

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2014

Public Authority: Commissioner of the Metropolitan Police
Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about an individual connected to the Profumo Affair of 1963. Outside the statutory time for compliance, the public authority confirmed it was applying sections 30 (investigations and proceedings) and 31 (law enforcement) to the request, and that it needed to extend the time for compliance to fully consider the associated public interest test. A response was sent some considerable time later and the Commissioner concludes that the public authority did not comply with section 17(3) by failing to communicate the outcome of the public interest consideration within a reasonable period of time. He also finds that it breached section 10(1) of the FOIA. He does not require any steps.

Request and response

2. On 1 October 2013, the complainant wrote to the public authority and requested information in the following terms:

"My request relates to the late Stephen Ward (19 October 1912 – 3 August 1963). You may recall that he was the osteopath and portrait artist who found himself at the centre of the Profumo Affair

of 1963. Mr Ward was arrested by the police in June 1963 and subsequently appeared at Marylebone Police Station. He was charged with living off immoral earnings and procuring prostitutes. His trial began at the Old Baily [sic] on the 22 July 1963 and ended on 5 August 1963 – two days after he took his own life.

I assume the information should be readily available. Dr Ward's death in 1963 means there are no data protection issues as far as the request is concerned. There are also no on-going investigations relating to this matter.

Please note that I am only interested in receiving material which relates to the period January 1 1962 to the January 1 1965.

Some of the information may have been generated prior to Dr Ward's arrest in 1962 and some of it may have been generated following his death in 1963.

1) Does the Metropolitan police hold information which relates to Mr Ward's arrest and or charges and or police interviews and or subsequent trial?

2) If the answer to the above question is yes can you please provide copies of all statements given by Stephen Ward and or his legal representative? Can you please provide copies of all transcripts of all police interviews with Mr Ward and or his legal team?

3) Could the Metropolitan Police force please provides [sic] copies of all documents it holds which in any way relates to the decision to arrest and or question and or charge Dr Ward. This information will include but will not be limited to case files, the note books of relevant police officers, other witness statements, interview transcripts, photographs and sketches.

4) Does the Metropolitan Police force hold a transcript of Dr Ward's trial at the Old Bailey. If the answer to the above question is yes can you please provide a copy.

5) Does the Metropolitan Police force hold copies of correspondence and communications (including faxes, telephone transcripts, memos and letters) with the Home Office and or the Home Secretary of the day (Henry Brooke) which relates in any way to the decision to arrest and or question and or charge Stephen Ward. If the answer to this question is yes can you please provide copies of this correspondence and communication. I am interested in receiving both sides of the correspondence and communication".

3. On the 2 October 2013 the complainant added:

"Can I just make one point in the interests of clarity. My reference to the transcript of the trial should be taken to mean all contributions including those from the defendant, witnesses, legal counsel and the judge's summing up".

4. On 30 October 2013, outside the statutory time for compliance, the public authority advised that it required additional time to consider the public interest, citing section 31. It did not cite a subsection of this exemption or provide any details as to why it was being considered. It provided a revised response date of 25 November 2013.
5. On 29 November 2013 the public authority advised the complainant that it needed further time to consider the public interest, still citing section 31 and adding section 30(2); again it provided no reasoning as to why either exemption might be relevant. It provided a revised response date of 20 December 2013.
6. On 31 December 2013 the complainant chased a response and requested an internal review. An internal review was provided on 7 January 2014 but this only considered the public authority's procedural errors in dealing with the request and concluded that it had breached 'best practice' in handling the request. It again failed to provide a response to the information request, advising that one would be sent within *"approximately ten working days"*.
7. A response was sent to the complainant on 21 January 2014, however, for an unknown reason this was not received by him. In view of the content of some subsequent correspondence, on both 4 and 5 February 2014 the public authority enquired as to whether its response had been received. This was not followed up by the complainant and he did not receive a copy of the refusal notice until 25 February 2014, as a result of the Commissioner commencing his investigation.

Scope of the case

8. The complainant contacted the Commissioner on 8 February 2014 to complain about the way his request for information had been handled, specifically the apparent lack of response and the delays.
9. After receiving a copy of the refusal notice, which had been sent (although not received) on 21 January 2014, the complainant indicated that he still wished the Commissioner to make a finding regarding the delays. He also asked him to consider the content of that refusal which the Commissioner advised he would not do until the complainant had

undertaken the internal review process. The complainant has accepted this position.

10. The complainant also asked the Commissioner to consider a phone call which he received from the public authority shortly after making his request. The Commissioner has commented on this in 'Other matters' at the end of this notice.

Reasons for decision

Section 10 – time for compliance

11. Section 10 of FOIA states 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.*" The public authority should therefore have issued a full refusal notice or disclosed the requested information within 20 working days.
12. The public authority did not respond to the complainant within 20 working days thereby breaching section 10.

Section 17 – refusal of request

13. Having already breached the statutory time limit the public authority issued a notice under section 17(3) of the FOIA. This allows a public authority to provide its public interest determination in a separate notice "*within such time as is reasonable in the circumstances*".
14. The Commissioner has issued guidance on this point¹ which includes the following:

"...our view is that an authority should take no more than an additional 20 working days to consider the public interest, meaning that the total time spent dealing with the request should not exceed 40 working days."

15. In this case the Commissioner notes that the public authority has significantly exceeded the maximum 40 working days to consider the

¹[http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/time-for-compliance-foia-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/time-for-compliance-foia-guidance.pdf)

public interest test; he believes this to be unacceptable. No reasons were given for the delay.

16. The Commissioner therefore finds that the public authority has breached section 17(3) of FOIA because it did not provide the complainant with its public interest determination within such time as was reasonable.

Other matters

17. The complainant asked the Commissioner to consider the following:

"I am also concerned that a day or so after I submitted the request to the Met I received a phone call from a member of staff stating the Met was not going to release any of this information. This strikes me as an unorthodox approach to take".

18. The Commissioner notes that the public authority has already advised the complainant that the call was made by a member of staff on 10 October 2013. This member of staff works in the public authority's records management branch and had mistakenly believed that the age of the information requested meant that section 3(4) of the Public Records Act 1958 acted as a statutory bar under section 44 of the FOIA. The Commissioner understands that this misinterpretation has now been corrected and he notes that the public authority did apologise to the complainant for this mistake in its letter of 7 January 2014.

Right of appeal

19. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Gerrard Tracey
Principal Policy Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF