

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 September 2010

Public Authority: Commissioner of the Metropolitan Police Service
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Summary

The complainant requested information concerning referrals for suspected grooming on BEBO to the Metropolitan Police and to the Child Exploitation and Online Protection Centre. The public authority refused to confirm or deny whether it held information falling within the scope of the request and cited the exemptions provided by sections 23(5) (information relating to, or supplied by, security bodies), 30(3) (information held for the purposes of investigations), 31(3) (prejudice to law enforcement), 38(2) (endangerment to health and safety), 40(5) (personal information) and 44(2) (statutory prohibitions to disclosure). The Commissioner finds that the public authority applied the exemption provided by section 23(5) correctly and so was not obliged to provide confirmation or denial of whether it held information falling within the scope of the request. However, he also finds that the public authority failed to comply with the requirements of sections 17(1)(c) and 17(3)(a) in not providing adequate explanations for the exemptions cited.

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. The complainant made the following information request on 5 January 2010:
 - i. *"Can you please inform me how many suspect groomers have been referred to the Metropolitan Police or CEOP directly from the online social networking site BEBO by the owners of this site [during the last four years]."*
 - ii. *"the numbers [of referrals from BEBO to MPS or CEOP for suspected grooming] which have resulted in a criminal charge [during the last four years]"*.
 - iii. *"the number convicted [during the last four years as a result of referral from BEBO to MPS or CEOP for suspected grooming]"*.
3. The public authority responded to this on 26 January 2010 and refused to confirm or deny whether it held information falling within the scope of the requests. As reasoning for this refusal, the public authority cited the exemptions provided by sections 23(5) (information relating to, or supplied by, security bodies), 30(3) (information held for the purposes of investigations), 31(3) (prejudice to law enforcement), 38(2) (endangerment to health and safety), 40(5) (personal information) and 44(2) (statutory prohibitions on disclosure).
4. Section 17(4) was cited in the refusal notice. This section provides that a public authority is not obliged to explain in a refusal notice why an exemption is engaged, or, where relevant, why the balance of the public interest favours the maintenance of an exemption, if to do so would, in itself, involve the disclosure of exempt information. However, whilst the public authority provided no explanation as to why sections 23(5), 30(3), 40(5) and 44(2) were believed to be engaged, it did go on to briefly address why it believed that sections 31(3) and 38(2) were engaged, and why it believed that the balance of the public interest favoured the maintenance of sections 30(3), 31(3) and 38(2). These explanations covered these exemptions jointly, rather than providing a separate explanation as to why sections 31(3) and 38(2) were believed to be engaged, or for why the balance of the public interest was believed to favour the maintenance of each of the qualified exemptions cited.
5. The complainant responded to this on 26 January 2010 and requested that the public authority carry out an internal review of its handling of his information request. The public authority responded to this on 8 February 2010. The outcome of the internal review was that the public

authority upheld its refusal to confirm or deny whether it held information falling within the scope of the request on the grounds that the exemptions provided by sections 23(5), 30(3), 31(3), 38(2), 40(5) and 44(2) were engaged. This response stated specifically that it represented a refusal notice for the purposes of section 17(1), rather than 17(4), but provided no significant further detail as to why these exemptions were believed to be engaged.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner on 8 February 2010. The complainant disagreed with the refusal by the public authority to confirm or deny whether it held information falling within the scope of the request and suggested that the information he had requested should be disclosed as this would be consistent with the disclosure of other data about crime.

Chronology

7. The Commissioner contacted the public authority in connection with this case on 20 April 2010. The public authority was asked to respond with detailed explanation for each of the exemptions cited.
8. The public authority responded to this on 16 June 2010. In this response the public authority confirmed that it believed that the exemptions cited in the refusal notice and in the internal review response were engaged and provided further explanation of its reasoning for the citing of these exemptions. At this stage the public authority also confirmed that its position was not that section 17(4) applied, as it accepted that it would have been possible for it to provide a refusal notice compliant with sections 17(1) and 17(3) without disclosing exempt information.

Analysis

Exemptions

Section 23

9. Section 23(5) provides an exemption from the duty to confirm or deny if to do so would involve the disclosure of information that related to, or was supplied either directly or indirectly by, any of the bodies specified in section 23(3). Section 23(5) specifies that it applies to either recorded or unrecorded information. The effect of this is that the issue to determine when considering if this exemption is engaged is whether it is reasonable to conclude that, if the public authority did hold information falling within the scope of the complainant's requests, this information would have been supplied by, or would relate to, any of the bodies specified in section 23(3).
10. The argument of the public authority in this case concerns the relationship between the Child Exploitation and Online Protection Centre (CEOP) and the Serious Organised Crime Agency (SOCA). SOCA is specified in section 23(3) and the public authority describes CEOP as '*affiliated*' to SOCA and, therefore, information relating to or supplied by CEOP would be subject to the protection afforded to SOCA by section 23(3). The Commissioner has undertaken a two stage process in this case in deciding whether this exemption is engaged. First, he has considered the relationship between CEOP and SOCA and what this suggests about whether information supplied by or relating to CEOP would be subject to section 23(3). Secondly, if it is the case that the relationship between CEOP and SOCA does suggest that section 23(3) would apply to information relating to, or supplied by, CEOP, the Commissioner will go on to consider whether it is reasonable to conclude that any information held by the public authority that falls within the scope of the request would have been supplied by or would relate to CEOP.
11. Turning to the relationship between CEOP and SOCA, as covered above, the public authority stated that CEOP is '*affiliated*' to SOCA, but initially provided no detail or description about this relationship. The Commissioner's research on this issue has located the following.
12. The website of SOCA contains the following relevant content:

"SOCA supports the operation of CEOP. CEOP is an affiliated unit with operational independence from SOCA but accountable to the SOCA Board through a committee".

<http://www.soca.gov.uk/about-soca/how-we-are-run>

The CEOP website states the following about its relationship with SOCA and about the Act:

"The Child Exploitation and Online Protection (CEOP) Centre is affiliated to the Serious Organised Crime Agency (SOCA), and as such all directly employed staff will in essence be employed by SOCA and governed by the policies and terms and conditions of employment adopted by SOCA."

<http://www.ceop.police.uk/recruitment/>

"CEOP derives its statutory powers from the Serious Organised Crime and Police Act 2005 and CEOP is therefore exempt from The Freedom of Information Act 2000"

http://www.ceop.gov.uk/terms_and_conditions.asp

13. In response to further questioning from the Commissioner on the issue of the relationship between CEOP and SOCA, the public authority consulted with SOCA about this. The following is the description provided by SOCA to the public authority about the status of CEOP:

"CEOP is, and always has been, a department of SOCA. It has no legal personality that can feature in any proceedings. There is no Act of Parliament that has constituted a body called CEOP. Matters concerning CEOP's mode of operation, management and engagement with other agencies are purely administrative."

14. The Commissioner is mindful that Parliament was specific when identifying the organisations that it believed required the protection provided by section 23. The Commissioner will not make decisions that contradict Parliament by, in effect, extending this protection to other organisations by virtue of the fact that, for example, an organisation not specified in section 23(3) works closely with a section 23(3) body. If the affiliation between CEOP and SOCA amounted only to these organisations working closely together, section 23 would not, therefore, cover CEOP. If, however, CEOP is a part of SOCA, the Commissioner would accept that section 23 applies to it.
15. The Commissioner notes that the quote from the SOCA website above states that, whilst CEOP has operational independence, it is accountable to the SOCA board. The Commissioner considers it clear from this description that the relationship between SOCA and CEOP

goes beyond that of two separate organisations that work closely together. The use of the term *operational* independence also suggests that SOCA regards CEOP as having the appearance of an independent organisation in its day to day work, without actually being such.

16. Further evidence of the relationship between SOCA and CEOP is provided by the quote above which states that CEOP staff are '*in essence*' employed by SOCA. Whilst the use of the wording '*in essence*' suggests that there may be a crucial distinction between the staff of CEOP and of SOCA, the Commissioner believes that this wording is there to indicate that CEOP staff work on separate matters and at separate premises to core SOCA staff whilst still being employed by SOCA, and so this distinction is not crucial to the section 23 issue here. The Commissioner takes this description of the staffing arrangements within CEOP as further evidence that CEOP is a part of SOCA.
17. Finally, the Commissioner has taken into account the description provided by SOCA of its relationship with CEOP. This description is unequivocal in stating that CEOP is a department of SOCA. The Commissioner considers this description particularly significant given that, rather than this being an attempt by the public authority to explain the status of CEOP and its relationship with SOCA, this description was provided by SOCA itself. The Commissioner also notes that the Home Office published proposals "Child Exploitation and Online Protection Centre: the way forward" in January 2010, which sets out plans for CEOP to become a new NDPB in its own right, which again suggests that it currently does not have its own identity.¹
18. On the basis of the evidence described above, the conclusion of the Commissioner is that CEOP is a part of SOCA. Information relating to, or supplied by, CEOP is, therefore, related to, or supplied by SOCA and so is subject to the exemptions provided by sections 23(1) and 23(5). The Commissioner would stress that the basis of this decision is that CEOP is a part of SOCA. This decision is not based on the closeness or otherwise of the working relationship between CEOP and SOCA and this decision should not be taken as an indication that the Commissioner will make any decision that extends the protection afforded by section 23 to any body not specified in section 23(3).
19. Turning to the second question, whether it is the case that it is reasonable to conclude that any information held by the public authority that falls within the scope of the request relates to, or was supplied by CEOP, the first part of this analysis is based upon the wording of the request and what this suggests about information within

¹ <http://www.official-documents.gov.uk/document/cm77/7785/7785.pdf>

its scope. The remainder of this analysis is based on the representations provided by the public authority as to how information falling within the scope of the request would have been provided to it.

20. The complainant requests total figures relating to referrals received from BEBO by either CEOP or the public authority. To the extent that these figures cover referrals made directly to CEOP, the Commissioner considers it clear that this information would relate to CEOP and so to SOCA, a body specified in section 23(3), meaning that section 23(5) is engaged.
21. To the extent that these total figures relate to referrals made to the public authority, as the public authority is not amongst the bodies specified in section 23(3), it is less clear that section 23(5) would apply to this information. The argument of the public authority here is that it is likely that any relevant information that might exist would have been supplied to it via CEOP. The public authority acknowledges, however, the possibility of direct referral without going via CEOP.
22. The Commissioner accepts that the primary route for relevant referrals to the public authority would be via CEOP. In response to the Commissioner's enquiries on this issue, the public authority provided evidence, including a statement from a relevant specialist from within the MPS, that establishes the probability that the requested information, if held, came through a s.23 body.
23. The Commissioner also notes the following wording from the CEOP website:

*"The Child Exploitation and Online Protection (CEOP) Centre delivers a multi-agency service dedicated to tackling the exploitation of children. That means building intelligence around the risks, tracking and bringing offenders to account **either directly or with local and international police forces**".*

<http://www.ceop.gov.uk/>

24. As to the acknowledgement from the public authority that it is possible that referrals could be made to it directly rather than via CEOP, a similar issue was considered by the First-tier Tribunal (Information Rights) in the case *The Commissioner of Police of the Metropolis vs Information Commissioner* (EA/2010/0008) and the public authority made reference to that case in its representations here. In that case, the position of the public authority was that it was highly likely that any information it held that fell within the scope of the request would have been supplied to it by a section 23(3) body and, therefore,

section 23(5) was engaged. The counter argument was made that only certainty as to the source of the information would be sufficient. The Tribunal rejected this counter argument and stated:

*"[The evidence provided] clearly establishes the **probability** that the requested information, if held, came through a section 23 body."* (paragraph 20)

25. In this case it is not possible to establish with certainty that any, or all, relevant information would relate to CEOP as the public authority has acknowledged the possibility of referral being made to it directly. However, similarly to the aforementioned Tribunal case, the Commissioner accepts, primarily on the basis of the evidence referred to above at paragraph 22, the probability that relevant information would have been supplied to the public authority by CEOP and section 23(5) does, therefore, apply to the requested information to the extent that these figures relate to referrals made to the public authority.
26. The overall conclusion of the Commissioner is, for the reasons given above, that the exemption provided by section 23(5) is engaged and, therefore, that the public authority was not obliged to comply with the requirement of section 1(1)(a) in relation to these requests. This conclusion applies to the entirety of requests (i), (ii) and (iii).

Sections 30, 31, 38, 40 and 44

27. As the above conclusion has been reached on section 23(5), it has not been necessary to go on to consider the other exemptions cited by the public authority.

Procedural Requirements

Section 17

28. In failing to provide adequate explanations as to why the exemptions were believed to be engaged or, where relevant, for why the balance of the public interest favoured the maintenance of these exemptions at either the refusal notice or internal review stage, the public authority did not comply with the requirements of sections 17(1)(c) or 17(3)(a).

The Decision

29. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied the

exemption provided by section 23(5) correctly. However, he also finds that the public authority failed to comply with the procedural requirements of sections 17(1)(c) and 17(3)(a) in its handling of the request.

Right of Appeal

30. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 23rd day of September 2010

Signed

Steve Wood
Assistant Commissioner

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

Legal Annex

Section 17

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."

Section 17(3) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

Section 23

Section 23(3) provides that –

"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
- (l) the Service Authority for the National Criminal Intelligence Service
- (m) the Serious Organised Crime Agency."

Section 23(5) provides that –

"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)."