

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 21 December 2006

Name of Public authority: North Yorkshire Police
Address of Public authority: Newby Wiske Hall
Northallerton
North Yorkshire
DL7 9HA

Summary

1. The complainant asked North Yorkshire Police ('NYP') for information about the cost to the force of policing/policing protests at RAF Menwith Hill ('the base'). NYP refused to provide the information, citing the exemptions contained in sections 24(1), 26(1), 27(1), 31, 36(2), and 38(1) of the Freedom of Information Act 2000 ('the Act'). However, NYP subsequently withdrew its citation of the exemption in section 24 and instead contended that the exemption in section 23(1) was applicable to most of the information sought. The Commissioner has decided that section 23(1) is engaged and, since it is an absolute exemption, it is not subject to the public interest test, and NYP is entitled to withhold the information in question. While the Commissioner welcomed NYP's agreement to provide the complainant with some information, he criticised NYP for citing section 23 at such a late stage and found that NYP was in breach of section 17 of the Act.

The Commissioner's Role

2. The Information Commissioner's ('the Commissioner') role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.

The Request

3. On 21 February 2005, the complainant asked NYP, under section 1 of the Act, for the following information regarding the policing of the base in the five year period prior to the date of his request:
 - statistically, the number of incidents/events that (NYP) officers have been called to or attended, arising from protests outside the base, or intrusions or other acts

committed by protesters in it or around it and, if available, the number of man hours of police time that have been spent dealing with such incidents;

- did NYP have any specific agreement(s) with the base as regards provision of policing around it or within it, and could he have a copy of any such agreement;
 - regarding the financing of all such policing, the cost to NYP year by year over that period, and information about any reimbursement of such costs by the base itself or by central government;
 - whether the base paid a certain amount to NYP for their services and, if so, how much this was and how often was it paid.
4. On 7 March 2005 NYP declined to provide the statistics the complainant had requested, saying that protests at the base were policed while maintaining normal policing functions, and that the number of man hours spent was not recorded. NYP said that it had a formal working partnership with the Ministry of Defence Police, but declined to provide the complainant with a copy of any specific agreement, citing sections 26, 30 and 31 of the Act (relating respectively to Defence; Investigations and proceedings conducted by public authorities; and Law enforcement). NYP revealed that it received some additional funding from central government for the policing of the base, but refused to provide details of the cost to NYP year by year over a five year period, citing section 31 of the Act. NYP said that it did not appear to have information as to whether or not the base paid any amount for police services, and suggested that the complainant made the request to the Ministry of Defence Police. NYP recognised that, where public funds were being spent, there was a public interest in accountability and justification. However, NYP concluded that these considerations were outweighed by the potential impact of the release of the information on: operational effectiveness in the deployment of staff: the response to incidents or operations: the interests of third parties, and on the capability and effectiveness of security.
5. On 22 March 2005 the complainant asked NYP to reconsider its decision in relation to all but its refusal to provide the number of man hours of police time spent dealing with/attending incidents at the base. He argued that it was a matter of public interest for the statistics he sought to be revealed, and that he could not imagine that all of the information in the partnership agreement fell within the exemptions in sections 26, 30 and 31 of the Act: he requested an edited version of the information. As to the additional funding received by NYP and the yearly cost to it, the complainant argued that these matters involved public funds and that it was in the public interest to know the scale of such additional funding and costs.
6. In their reply to the complainant's review request on 29 June 2005, NYP provided him with statistics as to the number of protests recorded at the base in the previous two years and confirmed what they had told him during a telephone call, that searching five years of reports for information "would fall within the fee paying criterion, which was an option that the complainant had said he did not wish to pursue." (The Commissioner understood this to mean that the cost of providing the information would exceed the appropriate limit and that, although the NYP was prepared to provide the information for a fee, the complainant had indicated that he

did not wish to be supplied with the information on that basis.) NYP provided the complainant with some information relating to the specific agreements with the base regarding policing, but maintained their refusal to disclose information as to the financing of the policing of the base and as to whether or not the base paid a certain amount to NYP for its services.

The Investigation

Scope of the case

7. In asking the Commissioner to review NYP's refusal of his information request, the complainant refined his description of the outstanding information, as follows:

"The year by year costs to NYP of all of the policing of protests at (the base) (i.e. within it; arising from protests/protest events and incidents outside it, or intrusions or other acts by such protesters in or around it) in the previous five years;

information about any reimbursement to NYP of such costs by the base or by central government;

whether in the previous five years RAF Menwith Hill paid a certain amount to NYP for its services and, if so, exactly how much was paid, and how often".

8. The complainant contended that NYP's decisions on the matter were against the public interest; that, as regards the costs of policing the protests at the base, members of the public should be allowed to know the cost to the public purse, and how much of that cost fell on NYP. He said that local people might feel the latter cost to be disproportionate. As to the scale of any government financial assistance, or of any payment made direct to NYP by the base, he contended that this too should be public knowledge. He said that the disclosure of the scale of costs/financial assistance would not reveal operational policies or police strategies or harm policing generally. He contended that, as a general principle, public expenditure should be as transparent as possible.

Chronology

9. The Commissioner asked NYP for copies of the information sought by the complainant, and for any comments that it wished to make. On 27 March 2006, along with NYP's comments on the complaint to the Commissioner, it provided details of the total costs for the policing of the base, including the costs of policing demonstrations, from 2001/2002 to 2004/2005, and the grant that NYP had received towards it. NYP said that it did not have any figures before this date, and that the information that it did have was withheld from the complainant under section 31 of the Act on the ground that release of the information might impact on its operational effectiveness. NYP further said that, during the internal review, it had found that the information could also have been withheld under sections 36 (prejudice to effective conduct of public affairs) and 38 (health and safety). It also said that, due to the nature of the funding for the base, disclosure of this

information would identify the relative importance of the base in the national security infrastructure and thus sections 24 (national security) and 26 (defence) would also apply, as well as section 27 (international relations). NYP contended that, while it was accepted that protesters could identify the overt resources deployed, they had no way of knowing the extent of any other deployment, which could be revealed if the costs of policing specific protests were to be released. NYP said that this would make the policing of events less effective, and have implications for the security of the base and for the health and safety of the officers and the public. It said that the release of the information could also damage its relations with the American Forces present at the base.

10. In response to enquiries made by the Commissioner's staff, NYP confirmed that information relating to the funding of the policing of the base between 1999 and 2001 was not readily available (rather than non-existent) because it was prior to the establishment of the Counter Terrorism Unit, before the creation of which such information was not routinely captured.
11. Following receipt of the Commissioner's preliminary view of the case, on 6 October 2006 NYP notified the Commissioner that, in order to inform its response, it had contacted the base and had, for the first time, been advised by the base that the information sought by the complainant was such that it should be properly characterised as exempt by virtue of section 23(1) of the Act. NYP therefore withdrew its contention that section 24 was applicable. On 13 October 2006, the Commissioner sought confirmation from the Ministry of Defence of the applicability of section 23(1), which it supplied on 21 November 2006.
12. Following the Commissioner's intervention, NYP has agreed to inform the complainant of the source of its funding for policing, including policing protests, at the base, which will also serve to answer the questions of whether the base contributes to those costs, and to let him know whether any such costs fall to be met from local taxation. The Commissioner welcomes this development.

Analysis

Procedural matters

13. In reaching his decision in this case the Commissioner has first considered how NYP dealt with the complainant's information request. Under section 17 of the Act (see the Legal Annex to this Decision Notice), where a public authority is relying on a claim that information is exempt information, it must, within twenty working days, give the applicant a notice which states that fact, specifies the exemption in question and states (if not apparent) why the exemption applies. The Commissioner notes that NYP did not give the complainant such a notice in relation to its reliance on the exemptions in sections 24, 27, 36 and 38 of the Act, which it did not cite until commenting on 27 March 2006 on the complaint as made to the Commissioner.

14. In addition, and of much greater concern, is the fact that NYP did not express their intention to rely on section 23 of the Act until 6 October 2006, after it had been given the opportunity to comment on the Commissioner's preliminary findings. The Commissioner recognises that some requests for information require public authorities to take advice from sources such as government departments and others with whom they do not have regular dealings. Nevertheless, the Commissioner expects any such consultation to be undertaken at an early stage in proceedings. In the present case, the Commissioner is surprised that NYP was unaware of the base's status: given that fact, he therefore considers NYP's failure to take steps to establish what that status was until some 18 months after the complainant made his information request to be wholly unacceptable. There is a need to cite any relevant exemptions at the earliest possible date, and matters would have been resolved much more quickly if NYP had acted sooner.
15. In both of the instances outlined above, the Commissioner finds that NYP has breached the requirements of section 17 of the Act. The consequences in terms of providing a proper response to the request and the protraction of the Commissioner's resultant investigation are matters of serious concern which warrant the Commissioner's criticism.

Exemptions

16. Since NYP now seek to rely on section 23 (see the Legal Annex) as its basis for withholding all of the information sought by the complainant (other than that set out in paragraph 12 above), the Commissioner first considers that exemption.

Section 23

17. The effect of section 23 (1) is that information held by a public authority is exempt information if it 'relates to' any of the bodies specified in subsection (3). NYP now contends, and the Ministry of Defence has confirmed, that the information sought about RAF Menwith Hill does so relate. The Commissioner therefore finds that section 23 is engaged. In view of the fact that section 23 affords an absolute exemption, and is not subject to the public interest test, the Commissioner concludes that NYP was entitled to withhold the outstanding information.

Sections 26,27,31,36 and 38

18. Given the absolute nature of section 23, the Commissioner considers that no useful purpose would be served by him discussing the merits, or otherwise, of the arguments put forward by NYP under the above sections of the Act.

The Decision

19. The Commissioner's decision is that NYP
 - i) has correctly applied section 23 in relation to the details of the costs of policing RAF Menwith Hill, and policing protests in and around the base;

- ii) should, as agreed, now notify the complainant as to the source of any grant that it receives towards the overall cost of policing the base, and protests in and around it, and should notify him as to whether or not such costs are met from local taxation.

Steps Required

- 20. The Commissioner requires NYP to provide the complainant with the information set out in paragraph 19 (ii) above within 40 days of receipt of this Notice.

Right of Appeal

- 21. Either party has the right to appeal against this Decision Notice to the Information Tribunal ('the Tribunal'). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 21 day of December 2006

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled -

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 17(1) provides that-

“(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of 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 that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 23 provides that -

“(1) Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

(2) A certificate signed by a Minister of the Crown certifying that the information to which it applies was directly or indirectly supplied by, or relates to, any of the bodies specified in subsection (3) shall, subject to section 60, be conclusive evidence of that fact.”

(3) The bodies referred to in subsections (1) and (2) are-

- (a) the Security Service,
- (b) the Secret Intelligence Service,
- (c) the Government Communications Headquarters,
- (d) the special forces,
- (e) the Tribunal established under section 65 of the Regulation of Investigatory Powers Act 2000,
- (f) the Tribunal established under section 7 of the Interception of Communications Act 1985,
- (g) the Tribunal established under section 5 of the Security Service Act 1989,
- (h) the Tribunal established under section 9 of the Intelligence Services Act 1994,
- (i) the Security Vetting Appeals Panel,
- (j) the Security Commission,
- (k) the National Criminal Intelligence Service, and

(l) the Service Authority for the National Criminal Intelligence Service.”

(4) In subsection (3)(c) “the Government Communications Headquarters” includes any unit or part of a unit of the armed forces of the Crown which is for the time being required by the Secretary of State to assist the Government Communications Headquarters in carrying out its functions.”