

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 27 July 2011

**Public Authority:** The Metropolitan Police Service  
**Address:** New Scotland Yard  
Broadway  
London SW1H 0BG

### Summary

---

The complainant requested information about the ethnicity of people stopped at SO15 Ports under Schedule 7 of the Terrorism Act. The organisation to which he made the request forwarded it to the Metropolitan Police Service (MPS). The MPS confirmed it held the requested information but refused to provide it on the basis that it was exempt from disclosure by virtue of sections 24 (national security) and 31 (law enforcement).

The Commissioner has investigated and found that the exemption provided by section 24 was correctly applied. He therefore requires no steps to be taken. The Commissioner also identified a series of procedural shortcomings on the part of the public authority.

### 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.

### Background

---

2. Schedule 7 of the Terrorism Act 2000 is the principal legal power police officers working at ports and borders use to protect the country from terrorism. Ports include airports, seaports and international railway stations.

3. The legislation is unique and applies only at a port or border area. The legislation is used by police officers to determine whether a person appears to be (or has been) concerned in terrorism.
4. Schedule 7 provides specific powers to stop, question, search and if necessary detain a person. The procedure is referred to as an examination.
5. An examining officer, who in most cases in London is an SO15 Counter Terrorism Command Ports police officer, may question any person whom he or she believes to be entering or leaving Great Britain, to determine whether that person appears to be involved in the commission, preparation or instigation of acts of terrorism, and may stop and detain a person to exercise this power.

## The Request

---

6. The complainant originally made the following request for information to the Metropolitan Police Authority (MPA) on 23 November 2009:

*"Looking at the Communities, Equalities and People Committee minutes of 10th September meeting Agenda point 5: The use of Schedule 7 of the Terrorism Act 2000 it states that:*

*17. To support the strategy, SO15 Ports recently (since mid July) began to record the ethnicity of those being examined. This is officer-defined using standard police descriptions primarily from their observation, rather than being actively sought from the person stopped. This will enable the SO15 Ports to better identify the impact of Schedule 7 within its port areas.*

*I just wanted to know how I could get hold of this information".*

7. The MPA advised him that it would pass the request on to the Metropolitan Police Service (MPS).
8. From correspondence which the Commissioner has seen, it is not clear when the MPA passed the request on to the MPS. However, the MPS variously acknowledged the request as having been received on 19 January 2010 and 21 January 2010.
9. The MPS wrote to the complainant on 23 February 2010. It advised him that it was considering the public interest test in relation to the exemptions in sections 24 and 31 and that, in accordance with section 17(2), it was extending the deadline for responding.

10. MPS's reply of 11 March 2010 refused to disclose the requested information, citing the exemptions in sections 22(1) (information intended for future publication), 24(2) (national security) and 31(3) (law enforcement) of the Act.
11. MPS varied its original decision in an internal review which was sent to the complainant on 3 June 2010, withdrawing its reliance on section 22 and upholding its decision to engage the exemptions in sections 24 and 31. At this stage, it clarified the subsections as being 24(1) and 31(1)(a) and (b).

## The Investigation

---

### Scope of the case

12. The complainant contacted the Commissioner on 16 June 2010 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

*"I do not accept that releasing ethnicity data would have a negative impact on national security or law enforcement".*

13. The Commissioner notes that, although not required to do so by the Act, the complainant has, from the outset, explained his reason for making the request.
14. Following an unsuccessful attempt at informal resolution, on 25 January 2011 the complainant told the Commissioner:

*"Since the Metropolitan Police are concerned about releasing the data at the individual ports level, I am more than happy to accept the data if they were to combine them all together and remove the references to the ports. I have been as flexible as possible; I have even requested the data in the form of percentages (instead of absolute numbers) if it made them more comfortable releasing it."*

15. The Commissioner has therefore investigated on the basis of the request for information being for combined ethnicity figures for stops at all ports in the MPS area, expressed in percentage form, rather than for the ethnic breakdown, in absolute numbers, of individuals stopped at each port.

### Chronology

16. The Commissioner wrote to the MPS on 7 December 2010 asking for further explanation of its reasons for citing sections 24 and 31 in relation

to the request, including its reasons for concluding that the public interest in maintaining the exemptions outweighs the public interest in disclosure of the information requested.

17. In an attempt at informal resolution, the MPS contacted the complainant about his request. On 18 January 2011, whilst maintaining its position that disclosure of its force-level data would be harmful, MPS provided him with details of a recent (December 2010) Home Office disclosure of which it was aware. As that disclosure included national-level ethnicity data for Schedule 7 stops the MPS considered it would be of interest to the complainant. The Commissioner notes that that disclosure was made some time after the date of the complainant's request in this case.
18. The complainant contacted the Commissioner on 25 January 2011 to confirm he wished to pursue his complaint.
19. The Commissioner contacted the MPS on 26 January 2011 to advise that he was continuing with his investigation. Accordingly, he asked the MPS to respond to the questions posed in his letter of 7 December 2010.
20. The MPS provided its comprehensive response on 1 March 2011.

## Analysis

---

### Exemptions

21. MPS confirmed it is relying on section 24(1) and section 31(1)(a) and (b) and that it considered both exemptions to be equally important. It also told the Commissioner that the arguments put forward in this case for sections 24 and 31 are "*very closely related*". The Commissioner has first considered MPS's application of section 24(1).

### Section 24 National Security

22. The exemption at section 24(1) of the Act only applies where the exemption is *required* for the purpose of safeguarding national security. The approach of the Commissioner is that *required* in this context means reasonably necessary. It is not sufficient for the information sought simply to relate to national security; there must be a clear basis for arguing that disclosure would have an adverse effect on national security before the exemption is engaged.

#### *Does the information relate to national security?*

23. The Commissioner acknowledges that the term 'national security' is not defined in the Act. However, in his view, the interests of national security are not limited directly to preventing military and terrorist

attacks on the UK, but include the safety of UK citizens abroad, the protection of the UK's democratic constitution, the effective operation of national security bodies and co-operation with other countries in fighting international terrorism.

24. The withheld information in this case consists of the ethnicity data held by the MPS in respect of stops made under Schedule 7 of the Terrorism Act 2000. MPS has argued that the purpose of the legislation is to prevent terrorist activity. In this respect, it told the Commissioner:

*"Schedule 7 is used only for the purpose of countering terrorism".*

25. The Commissioner is aware that the National Policing Improvement Agency (NPIA) published practice advice on the use of Schedule 7 in 2009. This publication clearly states that Schedule 7 powers should only be used to counter terrorism and may not be used for any other purpose.
26. On this basis, the Commissioner is satisfied that the information relates to national security. He has next considered whether disclosure would have an adverse effect on national security.

*What would the impact of disclosure be on national security?*

27. MPS told the complainant:

*"the threat from terrorism cannot be ignored.....The UK faces a sustained threat from violent extremists... Stops under Schedule 7 of the Terrorism Act are an important tool in the on-going fight against terrorism".*

28. With respect to his original request, which it interpreted as being for absolute numbers at individual port level, MPS told the complainant:

*"Should SO15 release the Schedule 7 ethnicity data it holds at a force level, this would inadvertently allow individuals to work out precise levels of Schedule 7 activity at its ports and thereby present real and specific threats to our national security".*

29. It also argued that disclosure in response to a request such as the one in this case, repeated on a force-by-force basis, could provide terrorists with tactical intelligence regarding the levels of Schedule 7 activity at all of the country's ports.
30. The Commissioner accepts that those with terrorist intentions may travel as part of planning and preparation for their criminal activities. He therefore considers it plausible that the release of numerical totals at force-level, by port and ethnicity could, as the MPS has argued, be used

by interested parties to exploit "*what they perceive as 'softer' border entry points*".

31. The Commissioner finds the argument less plausible when the information at issue consists of ethnicity data expressed as a percentage of those stopped under Schedule 7, with all reference to individual ports removed. In his view, in this format, the information does not reveal levels of activity at individual ports. Instead, he considers the key issue in relation to the information broken down in this way to be that of the likelihood of being stopped and examined at a port within the MPS area.
32. During the course of the Commissioner's investigation, aware of the complainant's revised expectation of the nature of the requested information, MPS accepted that this format protects the actual numbers involved. However, it continued to argue that representing the total MPS figures as percentages still reveals the proportion of examinations conducted in respect of each ethnicity. In its view, disclosure would identify levels of Schedule 7 activity within the MPS area as a whole, and that this would be damaging to its role in fighting terrorism.
33. With respect to the effect on national security of disclosing this information, MPS also argued that comparing the MPS's force-level information with published national data could enable the statistics to be used by potential terrorists to draw inferences about the likelihood of being stopped and examined within, and outside of, the MPS area. It therefore considered disclosure at force level to be extremely harmful.
34. MPS provided the Commissioner with further arguments in support of its stance that disclosure would have an adverse effect on national security. The Commissioner is necessarily restricted as to what he can say about these arguments. However, he considers they encapsulated the view that disclosure may allow potential terrorists to take informed decisions with the intention of reducing the likelihood of an examination under Schedule 7.
35. Having considered the withheld information and the public authority's comments, the Commissioner is satisfied that retention of the information is 'required to safeguard' national security, since there is a specific and direct application to which such information might be put which could potentially be damaging to national security. The information therefore has the necessary quality to fall within the definition of section 24(1).
36. Since section 24 is a qualified exemption it is subject to a public interest test under section (2)(2)(b) of the Act. This favours disclosure unless, "*in all the circumstances of the case, the public interest in maintaining*

*the exemption outweighs the public interest in disclosure of the information”.*

***Public interest arguments in favour of disclosing the requested information***

37. The complainant told the Commissioner that he did not consider that the release of ethnicity data would negatively impact on national security. Referring him to statistics released by the Home Office on a regular basis, the complainant argued that ethnicity data is already released about other terrorism stop and search powers without hindering national security.

38. In pursuing his complaint following the failed attempt at informal resolution, the complainant asked the Commissioner to continue with his investigation, saying that he wished to “*exhaust all options*” due to the “*huge public interest in this data*”.

39. In correspondence with the complainant, MPS acknowledged the public interest in disclosure on the basis that the Act requires public authorities to be transparent and held accountable for their actions. It told him:

*“The idea of accountability becomes more of a prominent matter when it concerns high profile topics such as those relating to the Terrorism Act – as this is an emotive issue that highly affects the community”.*

40. As evidence that it considers responsible use of Schedule 7 to be a priority, MPS brought to the Commissioner’s attention the fact that it is involved in community engagement initiatives with a view to addressing community concerns.

41. In support of disclosure, MPS recognised that the release of information in this case would lead to accurate public debate about the actions of the MPS and raise awareness of the work of its ports officers. It notes that this in turn would enable members of the public “*who may have preconceived ideas about the ethnicity of those stopped under this legislation to make informed opinions*”.

42. Along similar lines, it accepted that disclosure:

*“may improve relations with certain groups within the community who have a false belief that people of a certain ethnicity are disproportionately ‘targeted’ by those using the legislation”.*



***Public interest arguments in favour of maintaining the exemption***

43. Arguing against disclosure, MPS consistently maintained that public safety is of paramount importance and must be taken into account when considering the disclosure of information relating to national security. Accordingly, it argued that release of any data which will increase the risk to public safety cannot be seen to be in the public interest. It told the complainant:

*“Releasing information on policing arrangements ... would render security measures 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.”*

44. It argued strongly that disclosure of the requested information could potentially be misused which would be detrimental to its ability to combat terrorism and therefore clearly not in the public interest. It confirmed to the Commissioner that it considered this argument applied both to the lower-level information originally requested, that is the actual number of stops broken down by port and ethnicity, as well as to the higher level of information comprising combined, force-level, percentages by ethnic category.

***Balance of the public interest arguments***

45. While he understands the complainant's personal reasons for wanting access to the information, the Commissioner has taken into account the fact that neither the identity of the applicant nor any purely personal reasons for wanting the requested information is relevant to the consideration of a freedom of information request. He must consider whether or not it is appropriate for the requested information to be released to the general public.
46. In reaching his decision in this case, the Commissioner is mindful of the fact that matters of national security, including the way in which legislation is used to investigate and prevent potential acts of terrorism, are issues of concern and interest to the public. He therefore gives some weight to the argument that disclosure in this case would further the understanding of, and participation in, public debate of issues of the day, such as the impact of the anti-terror legislation on different sections of the community.
47. However, he considers that recent relevant disclosures evidence the willingness to disclose information in such a way as to satisfy the public interest without jeopardising operational capability with respect to the policing of matters involving national security issues. The context does



not indicate a complete lack of information about this issue that makes a more compelling case for disclosure.

48. In this case, the Commissioner recognises the argument that disclosure would enable scrutiny, including comparison with national figures, of the way in which the MPS used its powers under Schedule 7, thus addressing any concerns about its use of the legislation.
49. However, the Commissioner has also taken into account that the requested information in this case relates to a specific piece of legislation and that the specific purpose of the use of that legislation is with respect to matters of national security, namely in preventing and detecting terrorist activity.
50. In the Commissioner's view, increasing the risk to national security will always be a consideration of significant weight in favour of maintaining the exemption. If non-disclosure is required to safeguard national security it is likely to be only in particular, compelling circumstances that consideration of other public interest factors will result in disclosure.
51. Having given due consideration to the opposing public interest factors in this case, the Commissioner has concluded that the factors in favour of disclosure do not equal or outweigh those in favour of maintaining the exemption.

### **Section 31 Law Enforcement**

52. As the Commissioner has concluded that the MPS correctly applied section 24(1), he has not gone on to consider the other exemption cited by the MPS in this case.

### **Procedural Requirements**

#### **Section 10 Time for compliance**

#### **Section 17 Refusal of request**

53. In this case, the correspondence differs as to whether the complainant's request was received by the MPS on 19 January 2010 or 21 January 2010. Regardless of which of these dates is taken as the date on which the request was received, the MPS did not issue its refusal letter advising the complainant that it required additional time to consider the public interest test until 23 February 2010. It therefore took the MPS more than 20 working days to respond to the information request.
54. Accordingly the Commissioner finds that, in failing to confirm or deny within 20 working days whether it held the requested information, the MPS breached the requirements of section 10(1), and that it also

breached section 17(1) by failing to provide the details required by that section within 20 working days.

## **Section 16 Advice and assistance**

55. Section 16(1) of the Act places a duty on public authorities to provide advice and assistance:

*"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."*

56. Section 16(2) provides that:

*"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."*

57. MPS accepted that the original request did not specify the precise details the complainant was seeking: instead it referred to an extract from the minutes of a meeting which describes the introduction of the recording of information.
58. MPS acknowledged that it did not seek to clarify the details sought by the complainant at the time of the request. Indeed, the Commissioner notes that it was not until his investigation was underway that the MPS contacted the complainant in line with its duty to provide advice and assistance. He also notes that, having been contacted by the MPS, the complainant has been flexible and proactive in suggesting ways in which he would be prepared to receive the requested information.
59. The Commissioner takes the view that the public authority should have done more to clarify the exact scope of the request at the time of the request. Accordingly, the Commissioner finds that the public authority breached its duty under section 16 of the Act to provide the complainant with advice and assistance.

## **The Decision**

---

60. 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 applied the exemption in section 24(1).

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

- 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 16(1) by failing to provide advice and assistance; and
- it breached section 17(1) by failing to issue the refusal notice within the statutory time limit

### **Steps Required**

---

62. The Commissioner requires no steps to be taken.

## Right of Appeal

---

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

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

64. 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.
65. 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 27<sup>th</sup> day of July 2011**

**Signed .....**

**Steve Wood**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Legal Annex

---

### General Right of Access

#### **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."

### Time for Compliance

#### **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."

### Duty to provide Advice and Assistance

#### **Section 16(1) provides that -**

"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."

#### **Section 16(2) provides that –**

"Any public authority which, in relation to the provision of advice and 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."

### Refusal of Request

#### **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,
- (a) specifies the exemption in question, and
- (b) states (if that would not otherwise be apparent) why the exemption applies."

**Section 17(2) states –**

"Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached."

**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."

## **National Security**

### **Section 24(1) provides that –**

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."