

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 November 2012

**Public Authority:** The Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

#### Decision (including any steps ordered)

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1. The complainant asked the Metropolitan Police Service (MPS) to provide him with the identities of three police officers who had attended a particular court hearing. The MPS refused to provide this information relying on the exemptions contained at section 40 (personal data) and section 38 (health and safety) of the Freedom of Information Act (FOIA). The Commissioner has concluded that the withheld information is exempt from disclosure on the basis of section 40 of FOIA.

#### Request and response

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2. On 8 December 2011 the complainant wrote to the Metropolitan Police Service (MPS) and requested information in the following terms:

*'On the 25th of November three plain clothed police officers attended the hearing of Ms TRACEY JANE MURPHY a member of the Metropolitan police who is currently on trial, at Luton Crown Court, for Perverting the course of Justice.*

*Can you please provide the following information;*

1. *The purpose of these officers attending this hearing*
2. *The cost of these officers attending this hearing, include all costings i.e expenses, salary, overtime etc*
3. *Copies of any instructions given to these officers*

*4. Copies of any reports made by these officers*

*5. Identity of these officers including rank and unit to which they are attached.'*<sup>1</sup>

3. The MPS responded on 10 January 2012. In respect of requests 4 and 5 – which are the two requests which are the focus of this complaint – the MPS' response was as follows: With regard to request 4 the MPS explained that it did not hold any relevant information. With regard to request 5, the MPS explained that one Police Sergeant and two Police Constables attended this hearing and all three officers were attached to Hillingdon Borough Operational Command Unit. However, it explained that any further details were exempt on the basis of section 40(2) of the Freedom of Information Act (FOIA).
4. The complainant contacted the MPS on 10 January 2012 in order to ask for an internal review. In relation to request 4 he argued that as all officers are required to make entries in the 'EAB's' (Evidence and Actions Books) this information would fall within the scope of this request. In relation to request 5, the complainant reiterated his wish to be provided with the names and shoulder numbers of the officers in question as well as the actual unit that these officers were attached to.
5. The MPS informed the complainant of the outcome of the internal review on 18 May 2012. The response explained that in relation to request 4, an EAB would not be used to record court attendances. However, the MPS explained that it had located a Computer Aided Dispatch (CAD) record and a Contact Handling System (CHS) record relevant to the request and these were provided to the complainant with certain parts redacted on the basis of section 40(2). In relation to request 5, the MPS maintained its position that the information it held concerning the officers' identities was exempt on the basis of section 40(2).

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<sup>1</sup> Ms Murphy was the personal assistant to the Borough Commander at Hillingdon in 2009. The complainant brought a private prosecution against her for 'perverting the course of justice'.

## Scope of the case

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6. The complainant contacted the Commissioner in order to complain about the MPS' handling of requests 4 and 5. The grounds of complaint were as follows:
  - With regard to request 4 the complainant argued that he had not been provided with a detailed explanation as to why the various redactions had been made.
  - With regard to request 5 the complainant disputed the MPS' decision to rely on section 40(2) to withhold the information he asked for and provided a number of reasons as to why he believed that this exemption had been incorrectly applied. The Commissioner has referred to these submissions in detail below.
  - Finally the complainant asked the Commissioner to consider the fact that it took the MPS 130 calendar days to complete the internal review which significantly exceeded the expected 20 working day time period which public authorities were meant to adhere to. The complainant also informed the Commissioner that he had submitted another request to the MPS on the same day and although that request had been dealt with separately, it had also taken the MPS a similarly lengthy period of time to conduct the internal review. The complainant asked the Commissioner to also consider the MPS' delays in relation to the handling of that internal review.
7. With regard to the complainant's third point of complaint, the Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA. Therefore the Commissioner cannot include in a decision notice a formal finding about the time taken to complete an internal review. However, the Commissioner has commented on the complainant's concerns regarding internal review delays in the Other Matters section at the end of this notice.
8. This notice therefore focuses on whether the MPS were entitled to withhold the information falling within the scope of the requests 4 and 5 that has not been provided to the complainant.
9. With regard to request 5 the nature of the information that falls within the scope of this request is the names and shoulder numbers of each of the three officers along with the precise unit (or units) to which they were assigned.

10. With regard to request 4, at the internal review stage the MPS took the position that the entire CAD and CHS documents fell within the scope of the request and these were disclosed to the complainant albeit with 32 separate redactions made to each document. However, during the course of the Commissioner's investigation the MPS explained that it was now of the view that only a small portion of these two documents actually fell within the scope of request 4.
11. It basis for this was as follows: The MPS explained that the CAD and CHS records were created as a result of one of the officers reporting their attendance at Luton Crown Court on 25 November 2011 and recording that they were leaving the MPS district. The MPS explained that contained within the CAD and CHS documents was a brief record of the 'reports' actually made by this officer. It accepted that this information, i.e. the actual content of the reports made by the officer, clearly fell within the scope of request 4.
12. However, it explained that the CAD and CHS records also contained further information which could not be accurately described as reports given by any of the three officers who are the focus of these requests. Such information included the personal information of other police staff responsible for making or updating entries on the relevant systems (i.e. those who actually recorded the reports made by the officers) and miscellaneous information such as the registration number of an unmarked police vehicle.
13. The MPS noted that applying this narrower reading of request 4, all of the comments made by the officer who reported the attendance at court had in fact been disclosed in full at the time of the internal review. The only exception to this was information that could be used to identify the officer, namely his divisional number and personal mobile number, which the MPS believed was exempt from disclosure on the basis of section 40(2).
14. The Commissioner has considered the wording of request 4, along with unredacted copies of the CAD and CHS records, and concurs with the MPS' narrower interpretation of this request. The Commissioner is satisfied that the only information which can accurately be described as 'reports' made by the three officers who attended the court has been provided to the complainant at the internal stage with the only exception being the divisional number and personal mobile number of one of the officers.
15. Therefore the withheld information falling within the scope of request 4 effectively mirrors the withheld information falling within the scope of request 5. Consequently, this notice has determined whether the names of the officers, their shoulder numbers, units to which they were

attached to and the personal mobile number of one officer is exempt from disclosure under FOIA. During the course of the Commissioner's investigation the MPS explained that in addition to section 40(2) of FOIA it was also seeking rely on sections 38(1)(a) and (b) of FOIA. These sections provide an exemption to the disclosure of information if its disclosure would, or would be likely to, harm the physical or mental health of an individual or the safety of an individual.

## Reasons for decision

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### Section 40(2)

16. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the DPA. The MPS has argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states that:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

17. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

*'...data which relate to a living individual who can be identified*

*a) from those data, or*

*b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'*

18. In his submissions to the Commissioner the complainant disputed the MPS' position that disclosure simply of the specific unit or units to which the three officers were attached to could lead to them being identified without the details of all employees in that particular section of the police also being available.

19. In the Commissioner's opinion truly anonymised data are not personal data and thus can be disclosed without reference to the DPA. The Commissioner's test of whether the information is truly anonymised is whether a (or any) member of the public, on a balance of probabilities, could identify individuals by cross-referencing the 'anonymised' data with information or knowledge already available to the public. Whether this 'cross-referencing' is possible is a question of fact based on the circumstances of the specific case. In addition the Commissioner's guidance on determining whether information is personal data explains when considering the question of identifiability, it is appropriate to consider not simply the means that could be used by the ordinary man on the street but also the means that are likely to be used. (The examples of such individuals given in the guidance include investigative journalists, estranged partners, stalkers or industrial spies.)<sup>2</sup>
20. If identification is possible the information is still personal data and the data protection principles do need to be considered when deciding whether disclosure is appropriate. However, where the anonymised data cannot be linked to an individual using the additional available information then the information will, in the Commissioner's opinion, be considered to be truly anonymised and can be considered for disclosure without any reference to the data protection principles.
21. The Commissioner has established that the specific units to which the officers were attached to at the time of the request only had a very small number of officers. The Commissioner believes that an individual with existing knowledge of police staff in Hillingdon Borough, or indeed any reasonably determined individual, would on the balance of probabilities be able to identify the three officers only if the units to which they were assigned were disclosed. The Commissioner is therefore satisfied that the units to which the officers were attached constitute the individuals' officers personal data as this information could be used to identify the officers in question.
22. For avoidance of doubt, the Commissioner also believes that it is clear that the officers' names, shoulder numbers and the personal mobile number of one of the officers also constitutes the various individuals' personal data. This is because such information could be used to identify the individuals in question.

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[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)

23. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
    - what the public authority may have told them about what would happen to their personal data;
    - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
    - the nature or content of the information itself;
    - the circumstances in which the personal data was obtained;
    - particular circumstances of the case, e.g. established custom or practice within the public authority; and
    - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
  - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
    - whether information of the nature requested is already in the public domain;
    - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
24. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
25. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

*The MPS' position*

26. With regards to the reasonable expectations of the officers the MPS explained that police officers recognised that on occasions, particularly where an officer is a member of a safer neighbourhood team, your face and name will appear on MPS websites. This is an accepted part of the role as a uniformed police officer. Furthermore, whilst on duty and in uniform, officers display their shoulder numbers and surnames. However, in the MPS' view this was not the same as disclosing officers' names to the world at large via a disclosure under FOIA.
27. In respect of the particular circumstances of this case, the MPS explained that the officers in question were specifically deployed on the orders of local senior management in order to facilitate the safe entry and exit of Ms Murphy into the court. The MPS decided that this goal would be more easily accomplished and generate less public attention by deployment in plain clothes and the officers did not identify themselves to others in the court. However, if they had been required to act as police officers and/or utilise any powers under legislation then formal identification as officers would have taken place. In short, the circumstances of the officers' deployment on this occasion required deployment in plain clothes for operational effectiveness and with this, in the MPS' opinion, went an expectation on the part of the officers that they would not, unless circumstances dictated declare themselves as police officers.
28. With regards to the consequences of disclosing the withheld information the MPS explained that individuals employed within the police service are vulnerable to harassment or being targeted by individuals with criminal intent. The MPS noted that whilst the withheld information obviously related to the public role of the individuals as police officers, their full names also clearly related to their private lives and the consequences of disclosure needed to be seen in that context. (The MPS provided the Commissioner with further submissions about the consequences of disclosing the withheld information in the particular circumstances of this case. However, given the nature of these submissions, the Commissioner has not repeated them in this notice).
29. With regards to the legitimate interests, the MPS recognised that in general there is a public interest in disclosure of information under FOIA given the associated benefits of enhancing the transparency and accountability of public authorities. In the particular circumstances of this case the MPS explained that the legitimate public interest relates to ensuring that it is transparent and accountable in relation to the spending of public funds and the allocation of police resources. However, the MPS argued that it in its view disclosure of ranks of the officers adequately describes the nature of the resources deployed and given

that police pay scales are in the public domain any assessment of the cost of the deployment could be made. Furthermore, the MPS noted that the reasons for deployment had also been disclosed. Therefore in its view disclosure of the names of the individual officers would not add significantly to the legitimate interests of the public. Moreover, the MPS argued that there were no exceptional circumstances that would justify disclosing the requested information, for example the officers concerned were deployed on the direction of local senior management and there was no suggestion that their behaviour or conduct had been anything less than professional.

30. The MPS therefore argued that disclosure of the withheld information would be unfair as the officers had a reasonable expectation that they would not be identified, there were likely to be damaging consequences for the officers if the identities were revealed, and furthermore there was not legitimate interest in the disclosure of the information.

*The complainant's position*

31. The complainant argued that the officers in question are public servants and as such are expected to be identified to the public and this principle is fundamental in ensuring the accountability of the police. The complainant also disputed the MPS' suggestion that the officers had acted as anything other than in a professional manner; rather the matter had been reported to the MPS as an act of intimidation and harassment. Furthermore the complainant argued that there was a clear public interest in disclosure of the unit to which the officers were attached to as disclosure of this information would reveal which unit (for example, the burglary unit) had lost resource by having to attend the court case.

*The Commissioner's position*

32. With regard to the expectations of the officers, the Commissioner agrees with the MPS that a distinction can be drawn between circumstances when a police officer is deployed in uniform and when a police officer is deployed in plain clothes. The Commissioner also agrees with the MPS that it is reasonable for a police officer deployed in plain clothes for operational reasons – as in this case – to assume that their identity in that context would not be disclosed in response to a request under FOIA.
33. The Commissioner notes that the officers in question hold relatively junior ranks – two being constables and one being a sergeant. Nevertheless, the Commissioner would note that police officers of all ranks have considerable powers in maintaining and enforcing public order. Therefore whilst the position of the officers may not be

considered to be a senior ranking role and may therefore have a greater expectation than, say, a Chief Constable, nevertheless the Commissioner considers that such officers would, in general, exercise a high level of personal judgement and would bear significant responsibilities in the course of his or her duties.

34. However, in the particular circumstances of this case, as the MPS has made clear both to the complainant and the Commissioner, the three officers attended court specifically on the instructions of senior management. Consequently the decision to attend the court on this particular day for the reason described by the MPS was not one made by the three officers. As a result the Commissioner believes that the officers in question would, in relation this particular deployment, have justifiably had an expectation that in due course they would unlikely to be accountable for the decision to attend court by having their identities revealed to the world at large.
35. With regards to the consequences of disclosing the withheld information the Commissioner accepts the MPS' suggestion that individuals employed within the police service can be vulnerable to harassment or may be targeted by individuals with criminal intentions. Furthermore, the Commissioner accepts that the consequences of any such action could impact not just on a police officer's public life but also on his or her private life. In the particular circumstances of this case the Commissioner is persuaded by the submissions provided to him by the MPS that disclosure of information that would lead to the three officers being identified would be likely to lead to unwarranted adverse attention for the officers in question. The Commissioner's reasons for reaching this opinion are also set out in the confidential annex.
36. With regards to the reasons for disclosing the withheld information, the Commissioner agrees with the MPS that to a significant extent the public interests of accountability and transparency in respect of the MPS' actions in this matter are met in light of the information that has been disclosed. Whilst it is the case that disclosure of the identities of the three officers would arguably add to such transparency, the Commissioner is not at all clear to what extent such a disclosure is genuinely necessary in order to meet a legitimate public interest. The Commissioner notes the complainant's explanation that a complaint has been made in respect of the officers' conduct. However, the MPS are obviously aware of the identities of the officers and thus are presumably able to deal with any such complaint without making the public aware of the identities of the officers. Furthermore, the Commissioner presumes that if it is appropriate or necessary for the identities of the officers to be shared with the individual or individuals who made such a complaint then this will take place, but any such disclosure would be separate and distinct from a disclosure under FOIA.

37. To some extent the Commissioner has more sympathy with the complainant's suggestion that the name of the unit could serve a legitimate public interest as it would, albeit to a very small degree, provide some further insight into the manner in which the resources of the MPS in Hillingdon on this particular day had been allocated. However, for the reasons discussed above, in the Commissioner's opinion disclosure of the names of the unit or units could still lead to the identities of the officers being disclosed. Therefore the legitimate interests in disclosing even this information has to be considered in relation to the officer's legitimate interests regarding the disclosure of their actual identities. In all the circumstances of this case, the Commissioner does not believe that the weight that should be attributed to the arguments in favour of disclosing any part of the withheld information outweighs the legitimate interests of the officers to have their identities withheld. This is given the strong (reasonable) expectations that the information would not be disclosed when allied with the consequences of any such disclosure.
38. For the reasons set out above the Commissioner believes that disclosure of the withheld information would be unfair and thus breach the first data protection principle. The Commissioner is therefore satisfied that all of the withheld information falling within the scope of requests 4 and 5 is exempt from disclosure on the basis of section 40(2).
39. In light of this decision the Commissioner has not considered whether the information is also exempt from disclosure on the basis of sections 38(1)(a) and 38(1)(b).

## **Other matters**

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40. As the Commissioner has explained in the main body of this notice, there is no statutory time limit for completing internal reviews. However, the Commissioner has issued guidance in which he has stated that in his view internal reviews should take no longer than 20 working days to complete and even in exceptional circumstances the total time taken should not exceed 40 working days. With regard to the requests which are the focus of this notice, the MPS took 91 working days to complete the internal review.
41. The complainant has explained to the Commissioner that he submitted a similar request to the MPS also on 8 December 2011. The MPS responded on 10 January 2012 and he subsequently submitted a request for an internal review four days later on 14 January. The MPS did not inform him of the outcome of the internal review until 18 May 2012 some 87 working days later.

42. As part of his investigation the Commissioner asked the MPS to explain why there was such a significant delay in completing these two internal reviews. The MPS explained to the Commissioner that during the period which these requests were submitted it had received a significant number of FOI requests and requests for internal reviews. (The MPS provided the Commissioner with the relevant figures for the period September 2011 to February 2012 in order to demonstrate this.) The MPS explained that given this significant volume of requests and internal reviews, even with the adjustments it had made to staffing, the demand placed upon it by this weight of work outstripped its ability to meet the Commissioner's guidelines regarding the timeframe for completing its internal reviews. The MPS explained that it was extremely conscious of the Commissioner's guidelines regarding the internal reviews and it worked hard to achieve these deadlines. However, in these two instances it recognised that this had not been possible and it offered its sincere apologies for that fact.
  
43. The Commissioner appreciates the detailed and candid response the MPS has provided him with in respect of this issue. However, when he set the timescales within which he expected internal reviews to be completed, the Commissioner took into account the volume and burden of work likely to be imposed on public authorities as result of dealing with FOI requests and he concluded that the timescales were realistic ones to set for public authorities. The Commissioner remains of that view. He therefore hopes, and expects, the MPS to ensure that the internal reviews it handles in the future adhere to the timescales he has set out in his guidance.

## Right of appeal

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44. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

45. 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.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
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