

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2023

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 about three east London schoolgirls who went to Syria in 2015, from the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny ("NCND") holding the requested information, citing sections 23(5) (Information supplied by, or relating to, bodies dealing with security matters), 24(2) (National security), 27(4) (International relations), 31(3) (Law enforcement) and 40(5) (Personal information) of FOIA.
2. The Commissioner's decision is that sections 23(5) and 24(2) are properly engaged. No steps are required.

Request and response

3. On 1 October 2022, the complainant wrote to the MPS and requested the following information:

"Concerning the disappearance of three east London schoolgirls bound for Syria in 2015:

Which was the first Commissioner of the Metropolitan Police to be aware that the girls were assisted on their journey by a Canadian intelligence asset?

Who informed that commissioner and when?

What was the commissioner told?

What actions were taken as a result by the commissioner?

Who was informed by the commissioner of the Canadian involvement?

Please release the communications to and from the relevant commissioner in respect of the Canadian involvement”.

4. On 1 November 2022, the MPS responded. It would NCND holding the requested information, citing sections 23(5), 24(2), 27(4), 31(3) and 40(5) of FOIA.
5. On 18 November 2022, the complainant requested an internal review.
6. The MPS provided an internal review on 16 December 2022, in which it maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 4 January 2023, to complain about the way his request for information had been handled. He said:

“The thrust of my objection is that the Metropolitan Police has responded as if I was requesting to know whether a Canadian intelligence asset had assisted the London schoolgirls to enter Syria. On that basis, the police has decided to neither confirm nor deny. However my questions do not concern whether this happened. The fact has been established by Richard Kerbaj's book, which was based on interviews with security practitioners and former prime ministers. My query concerns how the police handled the knowledge. The fact is that it took a book many years later to disclose the information that, during a worldwide manhunt for these girls, the police were informed by the Canadian authorities that their operative had brought the Britons into Syria. That information was covered up by the police. My request is designed to disclose who was involved in keeping this information from the public by discovering which senior officers knew what happened and when. It does strike me as the kind of information which the Act was passed to shed light on”.

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

Reasons for decision

Neither confirm nor deny ("NCND")

9. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
10. The decision to use an 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.
11. 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.
12. The MPS has taken the position of neither confirming nor denying whether it holds any of the requested information in its entirety, citing sections 23(5), 24(2), 27(4), 31(3) and 40(5) 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.
13. 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 assistance of a Canadian intelligence asset in the disappearance of three east London schoolgirls bound for Syria in 2015.
14. 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.
15. It also explained to the Commissioner:

"... there is a long standing convention of adopting a position of neither confirming nor denying the involvement, role or identity of overseas intelligence services (or their agents) in relation to investigations or operations conducted by the MPS.

This approach allows the MPS and Counter Terrorism Policing to maintain trusting relationships with international partners and to receive sensitive information that enable us to counter terrorist and hostile state threats to the UK. If we cease to be a trusted partner, we will be less effective at keeping the people of London and the UK safe from such threats.

The MPS in general will only disclose information through our Directorate of Media and Communications (DMC) in a careful and managed way. It is not in the public interest to disclose any information held or not held by the MPS under the Act. If held, it is important the MPS protect the integrity of any investigations and information released through our DMC and not FOIA".

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

16. Section 23(5) provides an exemption from the duty imposed by section 1(1)(a) to confirm or deny whether information is held if to do so would involve the disclosure of information, whether or not recorded, that relates to, or was supplied by, any of the security bodies listed in section 23(3). This is a class-based exemption, which means that if confirmation or denial would have the result described in section 23(5), the exemption is engaged.
17. The MPS argued that, if the information specified in the request did exist, it is very likely that it would have come from, or be related to, section 23(3) bodies.
18. In the Tribunal case, *The Commissioner of Police of the Metropolis vs Information Commissioner (EA/2010/0008)*, the argument was advanced that it was highly likely that any information held by the public authority that fell within the scope of the request would have been supplied to it by a section 23(3) body and, therefore, that section 23(5) was engaged. The counterargument was made that only certainty as to the source of the information would be sufficient. The Tribunal rejected this counterargument and stated:

"[The evidence provided] clearly establishes the probability that the requested information, if held, came through a section 23 body."
(paragraph 20)
19. The Commissioner accepts the Tribunal's view that the balance of probabilities is the correct test to apply. This means that for section 23(5) to be engaged, the evidence must suggest to a sufficient degree of likelihood (rather than certainty) that any information held that falls within the scope of the request would relate to, or have been supplied by, a body specified in section 23(3).

20. In this case, the Commissioner considers it clear that the subject matter of the request – the alleged involvement of a Canadian intelligence operative – is clearly within the area of the work of bodies specified in section 23(3). He also accepts that it is likely that, if the information described in the request did exist, it would do so as a result of liaison with the equivalent security bodies in the UK.
21. Whilst the complainant is of the view that there is information in a publicly available book about the subject matter, this information was not sourced or confirmed via any official MPS statement.
22. The MPS has explained to the Commissioner (its emphasis):

“I think it might be useful to refer the ICO’s [sic] to the below Decision Notice and Supreme Court Judgement in order to support our position that the requested information if held would relate to a section 23 body:-

- In Decision Notice IC-145889-N0Z4¹ the Home Office stated: “...the decisions in the Shamima Begum Case concern the deprivation of nationality and refusal of leave to enter. These decisions were informed by material provided by a section 23 body which had subsequent involvement in the proceedings.”

To clarify further, what this means is that a **section 23 body provided the information prior to the commencement of any legal proceedings**. Consequently, any legal proceedings that followed ‘**relate to**’ that **section 23 body**. Full details cannot be provided in this decision notice however the Commissioner has had two separate meetings with the Home Office to discuss and review information regarding this case and is satisfied that the information subject to the current request relates to a security body and that section 23(1) has therefore been correctly engaged.

- In the R (on the application of Begum) v SIAC and SSHD in the Supreme Court² the judgment supports the position that the requested information would relate to a section 23 body.

You will no doubt be aware the purpose applying both Section 23(5) and Section 24(2) together is to avoid confirming or denying the

¹ ic-145889-n0z4.pdf (ico.org.uk)

² Judgement [2021] UKSC7

involvement of a security body or otherwise in respect of the requested information, and thus to maintain a position which safeguards national security by avoiding whether a security body is involved a particular case engaging national security or not”.

23. This background information also clearly places information about the subject matter into the arena of security bodies.
24. The Commissioner accepts that, on the balance of probabilities, any information held by the MPS falling within the scope of the complainant's request would relate to, or have been supplied by, a body or bodies listed in section 23(3). His conclusion is therefore that section 23(5) is engaged.
25. As this conclusion has been reached on section 23(5), it is not strictly necessary to go on to also consider any other exemptions. However, as the MPS has also relied on section 24(2), the Commissioner has gone on to consider that exemption.

Section 24 – National security

26. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security. Consideration of this exemption is a two-stage process. First, the exemption must be engaged due to the requirement of national security. Secondly, this exemption is qualified by the public interest, which means that the confirmation or denial must be provided if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
27. The Commissioner has already accepted, when finding that section 23(5) is engaged, that revealing whether or not information is held within the scope of the request would reveal information relating to the role of the security bodies. The Commissioner also accepts that disclosure that touches on the work of the security bodies would consequentially undermine national security. For that reason, section 24(2) is also engaged, as exemption from the duty to confirm or deny is required for the purposes of national security.
28. Turning to the balance of the public interest, the question here is whether the public interest in safeguarding national security is outweighed by the public interest in disclosure of the confirmation or denial. Clearly, the public interest in safeguarding national security carries very great weight. In order for the public interest to favour provision of the confirmation or denial, it will be necessary for there to be public interest factors in favour of this of at least equally significant weight.

29. The view of the Commissioner is that there is some valid public interest in confirmation or denial in response to this request. It would increase public awareness of the work that the MPS may be involved in with intelligence operatives from another country. It may also further debate on what remains an emotive subject matter.
30. However, the Commissioner considers it to be clearly the case that this public interest does not match the weight of the public interest in safeguarding national security. This means that his conclusion is that the public interest in the maintenance of the exemption provided by section 24(2) outweighs the public interest in providing confirmation or denial.
31. In view of this finding, and of that above, on section 23(5), the Commissioner has not considered the other exemptions relied on.
32. The MPS was not required to confirm or deny whether it held the information requested by the complainant.

Right of appeal

33. 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

34. 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.
35. 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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