

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 April 2024

**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 information about the "Right Care Right Person" model from the Metropolitan Police Service (the "MPS"). The MPS refused to disclose this information citing sections 31(1)(a) and (b) (Law enforcement) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on sections 31(1)(a) and (b) of FOIA to withhold the requested information. However, in responding late to the request, it breached section 10(1) (Time for compliance) of FOIA. No steps are required.

#### **Background**

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3. The MPS provided the complainant with links to several pieces of information about the "Right Care Right Person" ("RCRP") model<sup>1</sup> referred to in the request.
4. The RCRP model is:

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<sup>1</sup> <https://www.met.police.uk/notices/met/introduction-right-care-right-person-model/>

“an operational model developed by Humberside Police that changes the way the emergency services respond to calls involving concerns about mental health. It is in the process of being rolled out across the UK as part of ongoing work between police forces, health providers and Government”.

5. There is a considerable amount of information available online. Further examples, as provided by the MPS, are on the College of Policing website<sup>2,3</sup>, the Government’s website<sup>4,5</sup> and the Mayor’s Office website<sup>6</sup>.

## Request and response

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6. On 28 November 2023, the complainant wrote to the MPS and requested the following information:

“Please share the policies and procedures that control room are following in regards of the new application of Right Care Right person. Particularly, I would like to see what warrants a dispatch under the police remit, and what does not. Examples are: aggressive person on the street known to have mental health problems. Vulnerable frail adult on the street, lost, unknown where they live, appears that suffers from dementia, no mental health presentation, not injured or requiring any medical help. Vulnerable adult in hospital, dementia who has absconded, unsure where. I would like to clearly see what basis a call handler uses to dispatch or refuse, without even creating a cad number, a call based on newly implemented RCRP.”

7. On 22 January 2024, the MPS responded. It refused to provide the requested information, citing sections 31(1)(a)(b) and 40(2) of FOIA.

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<sup>2</sup> <https://www.college.police.uk/guidance/right-care-right-person-toolkit>

<sup>3</sup> <https://www.college.police.uk/article/rcrp-national-guidance-launched>

<sup>4</sup> <https://www.gov.uk/government/publications/national-partnership-agreement-right-care-right-person/national-partnership-agreement-right-care-right-person-rcrp>

<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281242/36353\\_Mental\\_Health\\_Crisis\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/281242/36353_Mental_Health_Crisis_accessible.pdf)

<sup>6</sup> <https://www.london.gov.uk/who-we-are/what-london-assembly-does/questions-mayor/find-an-answer/implementation-right-care-right-person>

8. The complainant requested an internal review on 23 January 2024. He referred to the delay in the response and also disagreed with the citing of section 31. He said he was happy for personal information to be redacted.
9. The MPS provided an internal review on 20 February 2024. It apologised for the delay in responding. It maintained its position regarding the exemptions cited.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 29 February 2024 to complain about the way his request for information had been handled. He referred to timeliness and again advised that personal information could be redacted. Regarding the citing of section 31, he said:

“...my request is refused due to 'criminals gaining greater understanding of the police's methods, enabling offenders to take steps to counter them.' My request is about the fairly newly implemented Right Care Right Person policy and the routine misuse of this policy to violate the police duties to safeguard vulnerable adults, as I encounter both as a citizen and in my line of work. This has got public interest and has got nothing to do with criminality. It is a policy, misused, to decline to a member of the public a response from the police when a vulnerable adult is lost and in need of help. Releasing the information I requested, would not increase the likelihood of criminality in any way, and the refusal using this section/excuse is beyond ridiculous. The refusal mentions 'evade detection and valuable intelligence [sic] to criminals' and 'releasing the information would likely prejudice the prevention or detection of crime and the apprehension and prosecution of offenders'. Again, releasing the information I requested, would in no way help offenders. It is a policy which relates to the safeguard duties from the police and the decision to send or not send officers to a vulnerable adult, cannot be utilise [sic] in any way by criminals. This has not be [sic] justified in their response”.

11. The Commissioner will consider these matters below; he has not considered section 40 as the complainant was happy for personal information to be withheld. The Commissioner has viewed the relevant policy.

## Reasons for decision

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### Section 31 – Law enforcement

12. Section 31 of FOIA creates an exemption from the right to know if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.
13. In this case, the MPS is relying on sections 31(1)(a) and (b) of FOIA in relation to all the withheld information. These subsections state that information is exempt if its disclosure would, or would be likely to, prejudice:
  - (a) the prevention or detection of crime;
  - (b) the apprehension or prosecution of offenders.
14. In order to engage a prejudice-based exemption such as section 31, there must be the likelihood that disclosure would, or would be likely to, cause prejudice to the interest that the exemption protects. In the Commissioner's view, three criteria must be met in order to engage a prejudice-based exemption:
  - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed, has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and,
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie that disclosure 'would be likely' to result in prejudice or that disclosure 'would' result in prejudice.
15. Consideration of the exemption at section 31 is a two-stage process: even if the exemption is engaged, the information must be disclosed unless the public interest in maintaining the exemption outweighs the public interest in disclosure.
16. Rather than differentiate between the subsections of the exemption, the MPS has presented one set of arguments. The Commissioner recognises that there is clearly some overlap between subsections 31(1)(a) and 31(1)(b) and he has therefore considered these together.

## The applicable interests

17. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the law enforcement activities mentioned in sections 31(1)(a) and (b) – the prevention or detection of crime and the apprehension or prosecution of offenders.
18. With respect to law enforcement activities, the Commissioner recognises in his published guidance<sup>7</sup> that section 31(1)(a) will cover all aspects of the prevention and detection of crime. With respect to section 31(1)(b), he recognises that this subsection:

“...could potentially cover information on general procedures about apprehending offenders”.
19. The Commissioner acknowledges that the arguments presented by the MPS refer to prejudice to the prevention or detection of crime and to the apprehension or prosecution of offenders and that the appropriate applicable interests have therefore been considered.

## The nature of the prejudice

20. The Commissioner next considered whether the MPS has demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that sections 31(1)(a) and (b) are designed to protect. In his view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.
21. The MPS advised the complainant that:

“...disclosure of the requested information, over and above that which is already in the public domain, would cause operational harm to the MPS and affect our ability to fulfil the core function of law enforcement effectively in the future.

The MPS has a statutory role in investigating criminal offences and deploys a range of tactics and investigative techniques to do so. Disclosure of the requested information would, in this case, provide the public with an in depth knowledge of policing tactics and strategies. This would be harmful, as this would inform the offender

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<sup>7</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-31-law-enforcement/>

of the capabilities available to the MPS in investigating criminal offences and apprehending offenders.

Individuals (including criminals) would gain a greater understanding of the police's methods and techniques, enabling offenders to take steps to counter them. It may also suggest the limitations of police capabilities, which may further encourage criminal activity by exposing potential vulnerabilities.

More broadly, disclosing details of procedures and investigative options available to the MPS, particularly if a series of requests are made and responded to, would inform and embolden the offender. An informed and emboldened offender would be more likely to commit offences and be successful in doing so. The public interest does not support disclosure of the requested information when doing so would compromise the Met's ability to detect and investigate crimes and/or would encourage or facilitate crime.

This detrimental effect is increased if the request is made to several different law enforcement bodies. In addition to the local criminal fraternity now being better informed, those intent on organised crime throughout the UK will be able to 'map' where the use of certain tactics may or may not be deployed. This can be useful information to those committing (or those intent on committing or planning) crime".

### **Likelihood of prejudice**

22. With regard to the likelihood of prejudice in this case, the MPS did not specify the likelihood. Therefore, the Commissioner has considered its position at the lower level of 'would be likely to' prejudice.

### **Is the exemption engaged?**

23. In a case such as this, it is not enough for the information to relate to an interest protected by sections 31(1)(a) and (b); its disclosure must also at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it would occur.
24. The Commissioner recognises the importance of protecting information which, if disclosed, would be likely to undermine law enforcement activity.
25. Having considered the arguments put forward by the MPS, the Commissioner accepts that disclosure would be useful to someone intent on establishing any vulnerabilities which the MPS may have. For example, if a would-be criminal wished to distract MPS officers from their core policing duties by placing hoax calls, based on the types of

scenario where the police may necessarily attend the public (as revealed in the requested policy), this would likely leave areas with insufficient 'police cover' whereby they may be able to take advantage and successfully commit a crime. Consequently, the Commissioner is satisfied that disclosure would be likely to represent a real and significant risk to law enforcement matters.

26. As the Commissioner accepts that the outcome of disclosure predicted by the MPS would be likely to occur, he is satisfied that the exemptions provided by sections 31(1)(a) and (b) are engaged.

### **Public interest test**

27. Section 31 is a qualified exemption. The Commissioner must now consider whether, in all the circumstances of the case, the public interest in maintaining the exemption at sections 31(1)(a) and (b) of FOIA outweighs the public interest in disclosing the information requested by the complainant.

### **Arguments in favour of disclosure**

28. Some of the complainant's views are included above. He is concerned about vulnerable people not being properly attended by the emergency services when necessary. There is clearly a public interest in ensuring that this doesn't happen.
29. The MPS has argued:

"Disclosing the full details of RCRP Procedures could promote public trust in providing transparency and demonstrating openness and accountability into where and for what reasons the MPS spends public funds".

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

30. In its refusal notice the MPS argued:

"Release would have the effect of compromising law enforcement processes and would also hinder the ability of the MPS to fulfil its primary aim of enforcing the law and protecting the public. Any intelligence contained within documents is in use by Officers any release of tactical information could harm our ability to conduct that assessment and reduce our ability to conduct future investigations.

Disclosure would be releasing information into the public domain which would enable those with the capacity and inclination to try and use the information to evade justice".



## Balance of the public interest arguments

31. In carrying out the statutory balancing exercise in this case, the Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding likely prejudice to law enforcement matters.
32. Clearly, it is not in the public interest to disclose information that may compromise the police's ability to accomplish its core function of law enforcement. In that respect, he recognises that there is a very strong public interest in protecting the law enforcement capabilities of a police force and he considers that appropriate weight must be afforded to the public interest inherent in the exemption - that is, the public interest in avoiding prejudice to the prevention or detection of crime.
33. The Commissioner recognises the need to ensure transparency and accountability on the part of the police. However, whilst the complainant refers to arguments such as 'ethical' concerns, the Commissioner notes that the MPS has tried to reassure him by providing links to available information. It also explained:

"Every call to MPS emergency call handlers is assessed on the specifics of each incident. The RCRP toolkit used by our call handlers does not replace the National Decision MAKING Model or risk based decision making.

With respect to your comment, the review takes due regard to the following from a Gov.UK publication which will hopefully allay your concerns:<sup>8</sup>

'The approach involves consistent use of the RCRP threshold to determine whether the police are the appropriate agency to respond at the point at which the public or other professionals report a mental health-related incident (e.g. via a call made to the police). It is important to distinguish this from the police's powers under the Mental Health Act 1983 (MHA), e.g. section 136. While the decision to attend an incident is determined by assessing that the incident meets the RCRP threshold, the decision to use powers under the Mental Health Act, is made by an officer at the scene of an incident. Partnership arrangements governing police involvement at pre-planned interventions will

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<sup>8</sup> <https://www.gov.uk/government/publications/national-partnership-agreement-right-care-right-person/national-partnership-agreement-right-care-right-person-rcrp>



continue to be managed at a local level, e.g., police attendance at section 135 MHA warrants. The police will always have the discretion to deploy to incidents and this document does not impede the operational independence of chiefs.

The RCRP threshold should be used in a way that is responsive to dynamic and changeable situations. For example, there may be occasions where a call handler initially judges that there is no clear and immediate risk of serious harm, but the situation escalates. As with all other types of incidents, the police will apply a continuous risk assessment approach, and respond as required to any change in risk, taking into account any information provided by local partners. Likewise, when the police have responded to an incident, but the threshold is no longer reached, there should be a timely transfer of support to mental health or other suitable services, with local areas working towards handovers taking place within one hour as specified in local plans (unless mutually agreed in relation to a particular incident on a case-by-case basis).

Importantly, RCRP may be used in conjunction with appropriate joint-working models that are set up between the police and health agencies locally. Examples of effective and appropriate joint working include statutory Liaison and Diversion services<sup>9</sup> and locally developed health-led triage models. These services, which have a role in ensuring people access the right support, are separate from and can co-exist alongside the use of the RCRP approach.”

34. Whilst the Commissioner does not doubt the complainant’s genuine concerns, disclosure under FOIA is necessarily to the general public at large and not just to specific individuals. The Commissioner therefore accepts that providing criminals with a more detailed overview of the circumstances when police officers may be deployed would place the MPS at a disadvantage. Disclosure would be likely to encourage those with bad intent to find ways to undermine the service in an effort to commit crime with less chance of being apprehended.
35. In the Commissioner’s view, policing techniques can only be properly effective when full policing capabilities are not publicly known; disclosure of the data requested would be to the detriment of the wider

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<sup>9</sup> <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/about/>

public, as those seeking to evade the law may be able to ascertain how best to do so.

36. Having carefully balanced the opposing factors involved in this case, the Commissioner finds that the public interest in maintaining the section 31(1) (a) and (b) exemptions outweighs the public interest in disclosure. Therefore, the MPS was entitled to rely on sections 31(1) (a) and (b) of FOIA to refuse to disclose the requested information.

## **Procedural matters**

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### **Section 1 – general right of access**

#### **Section 10 - time for compliance**

37. 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.
38. 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.
39. The request was submitted on 28 November 2023, and the complainant did not receive a response confirming that the MPS held relevant information, until 22 January 2024. 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.

## **Right of appeal**

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40. 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)

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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