

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 September 2015

Public Authority: Chief Constable of Northamptonshire Police

Address: Force Headquarters

Wooton Hall

Northampton

NN4 0JQ

Decision (including any steps ordered)

1. The complainant requested information relating to correspondence and / or meetings between police staff and outside bodies regarding the former MP Cyril Smith.
2. Northamptonshire Police neither confirmed nor denied holding relevant information, citing the exemptions in sections 23(5) (information supplied by or relating to security bodies), 30(3) (investigations and proceedings), 31(3) (law enforcement) and 40(5) (personal information) of FOIA.
3. The Commissioner's decision is that Northamptonshire Police was entitled to rely on the exemption at section 23(5) and so was not obliged to confirm or deny whether the requested information was held.
4. The Commissioner does not require the public authority to take any steps.

Request and response

5. On 25 March 2015, the complainant wrote to Northamptonshire Police and requested information in the following terms:

"Please provide any correspondence between police staff and outside bodies regarding the former MP Cyril Smith. Please also provide details of any meetings regarding this subject which were

attended by police staff members and provide details of when the meetings took place."

6. Northamptonshire Police responded on 14 April 2015. It refused to confirm or deny whether it held the requested information. It cited the following exemptions as its basis for doing so:
 - section 23(5) information supplied by or relating to bodies dealing with security matters
 - section 30(3) investigations and proceedings
 - section 31(3) law enforcement
 - section 40(5) personal information
7. Following an internal review, on 18 May 2015 Northamptonshire Police revised its position: it provided some information within the scope of the request, namely a press release issued on 19 March 2015. However, Northamptonshire Police continued to neither confirm nor deny whether it held any other relevant information by virtue of sections 23(5), 30(3), 31(3) and 40(5) of FOIA.

Scope of the case

8. The complainant provided the Commissioner with the relevant documentation on 26 May 2015 to complain about the way his request for information had been handled.
9. He disputes that sections 23 and 40 apply in this case to all the requested information. He also disputes that Northamptonshire Police considered the public interest test correctly with respect to sections 30 and 31, setting out his reasons why he considers that to be the case.
10. Northamptonshire Police has relied on multiple exemptions, namely sections 23(5), 30(3), 31(3) and 40(5), to refuse to confirm or deny whether it holds any further information falling within the scope of the requests. It has relied on these exemptions in order not to fulfil the duty contained at section 1(1)(a) of FOIA – the section of FOIA that gives an applicant the right to know whether a public authority holds the information that has been requested.
11. Therefore this notice only considers whether Northamptonshire Police is entitled on the basis of any of these exemptions to refuse to confirm or deny whether it holds the requested information. The notice does not

consider whether the requested information – if held – should be disclosed.

Reasons for decision

Section 23 information supplied by, or relating to, bodies dealing with security matters

12. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request. This is known as 'the duty to confirm or deny'.

13. Section 23(5) of FOIA states that:

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."

14. Section 23(5) therefore provides an exemption from the duty imposed by section 1(1)(a) to confirm or deny whether information is held if to do so would involve the disclosure of information, whether or not recorded, that relates to or was supplied by any of the security bodies listed in section 23(3). This is a class-based exemption, which means that if the confirmation or denial would have the result described in section 23(5), this exemption is engaged. Also, as section 23 is not subject to the public interest, there is no need to consider whether disclosure of the confirmation or denial would be in the public interest.

15. It is only necessary for a public authority to show that either a confirmation or denial of whether requested information is held would involve the disclosure of information relating to a security body. It is not necessary for a public authority to demonstrate that both responses would disclose such information. Whether or not a security body is interested or involved in a particular issue is in itself information relating to a security body.

16. Furthermore, the Commissioner considers that the phrase 'relates to' should be interpreted broadly. Such an interpretation has been accepted by the First-Tier Tribunal (Information Rights) in a number of different decisions.

17. The test as to whether a disclosure would relate to a security body is decided on the normal civil standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the

disclosure would relate to a security body then the section 23 exemption would be engaged.

18. From the above, it can be seen that section 23(5) has a very wide application. If the information requested could be described as within the ambit of security bodies' operations, section 23(5) is likely to apply. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
19. Northamptonshire Police provided the Commissioner with submissions in support of its application of exemptions in this case. The Commissioner cannot elaborate on either the nature of those submissions, nor why he considers the submissions demonstrate that section 23(5) is engaged, as to do so would risk revealing information that is in itself exempt information. However, having considered the submissions the Commissioner is satisfied that by either confirming or denying whether it holds further information falling within the scope of this request Northamptonshire Police would, on the balance of probabilities, reveal information relating to one or more of the security bodies. The Commissioner has therefore concluded that Northamptonshire Police can rely on section 23(5) to refuse to confirm or deny whether it holds any further information falling within the scope of the complainant's request.
20. In light of his finding in respect of section 23(5), the Commissioner has not considered Northamptonshire Police's application of sections 30(3), 31(3) or 40(5).

Right of appeal

21. 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

22. 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.
23. 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
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