

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 16 March 2011

**Public Authority:** Commissioner of the Metropolitan Police Service  
**Address:** Public Access Office  
20th Floor  
Empress State Building  
Lillie Road  
London  
SW6 1TR

### Summary

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In a narrowed request, the complainant asked the Metropolitan Police Service (the "public authority") to provide information relating to a criminal inquiry. The public authority originally refused to disclose this relying on section 12 (cost of compliance exceeds appropriate limit). It subsequently applied the exemptions at sections 30(1) (investigations and proceedings), 40(2) and (5) (personal information) and 42(1) (legal professional privilege). It also stated that, in respect of one part of the request, it held no information. During the Commissioner's investigation the public authority again stated that it wished to rely on section 12.

The Commissioner's decision is that compliance with the request would exceed the appropriate limit. He has not therefore considered the applicability of the other exemptions. The complaint is not upheld. The public authority's handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice.

### The Commissioner's role

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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

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2. On 14 April 2010 the complainant made the following information request:

*'Pursuant to the Freedom of Information Act, we are writing to request a number of documents and information related to the Glenn Mulcaire / Clive Goodman criminal inquiry that was closed by the Met shortly after both men were sentenced on January 26, 2007:*

1. *All reports and/or summaries filed in this matter by the Metropolitan Police to the attorney general, the Crown Prosecution Service and/or the House of Commons Culture, Media and Sport Committee, including but not limited to reports/summaries dated May 30, June 30 and July 14 of 2006 and February 18 2010;*
2. *The minutes of any and all internal meetings, including but not limited to the Management Board sessions, attended by (but not limited to) [names removed] in which the Mulcaire/Goodman matter was discussed, at any time during the criminal investigation or following its closure;*
3. *The number of individuals identified during the Metropolitan Police's technical portion of its inquiry into the alleged phone-hacking of the Royal Household (specifically the number of people identified during the police's inquiry that occurred from January 2006 through August 2006; to be clear, we are not asking for individuals' names but rather the number of full names identified and the number of partial names identified);*
4. *The number of mobile phone numbers identified during the Metropolitan Police's technical portion of its inquiry into the alleged phone-hacking of the Royal Household (specifically all numbers identified during the police's inquiry that occurred from January 2006 through August 2006; to be clear, we are asking for a delineation between the number of full mobile numbers and the number of partial numbers identified);*
5. *The number of individuals whose PIN codes needed for access to mobile phone voicemail, was accessed, as identified during the Metropolitan Police's technical portion of the inquiry into the alleged phone-hacking of the Royal Household (specifically all PIN codes identified during the police's inquiry that occurred from January 2006 through August 2006);*
6. *Any email, memo or phone messages from any current or former members of News Corp., News International, News of the World, The Sun, The Times or The Sunday Times, including any of its reporters, editors or executives, about the Mulcaire/Goodman*

- inquiry or the phone-hacking investigation in general to any current or former member of the Metropolitan Police. In addition, any emails, memos or phone messages referencing any such inquiry from the above listed individuals and entities;*
7. *Any emails, phone messages or other documents, electronic or otherwise, from current or former employees of the Metropolitan Police to any current or former employee or current or former lawyer representing News Corp., News International, News of the World, The Sun, The Times or The Sunday Times, including any of its reporters, editors or executives (either current or former), about the Mulcaire/Goodman inquiry or the phone-hacking investigation in general. In addition, any emails, memos or phone messages referencing any such inquiry from the above listed individuals and entities;*
  8. *A copy of the document listing names and mobile phone numbers collected from the raids of Mr. Mulcaire's home and business and Mr. Goodman's office that was given to Mr. Hayman sometime between August 2006 and January 2007. (If you regard the names themselves as exempt, please redact the names but still provide the document itself.);*
  9. *Any and all documents, electronic or otherwise, that in any way relate to then [name removed]'s reported assertion that "they had found there were something like 6,000 people who were involved" and "You are not having everything, but we will give you enough on Taylor to hang them." (This assertion was part of the evidence given by [name removed] to the House of Commons Culture, Media and Sport Committee.);*
  10. *Any and all documents, electronic or otherwise, from or to [names removed];*
  11. *Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between [name removed], currently the chief executive at News International, and [names removed], in the time frame of 2002 to 2004, related to a news editor at the News of the World named [name removed]'.*
3. The Commissioner has already made a related decision about this request; it is considered in case reference FS50361392 which is issued at the same time as this Notice.
  4. Following a partial disclosure of information, on 22 June 2010 the complainant made the following 'narrowed' request:
    1. *All reports and/or summaries filed in this matter by the Metropolitan Police to the attorney general, the Crown Prosecution Service and/or the House of Commons Culture, Media and Sport Committee,*

- including but not limited to reports/summaries dated May 30, June 30 and July 14 of 2006 and February 18 2010;*
2. *The minutes of any and all internal meetings, including but not limited to the Management Board sessions, attended by (but not limited to) [names removed] in which the Mulcaire/Goodman matter was discussed, at any time during the criminal investigation or following its closure;*
  3. *Any email, memo or phone messages from any current or former members of News Corp., News International, News of the World, The Sun, The Times or The Sunday Times, including any of its reporters, editors or executives, about the Mulcaire/Goodman inquiry or the phone-hacking investigation in general to any current or former member of the Metropolitan Police. In addition, any emails, memos or phone messages referencing any such inquiry from the above listed individuals and entities;*
  4. *Any emails, phone messages or other documents, electronic or otherwise, from current or former employees of the Metropolitan Police to any current or former employee or current or former lawyer representing News Corp., News International, News of the World, The Sun, The Times or The Sunday Times, including any of its reporters, editors or executives (either current or former), about the Mulcaire/Goodman inquiry or the phone-hacking investigation in general.*
  5. *Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between [name removed], currently the chief executive at News International, and [names removed], in the time frame of 2002 to 2004, related to a news editor at the News of the World named [name removed]".*
5. The Commissioner notes that the wording of this request is almost identical to parts 1, 2, 6, 7 and 11, respectively, of the original request, part 4 (previously 7) having the final sentence omitted in the latter request.
  6. On 13 July 2010 the public authority sought further clarification of these requests stating:

*"The difficulty of locating/retrieving and extracting information held for particular questions posed within 18 hours, is due to the broad nature of your requests. The MPS remain within their rights to refuse to answer all the questions posed if information for only one of them would take over 18 hours to locate/retrieve or extract. However, I hope this opportunity will assure you that the MPS is working to assist you as much as possible on this request".*

7. Within this correspondence it made reference to each part of the request and made a number of suggestions as to how the complainant could refine the request.
8. On 15 July 2010, following a telephone conversation, the complainant again wrote to the public authority. He disagreed with the public authority's position, stating amongst other things that:

*"We reiterate our point on the fact the MPS has a computerised data recovery system and that a keyword search ought to recover relevant information".*

9. On 17 August 2010 the public authority provided an internal review regarding the five points of the refined request, and stated that it was changing its earlier position. It advised the complainant that using a key word search would not necessarily recover all relevant information:

*"To recover information in relation to investigations and particular individuals requires me to contact all relevant staff involved to ensure a full and thorough search for information is conducted".*

10. In respect of each part of the request it replied as follows.

Question 1 – it held advice file papers and case papers relating to this investigation which were exempt from disclosure by virtue of section 30(1)(a)(b)(c), section 40(2)(3) and section 42(1) (the latter in respect only of information contained within the advice file papers).

Question 2 – this information was not held.

Questions 3 and 4 – information was held but, aside from press releases, was exempt from disclosure by virtue of section 30(1)(a)(b)(c) and section 40(2)(3) of the Act.

Question 5 – it was neither confirmed nor denied, by virtue of section 40(5) of the Act, whether this information was held.

## The investigation

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### Scope of the case

11. On 30 June 2010 the complainant first contacted the Commissioner to complain about the way this request for information, and elements of his earlier request, had been handled. Following further correspondence with the public authority he wrote to the Commissioner again on 2 September 2010. He raised issues about this complaint, which are considered below, as well as issues about his original request which are dealt with in a further decision under case reference FS50361392.
12. In respect of this particular complaint, the Commissioner confirmed with the complainant that he would consider the public authority's citing of exemptions for parts 1, 3, 4 and 5 of the request and its position that no information is held in respect of part 2.

### Chronology

13. Following an earlier error regarding the scope of his investigation in this case, the Commissioner wrote to the complainant and public authority on 12 January 2011 to confirm what he was considering.

Question 1 – the citing of the exemptions at section 30(2), 40(2) and 42(1).

Question 2 – the assertion that no information is held.

Questions 3 and 4 – the citing of the exemptions at section 30(2) and 40(2).

Question 5 – the citing of the exemption at section 40(5).

14. Following further correspondence, on 28 February 2011 the public authority wrote to the Commissioner stating that it now wished to revert to its earlier position of relying on section 12. It provided a detailed response.
15. The Commissioner has chosen to exercise his discretion in this case to accept the late citing of section 12(1) and 12(4) by the public authority. However, section 17(5) of the Act requires that the complainant should be informed of a claim that section 12(1) applies within 20 working days of receipt of a request. The public authority failed to comply with this requirement in this case, as recorded below in *Procedural requirements*, and the public authority should seek to avoid similar breaches of the Act in future.



16. As to the reasoning for the decision to allow the late citing of section 12(1), when drafting the Act, Parliament intended that a public authority should not be obliged to comply with a request where the cost of doing so would exceed an appropriate cost limit (subsequently set at £600 for central government and £450 for all other public authorities). The estimate should be based on factors as they applied at the time of the request even if the public authority is applying section 12(1) late, as in this case.
17. The Commissioner has taken the general approach that to refuse to accept the late citing of section 12(1) would contradict the intention of Parliament that a public authority is not obliged to comply with a request if to do so would exceed the appropriate cost limit. The Commissioner has, therefore, decided to consider the application of section 12(1) in this Notice. The Commissioner has advised the complainant of this decision.

## Analysis

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### Substantive procedural matters

#### Section 12 – cost of compliance

18. Section 12(1) provides that -

*“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit”.*

19. Section 12(4) provides that -

*“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –*  
*(a) by one person, or*  
*(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*  
*the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”*

20. For clarity, there is no public interest element to consider when looking at section 12, which serves merely as a cost threshold. The Freedom of Information and Data Protection (Appropriate Limit and Fees)

Regulations 2004 (the “fees regulations”) provide that the limit for central government public authorities is £600. The fees regulations also provide that the cost must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours, and that the tasks that can be taken into account as part of a cost estimate are as follows:

- determining whether the information requested is held;
  - locating the information;
  - retrieving the information;
  - extracting the information.
21. The task for the Commissioner in considering whether section 12(1) has been applied correctly is to reach a decision as to whether the cost estimate made by the public authority is reasonable. The analysis below is based upon the description provided by the public authority in support of its cost estimate.
22. Having analysed the correspondence, the Commissioner believes that there are two subsections of section 12 which are particularly relevant to this case.
- Section 12(1): removes the public authority’s obligation to provide requested information where the cost of identifying, locating, retrieving and extracting the requested information would exceed the appropriate limit.
  - Section 12(4): allows a public authority to aggregate the cost of compliance with multiple requests in certain circumstances.
23. Analysis of the application of section 12 in relation to this case has therefore been as follows.
- Has the complainant made one request with multiple parts or multiple requests in one letter?
  - If the latter, can any of the requests be aggregated?
  - Would compliance with the request exceed the appropriate limit?

*Has the complainant made one request with multiple parts or multiple requests in one letter?*

24. The appropriate limit has been applied to all five parts of this request. Section 12(4) can be engaged where one person makes two or more requests. It allows for the aggregation of these requests for the purpose of calculating costs in circumstances which are set out in Regulation 5 of the Fees Regulations<sup>1</sup>. This Regulation provides that

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<sup>1</sup> <http://www.opsi.gov.uk/SI/si2004/20043244.htm>



multiple requests can be aggregated where two or more requests relate, to any extent, to the same or similar information.

25. Given the effect of section 12(4), the Commissioner first considered whether the complainant's letter of 17 November 2009 constituted a single request with multiple elements or multiple requests. The Information Tribunal considered a similar issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* [EA/2007/0124]<sup>2</sup>.
26. Taking the Tribunal's decision in *Fitzsimmons* into consideration, the Commissioner would characterise the complainant's letter of 17 November 2009 as containing more than one request within a single item of correspondence.

*Can all parts of the request be aggregated?*

27. Having established that the complainant has made multiple requests in a single letter, the Commissioner went on to consider whether those requests could be aggregated for the purpose of calculating the cost of compliance. The public authority has advised the Commissioner that:

*"... the five questions are intrinsically linked in respect of content as they all refer to or are connected with the MPS investigation into allegations of phone hacking by Glen Mulcaire and Clive Goodman. For that reason the MPS considers it appropriate in the circumstances to aggregate them for the purpose of calculating costs in accordance with section 12(4)".*

28. The Commissioner notes that all parts of the request relate to the same investigation. The Commissioner has therefore concluded that it is reasonable for them to be aggregated for the purpose of calculating the cost of compliance because they follow an overarching theme.
29. Having reached this conclusion, the Commissioner will next consider the application of section 12(1). This removes the public authority's obligation to provide requested information where the cost of identifying, locating, retrieving and extracting the requested information exceeds the appropriate limit.

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<sup>2</sup><http://www.informationtribunal.gov.uk/DBFiles/Decision/i242/Fitzsimmons.pdf>

*Would compliance exceed the appropriate limit?*

30. The public authority provided the Commissioner with the following explanation in its letter of 28 February 2011, in respect of the first part of the request:

*"Within the correspondence between the MPS and FSI as part of the internal review there is a clear indication that following discussions with MPS staff, FSI sought to redefine question 1 and in their letter to the MPS of 15 July 2010, they state that they were seeking 'any document, report or correspondence which relates to Mulcaire / Goodman investigation'. However, Question 1 is further clarified in the same letter to read 'between January 2006 and February 2010.' For information a copy of this letter was included in my submission to the ICO on 16 December 2010.*

*Despite the fact that FSI have redefined the request, it is I believe considerably wider in its remit than the initial request, and a fact that is referred to in the MPS internal review, (MPS letter to FSI 17 Aug 2010). The MPS will indeed hold reports and correspondence relating to the investigation and this is not only indicated by the HOLMES (Home Office Large Major Enquiry System) index, which shows that there are in excess of 8,000 pages contained in some 250+ documents seized or created in respect of the Goodman and Mulcaire investigation, but also in 24+ large ring binders contained within offices at New Scotland Yard.*

*I am also aware that information relevant to the question may well be contained within 30+ tapes and CD's, which are also stored within offices at New Scotland Yard.*

*I am informed that a similar number of box files, with some duplication however, are retained in the MPS Directorate of Legal Services, also based at Scotland Yard. An examination of these files would need to be carried out to assess whether additional information pertinent to the request is indeed held.*

*Whilst labelled, all box files and lever files do not generally contain an internal index, although may for example have on the spine, "witness statements" etc. therefore, whilst the reader may be able to 'discard' the content of some files, it will be necessary to examine each of the other files in turn to discover exactly what information is contained therein in order to assess its relevance to the request.*

*In respect of any correspondence held that is relevant to the Mulcaire / Goodman investigation, I caused searches to be made within the MPS case management system MetRIC. The MetRIC system is used to log, monitor and respond to information access requests (FOIA, DPA and EIR), their subsequent reviews and general correspondence received or sent from the majority of MPS command units. However, it should be noted that not all MPS commands use this particular system as it does not allow for anything to be recorded therein above the 'Restricted' protective marking as recognised by the Government Protected Marking System.*

*Within the MetRIC system there are currently more than 540,000 cases comprising of more than 1,051,000 separate documents.*

*As a case management system all documents relating to a request or piece of correspondence are kept together under one unique reference number i.e. 2010090000479. The system is designed to enable easy retrieval of information relating to a particular case number. The system also has reporting functions which allow for the identification of cases depending on the responsible person, the relevant unit, the date of request or closure, even the outcome (full disclosure, partial disclosure etc). However the system is not advanced enough to provide a report on all requests relating to a particular topic.*

*In order to identify all requests relating to a specified topic a Google type search needs to be made using key words or phrases. Whilst this can be effective - especially when trying to identify a specific case for which the URN is unknown - it is also somewhat of a scattergun approach. To clarify, this facility will identify the information held on MetRIC which features the key words. This could be a case, a part of a case (known as a phase) a response document (such as an email) or an attached file.*

*This can cause problems and delay in the time taken to conduct a thorough search. For example, an accurate search would need to follow the stages set out below:*

- 1) A search on a set of keywords*
- 2) Time taken in order to open each "hit" and noting the URN*
- 3) The case will need to be accessed to ensure that the contents are relevant to the search*

*This procedure would need to be actioned for each set of keywords for example, in relation to this particular case the search process was repeated for each of the following*

*keywords/variations, with date parameters set for on or before 14 April 2010:*

*Phone hacking / Phone tapping / News of the World / NoTW / Glen Mulcaire / Clive Goodman. Those searches resulted in 587 hits being identified within the MetRIC system.*

*Estimated timings*

*Each hit would need to be opened in order to establish the URN, note it down and return to the previous screen. It is estimated that this task would take at least one minute per hit.*

*The initial searching (which in the above example was repeated six times) did not take more than 10 minutes and to check each hit in order to identify whether or not the information within the 'hit' was relevant to the request took approximately 2 minutes per hit.*

*Therefore, in respect of the 587 hits identified following the search as outlined above, based on a restrictive 2 minutes per hit to locate, retrieve and extract relevant information for this part of this request, it is estimated that it would take 19.5hrs. On that timing alone this request would exceed the time limit of 18 hours and therefore, on the basis of aggregation, Section 12(4), all five requests would be excess cost.*

*Accordingly, based on the estimate for the correspondence system alone, and without considering other 'correspondence' that may be held within emails for the identified individuals or the searching of the investigative material, the cost threshold is already exceeded".*

31. The public authority went on to provide further estimates in respect of the other parts of the request. However, the Commissioner has not included these at this stage because, if he accepts that the limit would be exceeded by compliance with the first part of the request, further costs would be superfluous.

### *Conclusion*

32. It is the Commissioner's view that the public authority has provided adequate explanations – as quoted above – to demonstrate that it would exceed the appropriate limit to locate and retrieve the requested information for the first part of the request. As the Commissioner finds

that the costs can be aggregated, he therefore concludes that to comply with the request as a whole would exceed the appropriate limit.

## **Section 16 – advice and assistance**

33. Section 16(1) (full text in the legal annex attached to this Notice) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice in relation to the provision of advice and assistance in that case.
34. The Commissioner has already determined the issue of advice and assistance in relation to the complainant's first request in the other complaint referred to above.
35. In respect of this particular case the Commissioner notes that, on receiving the narrowed request, the public authority took steps to further clarify the request. This was done by telephone as well as in writing.
36. The public authority has shown in its responses that it tried to help the complainant to both clarify and narrow down the request. Although this may not have been to the complainant's satisfaction the Commissioner believes that the public authority did take reasonable steps to assist.
37. Accordingly, the Commissioner concludes that it did not breach section 16.

## **Procedural requirements**

### **Section 17 – refusal of request**

38. Section 17(5)(a) of the Act provides that –

*“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact”.*

39. In exceeding the statutory time limit to inform the complainant of its application of section 12 to the full request, the Commissioner finds that the public authority breached section 17(5) of the Act.

## **The Decision**

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40. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- it correctly concluded that to comply with the request would exceed the appropriate limit.

41. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- in exceeding the statutory time limit to inform the complainant of its application of section 12 to the full request it breached section 17(5).

## **Steps required**

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42. The Commissioner requires no steps to be taken.



## Right of Appeal

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43. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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.

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 16<sup>th</sup> day of March 2011**

**Signed .....**

**Jon Manners  
Group Manager**

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

## **Legal annex**

### **Section 1**

- (1) 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) 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 16**

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

### **Section 17**

- (5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.