

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 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 an operational document 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), 30(3) (Investigations and proceedings), 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 23(5) of FOIA. No steps are required.

Background

3. The request concerns "Operation Almasi". According to the complainant:

"Operation Almasi was an investigation carried out by the SO11 Criminal Intelligence Branch of the Metropolitan Police in 1998. It was investigation [sic] concerning drug importation and money-laundering activities of an organised group of criminals based in North East London & Essex".
4. The MPS has advised that, although it doesn't exist any longer, SO11 used to be its:

"Criminal Intelligence Branch – at the time it had the surveillance capability (central teams), Technical Surveillance Unit, Special Investigation Section (SIS), Telephone Intelligence Unit, Prisons, Collators etc – it changed over time and ... became Specialist Crime Directorate .

Additionally the Command dealt with all Kidnappings/tiger kidnappings ... They maintained Intelligence records and also trained surveillance teams across SO [Specialist Operations]".

Request and response

5. On 30 January 2023, the complainant wrote to the MPS and requested the following information:

"Please publish the document known as Operation ALMASI conducted by the former SO11 Criminal Intelligence Branch of the Metropolitan Police in 1998".

6. On 26 March 2023, following an extension to the time limit in which it considered the public interest, the MPS responded. It would NCND holding the requested information, citing sections 23(5), 24(2), 30(3), 31(3) and 40(5) of FOIA.
7. The complainant requested an internal review on 12 April 2023.
8. The MPS provided an internal review on 9 May 2023 in which it maintained its original position.

Scope of the case

9. The complainant contacted the Commissioner on 11 May 2023 to complain about the way his request for information had been handled. He said: "I disagree with the neither confirm nor deny response; and the justification that they has [sic] given in their internal review".
10. The Commissioner will consider the application of exemptions to the request below.
11. The Commissioner has received a 'closed' submission from the MPS which he has relied on but not reproduced in this notice.

Reasons for decision

Neither confirm nor deny ("NCND")

12. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
13. 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.
14. 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.
15. The MPS has taken the position of neither confirming nor denying whether it holds the requested information, citing sections 23(5), 24(2), 30(3), 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.
16. Put simply, in this case the Commissioner must consider whether or not the MPS is entitled to NCND whether it holds any information about Operation Almasi.

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

17. As it is an absolute exemption, the Commissioner has first considered section 23 of FOIA.
18. 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 the confirmation or denial would have the result described in section 23(5), this exemption is engaged.
19. When requesting an internal review the complainant argued:

"Operation Almasi was conducted by the Metropolitan Police, therefore it is not pertaining to information from exempt organisations".

20. The response from the MPS on this point was:

"To confirm or deny whether or not a specific operation was conducted by 'SO11 Criminal Intelligence Branch of the Metropolitan Police in 1998' would clearly indicate the nature and scale of police involvement in the area of preventing and detecting crime. The remit of SO11 included national security and counter terrorism, therefore if it were confirmed that information is held it may relate to information supplied by or connected to bodies dealing with security matters".

21. Based on the alleged involvement of SO11, the Commissioner accepts that it is very likely that any documentation that may be held concerning the named operation would have been likely to come from, or be related to, a section 23(3) body.

22. 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, 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)

23. The approach of the Commissioner on this point is that he accepts the Tribunal 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).

24. In this case, the Commissioner considers it clear that the subject matter of the request – an Operation allegedly involving SO11 – is within the area of the work of bodies specified in section 23(3).

25. The Commissioner therefore 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 and the MPS was entitled to rely on it to issue an NCND response to the request.

26. As this conclusion has been reached on section 23(5), the Commissioner does not consider it necessary to go on to also consider the other exemptions relied on.

Right of appeal

27. 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

28. 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.
29. 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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