

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 October 2015

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 concerning an alleged police informant from the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny holding the requested information citing the exemptions at sections 40(5) (personal data), 23(5) (information supplied by, or concerning, certain security bodies), 30(3) (criminal investigations and proceedings) and 31(3) (law enforcement); it subsequently withdrew reliance on section 23(5). The Commissioner's decision is that the MPS was entitled to rely on section 40(5)(a) and (b)(i) and he requires no steps.

Background

2. The request can be followed on the "What do they know?" ("WDTK") website¹.
3. The MPS has confirmed that the party concerned: "*... was employed as a police officer with the MPS*".

¹https://www.whatdotheyknow.com/request/the_illegal_activities_of_police#comment-55701

4. Allegations published by the media suggest² that the officer was 'undercover' and acted as an informant (or CHIS ('Covert Human Intelligence Source')), against fellow police officers.

Request and response

5. On 20 September 2014, the complainant wrote to the MPS and requested information in the following terms:

"Dear Metropolitan Police Service (MPS),

- 1. How many police or IPCC investigations have been carried out into the police informant [name removed] (aka [name removed])?*
- 2. When were the investigations carried out?*
- 3. Who carried them out?*
- 4. What are the results of these investigations?*
- 5. How much money did the police pay to [name removed] to prevent the public knowing about him?*

[Name removed] has publicly admitted being a police informant. He undermined court cases by infiltrating defence teams. A person's right to legal privilege is arguably the most important aspect of English law.

I am aware that the information [name removed] provided to the police enabled them to stop trials where the police were about to be exposed as perverting the course of justice.

I am also aware [name removed] also gave legally privileged information to the police to enable them to stop a witness being called.

[Name removed] was paid by defence solicitors while simultaneously working as a paid police informant for his police handlers, [name removed] (formerly Det. Supt.) and [name removed] (formerly Det. Ch. Supt.)

² <http://www.independent.co.uk/news/uk/crime/new-scandal-over-mets-undercover-policing-conviction-of-three-corrupt-former-scotland-yard-detectives-may-be-at-risk-9406142.html>

It is a matter of public interest that [name removed] was paid by police to breach legal privilege and spoil so many trials.

Following threats of a civil action brought by [name removed] ([name removed]) against the police for failing to look after him, how much money did the police pay to [name removed] to stop the action and thus prevent the public from knowing about [name removed]? This is public money and we have a right to know".

6. The MPS responded on 27 October 2014. It would neither confirm nor deny holding any of the requested information citing the following exemptions: section 40(5) (personal data), 23(5) (information supplied by, or concerning, certain security bodies), section 30(3)(criminal investigations and proceedings) and section 31(3) (law enforcement).
7. Following an internal review the MPS wrote to the complainant on 17 November 2014. It maintained its position.
8. During the course of the Commissioner's investigation the MPS advised that it no longer wished to rely on section 23(5) so this has been removed from the scope of the investigation.

Scope of the case

9. The complainant initially contacted the Commissioner on 6 February 2015 about her request. The Commissioner required further information which was provided to him on 4 March 2015.
10. The Commissioner will consider whether or not the MPS is entitled to neither confirm nor deny holding any of the requested information.

Reasons for decision

Section 40 – personal information

11. The MPS has neither confirmed nor denied holding information on two bases. Firstly, in that the information, if held, may relate to the complainant and, secondly that it would relate to a named party who it has confirmed was one of its officers. It states the former on the basis that comments within the WDTK request clearly make reference to the fact that the complainant has made complaints to both the IPCC and the MPS about the officer. The MPS has therefore cited section 40(5)(a) and (b)(i) in respect of the two parties concerned.

12. Section 40(5)(a) and (b)(i) of the FOIA state that:

"The duty to confirm or deny –

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded".

13. Consideration of section 40(5) involves two steps: firstly, whether providing the confirmation or denial would involve the disclosure of personal data, and secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.

Is the information personal data?

14. On the issue of whether confirmation or denial in response to the complainant's request would involve the disclosure of personal data, the definition of personal data is given in section 1(1) of the DPA:

"personal data' means data which relate to a living individual who can be identified:

(a) from those data, or

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

15. The Commissioner accepts that confirmation or denial as to whether the requested information is held would relate to the complainant herself based on comments she has herself placed onto the WDTK website. Furthermore, it clearly relates to a named officer and the Commissioner therefore readily accepts that any information held would also relate to him.

16. The Commissioner is satisfied that complying with section 1(1)(a) in this case would effectively confirm or deny whether the requested information is held in connection with the requester herself and the officer named in the request. Clearly this information would therefore relate to both individuals and so would be their 'personal data'.

The complainant's own personal data

17. The complainant's annotations on WDTK contains comments about complaints that she has allegedly made to the IPCC and the MPS about the officer concerned. The Commissioner therefore considers that confirming or denying whether or not it holds information about any investigations it has undertaken in respect of the officer would necessarily also be linked with the complainant herself. To the extent that confirmation or denial as to the existence of any investigations would also involve the disclosure of the complainant's personal data, ie whether or not she has actually made any complaints and the outcomes thereof, this would fall within the scope of section 40(1).
18. An applicant's own personal information is absolutely exempt from disclosure under the FOIA and should be requested under the subject access provisions of the DPA. The MPS was therefore entitled to neither confirm nor deny holding any information in respect of any matters raised personally by the complainant.

The named officer's personal data

19. The MPS has confirmed that the named individual was a police officer, however, it will neither confirm nor deny holding anything which suggests he was an 'informant' or 'covert officer', or in relation to any investigations which he may have been subject to.
20. The next step is to address whether disclosure of the personal data about the officer – in this case the confirmation or denial that information is held - would be in breach of any of the data protection principles.

Would confirmation or denial breach one of the data protection principles?

21. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle, and the most relevant in this case, states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focussed on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in confirming whether or not any information is held information.
22. In correspondence with the Commissioner, the MPS advised that in its view confirming or denying whether it holds the requested information would be unfair. Although there is much speculation about the named officer in the public domain it advised:

"The MPS does indeed recognise that a large amount of information pertaining to [named removed] is in the public domain, albeit that the information located by this office consists solely of media speculation. I can find no trace in the public domain of any formal acknowledgement as to whether:

- i) he was employed in a covert role whilst a member of the police service or,*
- ii) he was the subject of an investigation or investigations conducted by the MPS and or the IPCC".*

23. In respect of its officers in general it added:

"It should be recognised that the MPS employs covert officers and officers who may have assumed a different role to their official one. In addition, officers who may have started their careers in seemingly 'overt' roles may later progress to those positions which are covert and by necessity, not widely publicised. The identity of such individuals must be protected in order to ensure both their safety and the success of any covert operation in which they may be or have been involved. Accordingly, confirmation of their employment with the MPS may be likely to prejudice the individual officer concerned and or their family, and could also potentially jeopardise existing, past or future investigations.

Reasonable expectations

24. Confirmation or denial in this case could indicate whether or not the officer was indeed a 'covert officer' or an 'informant' and also whether there had been any investigations into his related conduct. The Commissioner's view is that an individual who may be acting 'undercover' will not normally expect any details about their role to be placed into the public domain. Furthermore, they would also not expect details about their conduct, or any investigations into the same to be disclosed. Personnel matters such as this are afforded a high degree of confidentiality and an individual would not reasonably expect any details to be placed in the public domain, especially in connection with the very serious allegations being made against this officer.
25. Based on this, and on the MPS's submissions above, the Commissioner is satisfied that the officer would have the reasonable expectation that confirmation or denial concerning any details about his role with the MPS or investigations into his conduct would not be given.

Consequences of disclosure

26. The MPS advised the Commissioner that:

"In taking up covert roles, officers have a legitimate expectation of 'privacy' in this regard by virtue of the significant personal risk a public disclosure of this nature may be likely to have on them and their families. Indeed, when taking up these positions there is a significant degree of trust between the officer and the organisation, and the MPS will endeavour, by all means possible, to protect those officers and their families from harm as a result of any operations they may undertake in the course of their duties. This includes maintaining a distinct divide between the often dangerous situations they enter into by virtue of their roles and their private and family life. Such an intrusion into the officer's 'privacy' would not in our view meet any of the Sections set out in Schedule 1, Part II. It would be unfair and, as a result, a breach of the first principle..."

And:

"Those who are involved in criminal behaviour often operate as part of a wider criminal network and consequently have associates who could also seek redress on their behalf. Therefore, confirmation under the Act that a named officer was working in a covert role would be likely to expose that officer to potential risk of attack from any individual (or associates) that the officer has come into contact with throughout their career. The distress that could be caused by this confirmation would be an unwarranted intrusion into the rights and freedoms of that officer, which would be grossly unfair and in breach of principle one".

27. The Commissioner understands that in confirming or denying whether the officer was undertaking the type of role suggested they are putting both the officer and those close to him at risk of harm from parties who may have dealt with him in the past. Such action could further undermine the service as a whole and make other officers more unwilling to undertake such roles for fear of exposure or retribution.

General principles of accountability, transparency and legitimate public interest in disclosure

28. The Commissioner appreciates that there is a general public interest in accountability and transparency. On the other hand the Commissioner recognises that this legitimate interest must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests

of any individual who would be affected by confirming or denying that the requested information is held.

29. The Commissioner accepts that the complainant has a genuine interest in the request and her concerns are reflected when reading articles in the press such as the one referenced above. Whilst the Commissioner accepts that there is a legitimate interest in ensuring that justice has been properly served, he also finds that disclosure of the information requested here would not have the ability to ensure that. Such allegations, if founded, need to go through the appropriate channels and disclosure to the world at large via FOIA is actually likely to further undermine any possibility of rectifying miscarriages of justice if indeed any of the allegations are founded. Additionally, the potential harm to the named individual of confirming whether or not he was an 'undercover' officer acting as an informant against fellow officers and whether or not he has been the subject of investigations into these matters would be likely to put him and his family and friends at risk. Such confirmation could also cause considerable harm to the police service as a whole in making officers reluctant to undertake such roles.

Conclusion

30. In her grounds of complaint to the Commissioner the complainant has stated:

"I know that [name removed] was a Covert Human Intelligence Source. The whole world has access to this information since [name removed] himself admitted it on BBC Radio and the recording is still available to this day via the internet.

[Name removed] undermined several court cases. He took information from a defence solicitor and passed it on to the police, resulting in the police deliberately collapsing a trial as the information would have proved the police had perverted the course of justice.

Since then, [name removed] has enjoyed whitewash investigations into him by the Metropolitan Police and the IPCC.

Since [name removed] has formally admitted being a police informant on BBC Radio, why should he enjoy 'top-secret status' in witness protection costing the public thousands of pounds? Especially since he has committed illegal acts.

The police state there is a risk to [name removed]. How can this be when [name removed]'s full address at [address removed] was made known on the internet to all interested parties for several

years. [Name removed] was not at risk then and is not at risk now. [Name removed] has only been moved so that the police can hide behind the 'risk to an informant' excuse.

I hope you can shed some light on this travesty of justice".

31. However, as stated by the MPS above, none of these allegations have been formally acknowledged. It is only supposition which has been placed in the media.
32. In considering whether the exemption contained within section 40(5)(b)(i) was correctly applied, the Commissioner has taken into account that disclosure under the FOIA should be considered in its widest sense – which is to the public at large. With due regard to the reasonable expectations of the officer, and the potential impact on him (and the potential risks to his wider family and friends) the Commissioner considers that it would be unfair to confirm or deny the existence of the personal data requested. He has also taken into consideration the potential detrimental impact to the police service as a whole were this type of information to be disclosed.
33. The Commissioner has therefore concluded that confirmation or denial as to whether the requested personal data is held would be in breach of the first data protection principle. He considers that the exemption provided by section 40(5)(b)(i) is engaged and that, in this case, the MPS was therefore not obliged to confirm or deny whether it held the information requested by the complainant.
34. In light of these findings the Commissioner has not found it necessary to consider any other exemptions cited.

Right of appeal

35. 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

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

36. 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.
37. 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

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