

Monday, 10 November 2014

Special branch exercise their own unique right to silence on records held on former Hackney community campaign group

Dear Mr Metcalf

Freedom of Information Request Reference No: 2014100001720

I write in connection with your request for information which was received by the Metropolitan Police Service (MPS) on 20/10/2014. I note you seek access to the following information:

Please could you confirm whether the Metropolitan Police holds or has ever held:

(a) a Special Branch file on Hackney Community Defence Association and/or the Colin Roach Centre, Hackney

(b) a separate Special Branch file on the following campaigns coordinated by the Colin Roach Centre

Justice for Patrick Quinn, Free Malcolm Kennedy.

Justice for David Ewin.

Justice for Andy Davey.

Brian Higgins Defence Campaign.

Justice for Mogous Abay.

If these files have ever existed, please could you confirm their Special Branch file references.

If these files still exist, please provide me with copies of each file.”

DECISION

Before I explain the decisions I have made in relation to your request, I thought that it would be helpful to outline the parameters set out by the Freedom of Information Act 2000 (the Act) within which a request for information can be answered.

The Freedom of Information Act 2000 creates a statutory right of access to information held by public authorities. A public authority in receipt of a request must, if permitted, state under Section 1(a) of the Act, whether it holds the requested information and, if held, then communicate that information to the applicant under Section 1(b) of the Act.

The right of access to information is not without exception and is subject to a number of exemptions which are designed to enable public authorities to withhold information that is unsuitable for release. Importantly the Act is designed to place information into the public domain, that is, once access to information is granted to one person under the Act, it is then considered public information and must be communicated to any individual should a request be received.

REASONS FOR DECISION

Section 17(1) of the Act provides:

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision in part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

- (a) states the fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

In accordance with the Act, this letter represents a Refusal Notice for this particular request. The Metropolitan Police Service can neither confirm nor deny that it holds the information you requested as the duty in s1(1)(a) of the Freedom of Information Act 2000 does not apply, by virtue of the following exemptions:

Section 23(5) - Information supplied by, or concerning, certain security bodies

Section 24(2) - National Security

Section 30(3) - Criminal Investigations

Section 31(3) - Law Enforcement

Section 40(5) - Personal Information

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

(5) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

This is an absolute exemption and I am therefore not required to complete a public interest test.

<http://www.legislation.gov.uk/ukpga/2000/36/section/23>

Section 24 - National security

(2) The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

<http://www.legislation.gov.uk/ukpga/2000/36/section/24>

This is a qualified exemption for which I am required to conduct a public interest test and provide evidence of harm.

Evidence of Harm

In considering whether or not we hold the information, I have considered the potential harm that could be caused by disclosure.

National security is not defined in the Act. However in the case of the Norman Baker MP v. IC (2007) the House of Lords referred to the decision in Secretary of State for the Home Department v. Rehman (2001):

- (i) national security means 'the security of the United Kingdom and its people'
- (ii) the interests of national security are not limited to action by an individual which can be said to be 'targeted at' the UK, its system of government or its people
- (iii) the protection of democracy and the legal and constitutional systems of the state is a part of national security as well as military defence

(iv) 'action against a foreign state may be capable indirectly of affecting the security of the United Kingdom'

(v) 'reciprocal co-operation between United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom's national security'

Based on this definition national security encompasses a wide spectrum and it is our duty to protect the people within the UK. Public safety is of paramount importance to the policing purpose and must be taken into account in deciding whether to disclose whether the information is or is not held.

To confirm or deny whether we hold any information, would allow interested parties to gain an upper hand and awareness of policing decisions used to safeguard national security. As you may be aware, disclosure under FOIA is a release to the public at large. Therefore, to confirm or deny that we hold any information concerning the Hackney Community Defence Association and/or the Colin Roach Centre, in addition to specified coordinated campaigns could potentially be misused proving detrimental to national security.

Confirming or denying whether any information is held would be of use to those who seek to disrupt police activity as it would, by process of elimination, enable individuals with the inclination to identify where specific people have or have not been subject of police tactics or investigations.

To confirm whether any information is held in respect of one piece of information and then neither confirm nor deny whether another piece of information is held, is likely to lead the public to deduce that information is held where a NCND response is applied.

Any information identifying the focus of policing activity could be used to the advantage of terrorists, extremist or criminal organisations. Information that undermines the operational integrity of these operational activities (whether information is or is not held in this instance) will adversely affect public safety and have a negative impact on both national security and law enforcement.

To confirm or deny whether any information is held particularly during a Counter Terrorism investigation would be extremely useful to those involved in terrorist activity, as it would enable them to ascertain what type of person or companies may or may not be monitored in any way, enabling those with criminal intent to ascertain whether they may or may not have evaded detection. It would also enable individuals to make mosaic requests which can then provide an overall picture as to who or what companies or people may be monitored in any way. This would enable individuals to evade detection and compromise the ability of the police to safeguard national security.

It remains our position that under FOIA the MPS will not confirm or deny whether the MPS holds any information pertinent to your request. This would be counter effective to the safeguarding of national security, and increase the risk of crime if the MPS does not take a consistent approach to requests regarding information held from investigations whether they be monitoring of companies or individuals. An increase in crime which arises out of an inconsistent approach to the 'NCND' principle may lead to an escalation of criminal activity that could have a detrimental effect on

national security and police intelligence.

Public Interest Test

Factors favouring confirmation or denial for S24 - The information simply relates to national security and disclosure would not actually harm it. The public are entitled to know how public funds are spent.

Factors against confirmation or denial for S24 - By disclosing any policing arrangements would render security measures less effective. This would lead to the compromise of ongoing or future operations to protect the security or infrastructure of the UK and increase the risk of harm to the public. To counter this, a full review of security measures would be needed and additional costs would be incurred.

Balancing Test - Whilst there is a public interest in keeping everyone informed about security measures, there is also a duty to ensure public safety. To confirm or deny whether information is held specific to your request could be detrimental to any current or future operations. Therefore, after weighing up the competing interests I have determined that the balancing test for disclosure is not made out.

Section 30 - Investigations and proceedings conducted by public authorities

(3) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) or (2).

<http://www.legislation.gov.uk/ukpga/2000/36/section/30>

This is a qualified exemption for which I am required to conduct a public interest test.

Public Interest Test

Factors favouring confirmation or denial for S30 – A statement confirming or denying whether or not information is held (e.g. whether the Hackney Community Defence Association and/or the Colin Roach Centre and its coordinated campaigns are or have been of interest to the police, or that any investigations have taken place) would enhance the transparency and accountability of the force and its operations. This would provide an insight into the police service and enable the public to have better understanding of effectiveness of the police, particularly, in relation to the spending of public funds and the decisions taken by officers. This may also enhance public confidence in the police.

If we confirmed or denied that Special Branch files were held this would allow the public to make informed decisions about how police gather intelligence. This would greatly assist in the quality and accuracy of public debate, which would otherwise likely be steeped in rumour and speculation.

Factors against confirmation or denial for S30 – To confirm or deny the existence of any information in relation to the Hackney Community Defence Association and/or the Colin Roach Centre or campaigns it has coordinated, would disclose MPS practices used, thereby exposing operational procedures and investigative protocols. Information relating to investigative tactics and protocol will rarely be disclosed under the Act and only where there is a strong public interest consideration favouring disclosure.

To confirm or deny that this level of policing activity has or has not occurred in any specific area would enable those engaged in criminal or terrorist activity to identify the focus of policing activity and any tactics that may or may not be deployed.

To confirm or deny the existence of such information would also reveal policing tactics regarding who was of interest to the police generally. This could be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public.

By confirming or denying whether specific groups have been or are of interest to the Police would hinder the prevention or detection of crime. To disclose whether any information is held and how this has been obtained, such as in confidence, could prevent others from coming forward to give valuable evidence. If it were believed that the MPS were unwilling to protect the anonymity of an individual, the public would be unwilling to provide assistance. The MPS would not wish to reveal who, what and when intelligence is recorded and the extent of their investigations as this would clearly undermine the law enforcement and investigative process. This would impact on police resources and more crime and terrorist incidents would be committed, placing individuals at risk.

To confirm or deny that information is held, which may have been received in confidence, would allow those who had committed a crime to know where an investigation is directed and would lead to recognition of which individual may or may not be under investigation. This knowledge may allow others to plan their activity to better try to evade detection.

Confirmation or denial that any further information is held may hinder and undermine the partnership approach to law enforcement in this complex area.

Balancing Test - Confirming or denying that any information is held, would reassure the public that any investigation is being or has been properly conducted and would allow for a greater understanding of how information is gathered. Confirming or denying that any information relevant to the request is held, would however, enable criminals/terrorists to identify the focus of policing activity and evade prosecution. Therefore, by neither confirming or denying that information is held protects any ongoing investigation that the MPS may be conducting. After weighing up the competing interests, I believe that the balance test favours neither confirmation or denial.

Section 31 - Law Enforcement

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).

<http://www.legislation.gov.uk/ukpga/2000/36/section/31>

This is a qualified exemption for which I am required to conduct a public interest test and provide evidence of harm.

Evidence of Harm

To confirm or deny whether information is held relevant to this request could be detrimental to law enforcement.

FOIA is considered to be a release to the world as once the information is published the public authority, in this case the MPS, has no control over what use is made of

that information. Whilst not questioning the motives of the applicant it could be of use to those who seek to disrupt any police investigation as it would by a process of elimination, enable them to identify what level of policing activity is likely to take place and what tactics may or may not have been used.

The effect of this information being available to the applicant and more importantly those who might wish to disrupt Police tactics, would be a requirement for a full review of police tactics and possible increase in costs to the public purse. These investigative tools have been tried and tested over a number of years and these methods have varied very little over the intervening years.

To confirm or deny that the requested information is held or provide details relating to what may or may not be held may be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public, and this would also impact upon any current investigation.

Public Interest Test

Factors favouring confirmation or denial for S31 - Confirming or denying whether Special Branch files are held in relation to specific groups or individuals, the public would see where public funds have been spent and allow the Police service to appear more open and transparent.

Factors against confirmation or denial for S31 - By confirming or denying whether specific groups or individuals are or have been of interest to SO15, would mean that law enforcement tactics would be compromised which would hinder the prevention and detection of crime. Security arrangements and tactics are re-used and have been monitored by criminal groups, fixated individuals and terrorists. These security arrangements and tactics would need to be reviewed which would require more resources and would add to the cost to the public purse.

Disclosure would technically be releasing sensitive operational information, if held, into the public domain, which would enable those with the time, capacity and inclination to try and map strategies used by the MPS.

The MPS is reliant upon these techniques during operations and the public release of the *modus operandi* employed during the enquiries would prejudice the ability of the MPS to conduct similar investigations.

Additionally MPS resources and its ability to operate effectively and efficiently would directly be affected as this information, if held, could be manipulated by those with criminal intent to operate in those areas.

Balancing Test - After weighing up the competing interests I have determined that the disclosure of the requested information, if held, would not be in the public interest as by confirming or denying that information is held would compromise law enforcement and could be to the detriment of providing an efficient policing service, resulting in costs to the public purse.

Section 40 - Personal information

Section 40 of the Freedom of Information Act 2000 is designed to address information that is covered by the Data Protection Act 1998.

Under section 40(5), the MPS is not required to comply with the requirements of section 1(1)(a) i.e. the duty to inform the applicant whether or not the information is held.

Section 40(5)(a) exempts a public authority from the duty to confirm or deny in circumstances where the information requested, if held, would constitute the personal data of the applicant.

The Information Commissioner's Office has published guidance titled 'The exemption for personal information' in relation to Section 40 of the Freedom of Information Act 2000 that states:

'The duty to confirm or deny does not arise in connection with the personal data of the applicant because of section 40(5)(a).'

http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal_information.ashx

Section 2 of the Data Protection Act also defines certain classes of information as 'sensitive personal data'. This includes, but is not limited to, information relating to:

- the commission or alleged commission of any offence
- the physical or mental health or condition of an individual.

A higher threshold exists for the disclosure of sensitive personal data.

Therefore, to either confirm or deny the existence of information regarding an individual would, in this instance be disclosing sensitive personal data. For example, such a statement in relation to your request would confirm to the world at large whether an individual had been investigated and to what extent. This will constitute a breach of the Data Protection Act. Alternatively, such a statement may impair the ability of the MPS to protect personal data in relation to similar requests for information.

To the extent that the information requested would, if held, contain personal data, the MPS is not required to confirm or deny whether the information is held subject to the provisions of section 40(5)(a) of the Act.

Please note that the rationale presented above is in relation to the duty to confirm whether the information requested is held by the MPS.

Overall Balance test

The security of the country is of paramount importance and the Police service will not divulge whether information is or is not held if to do so would undermine National Security or law enforcement. Whilst there is a public interest in the transparency of policing operations and providing assurance that the police service is appropriately and effectively engaging with the threat posed by various groups or individuals there is a very strong public interest in safeguarding the integrity of police investigations and operations in the highly sensitive area of extremism, crime prevention, public disorder and terrorism prevention.

There have previously been requests for information that the Counter Terrorism Command may or may not hold on individuals or groups where the applicant has been unhappy with the reply and pursued a decision from the Information Commissioner. On these occasions the ICO have upheld the approach taken based upon the use of the Section 23(5) exemption. In FS50258193 the Information Commissioner states "The Commissioner is satisfied that there will be very few

instances where the information held by Special Branch is not also held by a Section 23(3) body, even if it was not directly or indirectly supplied by them, as the nature of the work of special branches involves very close working with security bodies and regular sharing of information and intelligence.”

Similarly in FS50263467 the Information Commissioner further states *“that there may be instances where Special Branch information would not relate to a Section 23(3) body, although these would be few and far between.”* The ICO has also accepted in the same case that *“all documents compiled and held by Special Branch will on the balance of probabilities relate to, or have been supplied by, a body specified in Section 23(3). Therefore, any information falling within the scope of this request which might be held by the public authority would be exempt under section 23. To disclose whether such information is or is not held would itself be a disclosure of exempt information.”*

As much as there is public interest in knowing that policing activity is appropriate and balanced this will only be overridden in exceptional circumstances. Areas of interest to the police are sensitive to the extent that they reveal local intelligence. To confirm or deny the existence of the requested information, if held, would allow interested parties to gain an upper hand and awareness of policing decisions used during investigations. As previously stated, disclosure under FOIA is a release to the public at large. Therefore, to confirm or deny the existence of any information that you have requested, if held, into the public domain could potentially be misused proving detrimental to ongoing and future investigations. Whilst not questioning the motives of the applicant it could be of use to those who seek to disrupt any police investigation as it would by a process of elimination, enable them to identify whether specific individuals or groups have or have not been subject of a Special Branch investigation. This would lead to an increase of harm to either the investigation itself or the subject of the investigation.

Whilst to confirm or deny that any information is held, would reassure the public that an investigation had been properly conducted and allow for a greater understanding of how information has been gathered, this could undermine the role and effectiveness of any future investigations, as to confirm or deny that there might have been information which was obtained in confidence, individuals would be reluctant to assist the police for fear of this being made public.

To confirm or deny information is held would harm law enforcement functions of the MPS by disclosing operational techniques used over a significant number of years. This would compromise the future law enforcement capabilities of the police, which would be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public.

After weighing up the competing interests I have determined that confirmation or denial of any information being held concerning whether there are or were Special Branch files held on the Hackney Community Defence Association and/or the Colin Roach Centre or campaigns it has coordinated would not be in the public interest. To confirm or deny that information is held regarding any individual or groups who the MPS might or might not have investigated could be detrimental to any investigations that may be being conducted.

However, this should not be taken as necessarily indicating that any information that would meet your request exists or does not exist.

COMPLAINT RIGHTS

If you are dissatisfied with this response please read the attached paper entitled Complaint Rights, which explains how to make a complaint.

Should you have any further enquiries concerning this matter, please contact me at the address at the top of this letter, quoting the reference number above.

Yours sincerely

C. Gayle-Petrou
Information Manager

COMPLAINT RIGHTS

Are you unhappy with how your request has been handled or do you think the decision is incorrect?

You have the right to require the Metropolitan Police Service (MPS) to review their decision.

Prior to lodging a formal complaint you are welcome to discuss the response with the case officer who dealt with your request.

Complaint

If you are dissatisfied with the handling procedures or the decision of the MPS made under the Freedom of Information Act 2000 (the Act) regarding access to information you can lodge a complaint with the MPS to have the decision reviewed.

Complaints should be made in writing, within forty (40) working days from the date of the refusal notice, and addressed to:

FOI Complaint
Public Access Office
PO Box 57192
London
SW6 1SF
PublicAccessOffice@met.police.uk

In all possible circumstances the MPS will aim to respond to your complaint within 20 working days.

The Information Commissioner

After lodging a complaint with the MPS if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at www.ico.org.uk. Alternatively, phone or write to:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Phone: 01625 545 745

Total Policing is the Met's commitment to be on the streets and in your communities to catch offenders, prevent crime and support victims. We are here for London, working with you to make our capital safer.