

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 8 April 2015

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to the funding of the Metropolitan Police Service Special Demonstration Squad. The Home Office refused to confirm or deny whether it held this information and cited the exemption provided by section 31(3) (prejudice to law enforcement) of the FOIA.
2. The Commissioner's decision is that the Home Office cited this exemption incorrectly and so it is now required to provide a fresh response to the request.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Provide a fresh response under the FOIA to the complainant's information request. This response must not refuse to confirm or deny whether the requested information is held.
4. The Home Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

## Background

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5. The request refers to the Special Demonstration Squad (SDS). A report on the Metropolitan Police Service (MPS) website describes SDS and an investigation currently being carried out into its activities as follows:

*"The Special Demonstration Squad was an undercover unit formed by the [MPS] Special Branch. It operated between 1968 and 2008, during which time it infiltrated and reported on groups concerned in violent protest."*

*Operation Herne (formerly Soisson) was formed in October 2011 in response to allegations made by the Guardian newspaper about alleged misconduct and criminality engaged in by members of the SDS. Similar matters had been previously aired as early as 2002 in a BBC documentary."*

## Request and response

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6. On 4 July 2014 the complainant wrote to the Home Office and requested information in the following terms:

*"I would like to know the total costs/budget of the Special Demonstration Squad (SDS) operating within Special Branch of the Metropolitan Police from the unit's formation in 1968 to its closure in 2008.*

*I would like to know the total amount of money spent on the unit - including full staff salaries, operating costs and expenses - for each year of the unit's existence - if possible, with the total given for each year.*

*I understand that the Special Demonstration Squad was directly funded by the Home Office from 1968 until 1989 - so it may be that you can only supply the costs for that period. I would still like to receive any information that you have, in as much detail as you have it.*

*I would also like to know how much money went towards the SDS from the Home Office's Imperial and National Services Grant - and would be grateful for any details about this that you can supply."*

7. The Home Office responded substantively on 8 September 2014. It refused to confirm or deny whether it held information falling within the scope of the request under the exemption provided by section 31(3) (prejudice to law enforcement) of the FOIA.

8. The complainant responded on 30 November 2014 and requested an internal review. The Home Office responded with the outcome of the internal review on 8 January 2015 and upheld the refusal to confirm or deny under section 31(3).

## **Scope of the case**

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9. The complainant contacted the Commissioner on 9 January 2015 to complain about the refusal of her information request. The complainant indicated at this stage that she did not agree with the reasoning given by the Home Office for the refusal of her request.

## **Reasons for decision**

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### **Section 31**

10. The Home Office cited section 31(3), which provides an exemption from the duty to confirm or deny where to do so would, or would be likely to, prejudice any of the matters mentioned in section 31(1). In this case the Home Office specified that it believed confirmation or denial would be likely to prejudice the following matters:

31(1)(a) the prevention or detection of crime;

31(1)(b) the apprehension or prosecution of offenders;

31(1)(g) / (2)(a) and (2)(b) the exercise by any public authority of its functions for any of the purposes specified in subsection (2) / (2)(a) the purpose of ascertaining whether any person has failed to comply with the law, (2)(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper.

11. The approach of the Commissioner is that to accept that prejudice would be likely to result there must be a real and significant chance of this outcome occurring, rather than this being a remote possibility. The question for the Commissioner when considering whether these exemptions are engaged is, therefore, whether there is a real and significant chance of confirmation or denial in response to the complainant's information request resulting in prejudice to any of the matters mentioned above.
12. The reasoning of the Home Office for the citing of these exemptions concerned prejudice that it believed would be likely to result to Operation Herne. The Commissioner accepts that this argument is relevant to the subsections cited by the Home Office; disrupting the

work of Operation Herne would be prejudicial to the matters mentioned in the subsections specified above.

13. The next question is whether confirmation or denial would be likely to have the impact on Operation Herne that the Home Office argues. The Home Office identified three impacts it believed would be likely to come about through disclosure of the confirmation or denial:
  - It could be taken as an implication that SDS either was or was not provided funds from the Home Office's Imperial and National Services Grant.
  - It could also be taken as implying whether or not the Metropolitan Police Service (MPS) has communicated with the Home Office about Operation Herne.
  - It may not be consistent with responses to information requests made to the MPS.
14. Aside from whether the Commissioner accepts that any of the three impacts listed above is a real possibility as a result of confirmation or denial, the Home Office did not develop its arguments and explain how any of these three outcomes would be harmful to Operation Herne. For example, the Commissioner agrees that confirmation or denial may imply whether SDS was funded from the Imperial and National Services Grant. However, in the absence of explanation it is not clear to the Commissioner how the creation of that implication would be likely to prejudice Operation Herne.
15. Whilst the Home Office stated that Operation Herne is ongoing and that its remit covers the role of the Home Office in relation to SDS and how SDS was funded, this provides background. It does not, in itself, constitute reasoning on the likelihood of prejudice.
16. In the absence of convincing argument from the Home Office, the Commissioner has considered himself whether are any other reasons for why this exemption may be engaged. The Home Office has acknowledged that it is in the public domain that SDS was directly funded by it during the period 1968 to 1989. Given that this is already public knowledge, the Commissioner can see no reason why complying with section 1(1)(a) in response to the first part of the request – for the costs of SDS with a breakdown by certain details – could result in harm relevant to section 31(3).
17. As stated above, the Commissioner recognises that confirmation or denial in response to the part of the request that refers to the Imperial and National Services Grant may lead to an implication being drawn about funding from that grant. As also stated above, however, without

explanation on this point it is not clear how the creation of such an implication would be likely to be prejudicial to Operation Herne. The Commissioner cannot, therefore, find any other reasons for why this exemption would be engaged in relation to that part of the request. The overall impression of the Commissioner is that section 31(3) was cited in this case without clear reasoning having been established as to how prejudice would be likely to result.

18. For these reasons, the conclusion of the Commissioner is that he does not accept that confirmation or denial in response to the complainant's request would be likely to result in prejudice to any of the matters specified in sections 31(1)(a), (b) or (g) and so section 31(3) is not engaged. At paragraph 3 above the Home Office is now required to provide a fresh response to the complainant's request.

## Right of appeal

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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: 0870 739 5836

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

Website: <http://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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**