countries, either directly or indirectly. For example, were it publicised that country A has received a particular type of CT training but its neighbour B had not, then it may be used to the detriment of country B by highlighting a vulnerability. Such a disclosure could obviously directly affect international relations between the UK and these countries. It could also have a wider indirect impact on other countries concerned about future disclosure were they to engage UK services in these fields.

57. The Commissioner notes that there may be ways in which some of the information could be disclosed so as to reduce the risks from disclosure such as withholding the names of some of the countries or particular types of courses. However, this would require a suitably revised request. As the complainant has not revised her request, the Commissioner has considered the request and the information in its entirety.

58. The complainant does not accept that the MPS is entitled to rely on the efforts it needs to take in liaising with third parties to ascertain any harm. Regarding any burden to the third parties concerned, the Commissioner agrees and this has not been included in his consideration of the burden in complying with the request. However, the Commissioner accepts that the MPS needs to ascertain whether or not there would be any wider concerns were it to disclose details about the training / services being provided which it cannot do without further consultation; ascertaining this would necessarily cause a burden on the MPS itself.

59. The Commissioner considers it a sensible approach for the MPS to contact relevant parties where there could be an unknown impact were information disclosed. Whilst the Commissioner would not envisage a requirement for the MPS to contact every country directly for every service provided, he does consider that the MPS may not itself be best placed to know about any wider international issues. Its own officers / business units may be able to paint some of the picture but wider consultation would seem appropriate in many instances.

60. It was also noted that the MPS had not provided any cost estimate as to the amount of time it would require to contact the relevant third parties. The Commissioner therefore asked it to do so and was advised as follows:

> "I have written to the International Governance & Compliance Team in an attempt to quantify the time required to assess each of the applications for release under the Act. Having considered this, we

have found that the following research would, as a minimum, be required in respect of each application:

1. FOIA Team to write to International Governance & Compliance Team in respect of the applications

2. International Governance & Compliance Team to identify business area(s) and/or relevant officer(s) and write to them to seek their views on the information requested

3. Business area(s) and/or relevant officer(s) consider the information, consult internally where appropriate and identify and record any perceived harm/sensitivity

4. Business area(s) write to recipient of assistance (i.e. country or law enforcement agency) to establish their views on disclosure. Our views on disclosure (where appropriate) would be articulated to the recipient of the assistance

5. Assess comments of recipient of assistance and liaise with them where appropriate.

6. International Governance & Compliance team to confirm position on disclosure and communicate this to the FOIA Team

7. FOIA Team to consider the disclosure position (inclusive of any redaction required) and consider any applicable exemptions. Applicable exemptions to be considered and claimed where appropriate.

It is difficult to provide a precise estimate of the time required to assess a typical application, as each will be the subject of a number of variables. However we would conservatively estimate that assessing each application, inclusive of the steps 1-7 above, would take a minimum of 1-2 hours per application, however it is likely that this time will fluctuate per application depending upon the information being considered for release. Additionally, there would be some time saved should multiple applications to the same law enforcement agency/country be considered at the time".

61. The Commissioner initially notes that the MPS has already undertaken more than a week's work to reach this stage, which would equate to around 40 hours' work before any further tasks are undertaken.

62. Furthermore, the MPS has evidenced that there are 95 countries which would need to be contacted. Were it to apply the above methodology and approach each of these countries individually for an overall view rather than looking at each service provided, this in itself would take at least 95 hours based on the lower end of its estimate.

63. The Commissioner understands that a more precise estimate is not possible in this case without actually initiating enquiries for a sample of the services provided. However, even were each application only to take five minutes to consider, which is extremely unlikely except in the most straight forward of cases, the sheer volume of 782 applications would take over 65 hours to consider. Alternatively, were it only to consider the 376 applications where CT training was not provided, this would still take over 31 hours which, in any event, is not an option as the complainant has not narrowed her request in any way.

64. Whilst he recognises the importance of the information to the complainant, and also its worth to the wider public, the Commissioner is satisfied that the MPS was entitled to find these parts of the request to be vexatious on account of the burden in compliance. Were the complainant to submit a request with a shorter time frame, or one which is more focussed on her particular areas of interest, then it is likely that section 14 would not apply. However, as already indicated by the MPS, it should be borne in mind that other exemptions may then be cited.

Other matters

65. Although they do not form part of this notice the Commissioner wishes to include the following rationale for the complainant.

66. The Commissioner notes the complaint's view that:

> "The MPS does not know whether or not the information it holds falling within the scope of questions 3 and 4 is exempt [and] must therefore accept that it did not have a proper basis to rely upon section 27 and section 31 of FOIA in its initial response (upheld at internal review)".

67. When it wrote to the complainant advising of its change to reliance on section 14, the MPS did apologise for this late change. Such a change is permissible and the MPS was therefore entitled to claim section 14 when revisiting the request. The Commissioner also notes that, were the request not found to be vexatious, then it is likely that sections 27 and 31 of FOIA would be relied on to withhold at least some of the information.

68. The Commissioner also notes the complainant's view that the MPS is relying on third parties to determine whether or not exemptions are engaged and that it is also relying upon the burden to those parties.

69. The Commissioner has seen no direct evidence of this. What the MPS has said is that it will need to contact third parties for them to voice their concerns. This is to allow them to provide representations, not for

them to dictate whether or not the MPS can disclose any information. As the information owner, it is ultimately for the MPS to decide.

70. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy[8] to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy[9].

[8] https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf
[9] https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf

Right of appeal

71. 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
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

72. 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.

73. 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
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