

Dear Mr Gallagher

Freedom of Information Request Reference No: 2015010000963

I write in connection with your request for information which was received by the Metropolitan Police Service (MPS) on 15/01/2015. I note you seek access to the following information:

In 2013 it was reported that the Metropolitan Police had opened a criminal investigation into Edward Snowden's leak of classified material to the Guardian newspaper:

<http://bigstory.ap.org/article/guardian-paper-goes-court-over-seized-items>

The investigation was reportedly being led by the Met's then-assistant commissioner Cressida Dick:

<http://www.thetimes.co.uk/tto/news/uk/crime/article3919492.ece>

I would like to request that I be provided with any information held by the Met regarding, a) the current status of the investigation into the leaked classified material, b) the cost of the investigation to date, c) the number of officers currently involved in the investigation, and d) the name and rank of the officer who is now heading the investigation in the absence of Cressida Dick, who announced late last year that she was leaving the Met to take up a new job with the Foreign Office.

EXTENT OF SEARCHES TO LOCATE INFORMATION

To locate the information relevant to your request searches were conducted at the Counter Terrorism Command

AC Mark Rowley has taken over as Head of Specialist Operations following the departure of Cressida Dick

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 whether it holds any of the information that you have 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.

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.

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 if 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 whether we hold any information concerning any current or previous investigations into the alleged actions of Edward Snowden could potentially be misused proving detrimental to national security.

In this current environment, where there is a possibility of increased threat of terrorist activity, providing any details even to confirm or deny that any information exists could assist any group or persons who wish to cause harm to the people of the nation which would undermine the safeguarding of national security.

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 security measures would be rendered 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.

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 in relation to an individual or an investigation that may or may not 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 any information was held by the MPS 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 an individual or a specific investigation 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 a specific individual has or has not been of interest to the Police would hinder the prevention or detection of crime. The MPS would not wish to reveal who, what and when intelligence is recorded 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.

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 thereby exposing operational procedures and investigative protocols and evade prosecution.

Therefore, by neither confirming or denying that information is held protects any ongoing investigation that the MPS may or may not be conducting. Information relating to investigative tactics and protocol will rarely be disclosed under the Act. 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. 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 investigations that may or may not be in progress.

Public Interest Test

Factors favouring confirmation or denial for S31 - Confirming or denying whether the MPS has or is investigating a specific individual, 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 an individual is of interest to the MPS, 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, 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 has been investigated by the MPS 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.

Furthermore, a confirmation or denial would itself be disclosing personal data.

Under section 40(5)(a) the MPS is not required to confirm or deny whether or not information is held.

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 threats posed by 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.

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, into the public domain could potentially be misused proving detrimental to ongoing and future investigations. To disclose what information, if any, is held 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 MPS 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

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 the MPS has investigated the alleged actions of Edward Snowden or not would not be in the public interest. To confirm or deny that information is held regarding any individual or investigation that may or may not have taken place could be detrimental to any investigations that may be being conducted now or in the future.

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

COMPLAINT RIGHTS

Your attention is drawn to the attached sheet which details your right of complaint.

Should you have any further enquiries concerning this matter, please contact me

quoting the reference number above.

Yours sincerely,

Karen Fox
Information Manager