

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 January 2023

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

### Decision (including any steps ordered)

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1. The complainant has requested copies of written correspondence with the Chinese Embassy between specific dates, from the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny holding any information, citing sections 27(4)(a)(b) (International relations), 31(3) (Law enforcement) and 40(5) (Personal information) of FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 27(4) to NCND holding the requested information. No steps are required.

### Request and response

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3. On 17 August 2022, the complainant wrote to the MPS and requested information in the following terms:

"All written correspondence between the Metropolitan Police and representatives of the Chinese embassy in London, any Chinese consulate in the UK and/or the Chinese Foreign Ministry sent and received between July 22, 2022 and July 25 2022.

I would like to proceed with the request with searches of correspondence between Chinese officials and both Assistant

Commissioner [name redacted] and Assistant Commissioner [name redacted]”.

4. On 24 September 2022, the MPS responded. It would neither confirm nor deny (“NCND”) holding the requested information, citing sections 27(4)(a)(b), 31(3) and 40(5) of FOIA.
5. The complainant requested an internal review on 27 October 2022.
6. The MPS provided an internal review on 18 November 2022, in which it maintained its position.
7. The MPS later confirmed with the complainant that his request was in relation to the detention, in July 2022, of a named activist.
8. The MPS issued a press statement around that time, not naming any party, which included the following:

“At around 16:30hrs on 21 July, a man was detained at the Chinese Embassy in Portland Place due to his suspicious behaviour. He was found to be in possession of a quantity of glue and had attempted to glue his hand to the outside of the embassy building.

The man was arrested on suspicion of trespass on diplomatic premises, communicating false information to make a bomb hoax and criminal damage”.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 6 December 2022, to complain about the way his request for information had been handled. His grounds of complaint were as follows:

“Given the international media attention toward, and public interest in, the Chinese government's activities overseas to intimidate and harass dissidents and critics, I believe that correspondence that could shed light on the Chinese embassy's potential involvement in the arrest of activist [name redacted] should be open to scrutiny. There is a clear and compelling public interest in examining any potential role the embassy had in [name redacted]'s detention, given his prominence as a vocal critic of the Chinese government”.

10. The Commissioner will consider the MPS’ NCND position below.

## Reasons for decision

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

11. Section 1(1)(a) of 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. 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 correspondence between itself and the parties specified, between the dates given.
16. The MPS has said that the information described in the request, if it was held, would be fully exempt from disclosure by virtue of sections 27(4)(a)(b), 31(3) and 40(5) of FOIA.

### Section 27 – International relations

17. The MPS has cited sections 27(4)(a) and (b) which provide that the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) -
  - (a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1), or
  - (b) would involve the disclosure of any information (whether or not already recorded) which is confidential information obtained from a state other than the United Kingdom or from an international organisation or international court.

18. The ICO guidance on the exemption in section 27<sup>1</sup> states that:

“Section 27(1) is a prejudice based exemption which states that information is exempt if its disclosure would, or would be likely to, prejudice:

- (a) relations between the United Kingdom and any other State,
- (b) relations between the United Kingdom and any international organisation or international court,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad”.

19. It is important point to note that prejudice must be to the interests of the UK itself rather than simply to the public authority which holds the information.

20. The MPS has relied on a number of limbs of this exemption. Its arguments in respect of each are the same and the Commissioner considers that they are relevant to all the limbs under consideration.

21. The MPS has explained:

“Disclosure of the requested information, if held, would likely lead to a lack of trust and undermine relations and / or law enforcement agreements with overseas partners.

The effective conduct of international relations depends upon maintaining trust and confidence between the government and authorities. If the UK does not maintain trust and confidence with other countries, its ability to protect and promote UK interests through international relations will be disadvantaged. It remains the case that the disclosure of information detailing relationships and engagement with other countries could potentially damage bilateral relationships between the UK and other states. This would reduce

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<sup>1</sup><https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-27-international-relations/>

the UK government's ability to protect and promote UK interests through its relations with those other states.

To put the above considerations into perspective, it is the case that the MPS is a public authority, which carries out functions, which relate directly to, and have the potential to affect the international relations of the UK. It remains vital that the MPS does not prejudice relations between the UK and any other state".

22. It also advised:

"The MPS believes that confirming or denying whether any correspondence was exchanged between the Chinese officials and Assistant Commissioner [name redacted] and Assistant Commissioner [name redacted], between 22 July and 25 July 2022 would undermine the relationship and trust built up between police forces in the UK and China.

Smooth relations between the UK and other States is reliant on upholding confidence and trust. Should the UK fail to preserve these qualities by confirming or denying whether the information requested is or is not held, which in itself reveals information, the ability to protect and promote UK interests through international relations will be compromised".

23. The Commissioner accepts this rationale and agrees that sections 27(4)(a) and (b) of FOIA are properly engaged.

### **Public interest test**

24. Section 27 is a qualified exemption. This means that, even where its provisions are engaged, an NCND response may only be given if the public interest in doing so outweighs the public interest in confirming or denying that the information is held.

### **Factors in favour of confirming or denying**

25. When requesting an internal review the complainant argued that:

"the correspondence in question concerns an important matter of public interest that should be open to independent scrutiny".

26. The complainant's grounds in paragraph 9 above also reflect his views.

27. The MPS has argued that confirming or denying that the information is held would promote transparency. It would also increase public knowledge and awareness of its relations with overseas states.

### **Factors in favour of maintaining the exemption**

28. The MPS has argued that any confirmation or denial that information is, or is not, held, would be likely to damage the bilateral relationships between the United Kingdom and other governments, saying that this: "... would reduce the UK government's ability to protect and promote UK interests through its relations with different countries which would not be in the public interest".
29. It further argued that it: "would not be in the public interest to prejudice international relations and the interests of the UK through an adverse FOIA disclosure. It is in the public interest that the UK retain strong lines of communication and dialogue with other states. To harm international relationships based on an adverse FOIA disclosure would not be in the public interest, as this is likely to detrimentally impact on the security of the UK should the international relationships diminish".
30. The MPS also referred to the detriment that confirmation or denial could have on international relations, that have taken much trust and confidence to build.

### **The Commissioner's view**

31. The Commissioner agrees with the MPS that confirming or denying whether it holds the requested information is not in the public interest. He accepts that to do so could reveal information that any Embassy, or similar organisation, would expect to be kept confidential, ie whether or not it had contacted the MPS to report or discuss an issue. To do so could seriously undermine the sharing of information of this kind, which is likely to undermine the MPS's own ability to be an effective law enforcement provider and could impact on wider relationships between the UK and Chinese governments. This clearly is not in the public interest.
32. The Commissioner is therefore satisfied that the balance of the public interest clearly favours maintaining the exemption.
33. The Commissioner has not found it necessary to consider the other exemptions.

## Right of appeal

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34. 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)

35. 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.
36. 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**