

Freedom of Information Act 2000 (Section 50)

Decision Notice

16 June 2009

Public Authority: Metropolitan Police Service
Address: Public Access Office
Empress State Building
Lillie Road
London
SW6 1TR

Summary

The complainant requested information relating to an incident in which the Metropolitan Police Service conveyed the passport belonging to Cherie Blair, the Prime Minister's wife, from 10 Downing Street to Heathrow Airport. To begin with, the Metropolitan Police Service incorrectly dealt with the request outside of the Act. It subsequently refused the request on the basis of the exemptions at sections 24 (National Security), 31 (Law Enforcement) and 38 (Health and Safety). Following the Commissioner's intervention, the Metropolitan Police Service accepted that these exemptions do not apply to the information falling within the scope of the request and that they were cited in error.

During the course of his investigation, the Metropolitan Police advised the Commissioner that no recorded information within the scope of the request was held. Subsequently, it advised the Commissioner that a limited amount of recorded information had belatedly been located.

In failing to identify and disclose recorded information that was held at the time of the request the Commissioner finds the Metropolitan Police Service did not comply with its obligations under sections 1(1)(b) and 10(1) of the Act. In failing to confirm within 20 working days that it held recorded information within the scope of the request, the Metropolitan Police Service is in breach of section 1(1)(a) and section 10(1) of the Act. In issuing a defective refusal notice, the Metropolitan Police Service breached section 17(1) of the Act and in failing to specify the relevant sub-sections it breached section 17(1)(b). As the information has now been disclosed to the complainant, the Commissioner does not require any steps to be taken.

The Commissioner's Role

1. The Commissioner's duty 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. Following accounts in the press that the Metropolitan Police Service had rushed the passport of Cherie Blair, the Prime Minister's wife, from 10 Downing Street to Heathrow Airport on an occasion when she was travelling in a private capacity, the complainant wrote to the Metropolitan Police Service on 2 June 2005 to make a formal complaint about the incident. Within his letter, he requested:

'all relevant documentation regarding this matter including CAD logs, logs of telephone calls and radio messages, reports submitted after the incident and all similar relevant paperwork'.

3. On 20 June 2005, the Metropolitan Police Service wrote to the complainant advising him:

'Your request is being treated as a Freedom of Information Request. The matter is being investigated and we hope to be able to reply in the next few days'.

4. On 19 July 2005, despite its earlier correspondence advising him that it was treating his request as a Freedom of Information request, the Metropolitan Police Service wrote to the complainant advising him that it had handled the matter outside the provisions of the Act and that it was unwilling to disclose the information he requested.

5. The complainant wrote to the Metropolitan Police Service on 9 August 2005 expressing his dissatisfaction with its response and insisting that his request for information be complied with in accordance with the terms of the Act.

6. The Metropolitan Police Service subsequently issued a refusal notice on 10 October 2005 citing the following exemptions:

- section 31 *'because the disclosure would reveal the day to day detail of how the Metropolitan Police Service provides protection and undertakes its routine duties in connection with law enforcement'*;
- section 38 as these disclosures *'might threaten the health and safety of those subject to current or future protection'*; and
- section 24 in that *'public knowledge of the nature of protective security will erode public confidence in UK national security'*.

7. Following advice from the Commissioner, the complainant requested an internal review on 19 March 2006.

8. The Metropolitan Police Service responded to the complainant on 21 August 2006, upholding its original decision to withhold the requested information.

9. As the complainant remained dissatisfied, he wrote to the Commissioner on 28 September 2006 to complain about the way his request for information had been handled and about the Metropolitan Police Service's refusal to supply the information he had requested. The complainant specifically asked the Commissioner to consider the following points:-
- the validity of the exemptions being claimed by the Metropolitan Police Service in relation to his request for information;
 - the time taken by the Metropolitan Police Service to deal with the matter.

The Investigation

Scope of the case

10. During the investigation, the Metropolitan Police Service informed the Commissioner that it no longer wished to rely on sections 24, 31 and 38 for the non-disclosure of the requested information.
11. The Commissioner's investigation into the complainant's concerns has therefore sought to establish whether the Metropolitan Police Service complied with the requirements of section 1(1) of the Act.

Chronology

12. After an initial attempt at informal resolution, the Commissioner wrote to the Metropolitan Police Service on 16 September 2008 asking for clarification of the steps it had taken to locate the information required to satisfy the request. He also asked the Metropolitan Police Service to clarify whether information within the scope of the request would have been held at the time of the request but was no longer held and, if so, what evidence there was to support this.
13. The Metropolitan Police Service responded to the Commissioner on 23 September 2008, providing details of the searches undertaken to locate the information required to answer the request. It advised that no recorded information had been found and that, from its enquiries, there was no indication that the information would have been in existence at the time of the original request.
14. The Commissioner responded on 23 September 2008 asking for clarification of the areas in which relevant information may be recorded, specifically in relation to the use of police pocket notebooks and the availability of duty records.
15. On 29 September 2008 the Metropolitan Police Service wrote to the Commissioner providing information on the use of police pocket notebooks and the availability of duty records. It also advised that it had belatedly discovered a press line dated 22 May 2005 (the day of the incident) that had been recorded in respect of enquiries from journalists.

16. Following further correspondence with the complainant, the Commissioner wrote to the Metropolitan Police Service on 13 November 2008 confirming that his investigation would continue and specifying further search activity he required it to undertake.
17. The Metropolitan Police Service responded on 1 December 2008 advising that although a physical examination of the relevant police pocket notebooks had not been conducted, there was no reason to doubt the fact that officers did not recall recording any information within the scope of the request.
18. The Commissioner wrote to the Metropolitan Police Service on 4 December 2008, reminding of its responsibility to conduct the appropriate searches and asking to be provided with copies of the relevant pages of the police pocket notebooks. The Commissioner also asked the Metropolitan Police Service to explain its original response which understandably gave the complainant the impression that information about the incident existed at the time of his request.
19. On 7 January 2009 Metropolitan Police Service provided the Commissioner with a copy of the relevant pages from the police pocket notebooks. It also explained the reasoning behind its initial refusal and internal review.
20. On 30 January 2009 the Metropolitan Police Service wrote to the complainant apologising for the way in which it had handled his request for information and explaining the steps it has taken since 2005 to improve its approach to the handling of Freedom of Information matters. The Metropolitan Police Service also disclosed the press line to the complainant.
21. The Commissioner notes that during his investigation, the Metropolitan Police Service created some information which, although not disclosable under the terms of the Act as it was not recorded at the time of the request, could be of interest to the complainant.

Analysis

Procedural matters

Section 1 – Failure to disclose information

22. 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.”

23. Following the Commissioner's intervention, the Metropolitan Police Service located a copy of a press line that fell within the scope of the requested information. The Commissioner notes that it belatedly identified recorded information that should have been disclosed to the complainant at the time of the request.
24. The Commissioner has considered whether the Metropolitan Police Service has now undertaken the appropriate steps to locate and identify all information falling within the scope of the complainant's request. In deciding this matter, the Commissioner has considered the scope, quality, thoroughness and results of the searches carried out by the Metropolitan Police Service.
25. The Commissioner accepts that the Metropolitan Police Service has now located all the information held that falls within the scope of the complainant's request. The Commissioner notes, however, that the Metropolitan Police Service only undertook a search for information following prompting from his office and would stress the particular importance of ensuring that appropriate steps are taken to identify all information relevant to the request.
26. In this case, the Commissioner is satisfied that only limited information relevant to the request, namely the press line, was recorded at the time of the request. However, the Commissioner considers that this information should have been supplied at the time of the initial request and therefore the Metropolitan Police Service has breached section 1(1)(b) of the Act in that it failed to provide disclosable information by the time of the completion of the internal review.

Section 10 – Time for compliance

27. Section 10(1) provides that -

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

28. A response may take the form of the supply of the requested information, confirmation that the information is not held, a formal refusal or an indication that additional time is required to consider the public interest in relation to specific exemptions.
29. In this case, the complainant made his request on 2 June 2005 but the Metropolitan Police Service did not provide him with a decision until 10 October 2005. The Commissioner recognises that the Metropolitan Police Service's refusal notice in this case was conducted prior to the issuing of his 'Good Practice Guidance No 4' in February 2007, in which he provided advice to public authorities on relevant timescales. However, he notes that the 90 working days which the Metropolitan Police Service took to issue its refusal notice was clearly in breach of the statutory timescale. Accordingly, the Commissioner finds that, in failing to confirm or deny within 20 working days whether it held the requested information, the Metropolitan Police Service breached the requirements of section

10(1) and that it also breached section 10(1) by failing to provide the information within 20 working days.

Section 17 - Refusal of request

30. Section 17 (1) provides that:

“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.”*

31. When initially refusing the request, the Metropolitan Police Service cited sections 24, 31 and 38. Given the nature and content of the recorded information held at the time of the request, it is apparent that the Metropolitan Police Service was incorrect in refusing to disclose any information to the complainant on the basis that the information was exempt. It has since accepted that these exemptions do not apply to the information falling within the scope of the request and that they were cited in error.

32. The Commissioner considers the terms in which the request was framed were clear enough for the Metropolitan Police Service to have been in a position to respond correctly from the outset.

33. Although incorrectly refusing to provide the requested information, the Commissioner finds that the refusal notice the Metropolitan Police Service issued was technically defective. Section 17(1)(b) places an obligation upon the public authority that its refusal notice *‘specifies the exemption in question’*. The Commissioner’s view is that the public authority is thereby required to refer to the specific part(s) of the relevant exemption(s). In this case, in failing to specify the subsections of the exemptions claimed, the Commissioner has concluded that the Metropolitan Police Service breached section 17(1)(b) of the Act in failing to supply a notice compliant with the requirements of that section within 20 working days.

34. In failing to issue the refusal notice within the statutory time limit or rectify this by the time of its internal review, the Metropolitan Police Service failed to comply with the requirement of section 17(1) that, where a public authority believes an exemption applies, it should specify the exemption in question and state why that exemption is considered to apply.

The Decision

35. The Commissioner's decision is that the Metropolitan Police Service did not deal with the request for information in accordance with the Act.
- It breached section 1(1)(b) by not providing the complainant with the requested information by the time of the completion of the internal review
 - It breached section 1(1)(a) by failing to notify the complainant in writing whether it held information of the description specified in the request
 - It breached section 10(1) by failing to inform the complainant whether it held the requested information within 20 working days of the request
 - It breached section 10(1) by not providing the complainant with the requested information within 20 working days of the request
 - It breached section 17(1) by failing to issue the refusal notice within the statutory time limit and section 17(1)(b) by failing to specify the subsections of the exemptions claimed.

Steps Required

36. In light of the fact that the recorded information held at the time of the request, namely the press line, has been disclosed to the complainant, the Commissioner requires no steps to be taken.

Other matters

37. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.

Internal review

38. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. Whilst he recognises that in this case, the delay occurred before the publication of his guidance on the matter, the Commissioner remains concerned that it took over 100 working days for an internal review to be completed.

Right of Appeal

39. Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk

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

Dated the 16th day of June 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annexe

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 10(1) provides that –

'Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.'

Section 17(1) provides that -

'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.'