

## 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 in connection with criminal charges brought against an MP. The Metropolitan Police Service (the "MPS") initially confirmed it held related information but refused to provide it citing the exemptions at sections 40(2)(personal information) and 30(1)(a) (criminal investigations and proceedings) of the FOIA. During the course of the Commissioner's investigation the MPS revised its position and would neither confirm nor deny holding information citing sections 40(5) and 30(3) of the FOIA. The Commissioner's decision is that the MPS was entitled to rely on section 40(5). He requires no steps.

#### Background

---

2. The '*Parliamentary Committee on Standards - Tenth Report*' covers the background to the issues raised. This can be found online<sup>1</sup>.

---

<sup>1</sup><http://www.publications.parliament.uk/pa/cm201314/cmselect/cmstandards/1179/117902.htm>

## Request and response

---

3. Following earlier correspondence, on 9 March 2015, the complainant wrote to the MPS and requested the following information:

*"1. The MPS's 2012 document in which the decision was made not to lay charges against Maria Miller MP.  
2. Any documents laying out the MPS's reasons why Maria Miller was not to be charged.  
3. Any letters or emails sent in response to people/organisations, like Thomas Docherty MP and John Mann MP, requesting that the Miller case be reopened by the MPS.  
4. Any recorded information, such as emails, meeting minutes, research or reports, relating to MPS's engagement with the Parliamentary Standards Commissioner in connection with her investigation in the Miller case.  
5. In the light of the Parliamentary Standards Commissioner's investigation or any other circumstances, any documents providing details of any review by MPS of its 2012 decision not to lay charges against Miller."*

4. The MPS responded on 5 May 2015. It confirmed holding information but stated that it was exempt from disclosure, citing the exemptions at sections 30(1)(a) and 40(2).
5. Following an internal review the MPS wrote to the complainant on 4 June 2015. It maintained its position.

## Scope of the case

---

6. The complainant initially contacted the Commissioner on 3 August 2015 to complain about the way his request for information had been handled. He asked the Commissioner to consider the application of the exemptions.
7. Following the MPS's change of position the Commissioner invited further arguments from the complainant. The complainant advised that he did not believe the MPS was correct to neither confirm nor deny holding information as it was his belief that confirmation concerning its involvement was already in the public domain.

## Reasons for decision

---

8. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the “*duty to confirm or deny*”. However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.

### Section 40 – personal information

9. Generally, the provisions in section 40 subsections 1 to 4 FOIA exempt personal data from disclosure. Section 40(5) of FOIA states that the duty to confirm or deny whether information is held does not arise if providing the public with that confirmation or denial would contravene any of the data protection principles set out in the Data Protection Act 1988 (the ‘DPA’).
10. In this case, the MPS considers section 40(5)(b)(i) applies. It has argued that confirming whether or not it holds the requested information would breach the data protection rights of the individual named in the request, as it would reveal under FOIA whether they had been the subject of the potentially criminal investigation referred to by the complainant. Such an argument is relevant to the exemption contained at section 40(5)(b)(i).
11. Consideration of section 40(5) involves two steps: first, 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.

### ***Would confirmation or denial disclose personal data?***

12. 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”.*

13. The Commissioner considers that the way in which the request is worded clearly indicates that the complainant is seeking information which can be linked with the named individual. Parts 1, 2, 4 and 5 all relate directly to the named MP. Part 3 differs in that it relates to information which may be held concerning other parties.

14. As the complainant has requested information specifically about named individuals by its nature the request identifies those individuals and any information, if held, would constitute their personal data.
15. Confirmation or denial as to whether or not the MP has been subject to an investigation of the type suggested in this request would reveal something of a personal nature about her and would therefore constitute her personal data. Furthermore, as it relates to alleged criminality it would be classed as 'sensitive' personal data under sections 2(g) and (h) of the DPA. A particular requirement in relation to processing sensitive personal data (which includes confirmation or denial of its existence in this case) is that at least one of the conditions in Schedule 3 of the DPA is met.
16. Confirmation or denial as to whether or not the MPS has corresponded with other parties concerning the MP would also be the personal data of those parties concerned.

***Would disclosure breach any principles?***

17. The MPS advised that it believed confirmation or denial would breach the first data protection principle.
18. When considering the first principle the Commissioner will generally look to balance the reasonable expectation of the data subject with the consequences of compliance with the request, and general principles of accountability and transparency.
19. The first data protection principle requires that personal data is processed fairly and lawfully and that one of the conditions in schedule 2 of the DPA is met in order to disclose personal data.
20. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:
  - the individual's reasonable expectations of what would happen to their information;
  - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
  - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
21. The Commissioner will firstly consider those parts of the request which relate directly to the MP and then move on to the other parties.

***The MP – parts 1, 2, 4 & 5***

22. The Commissioner considers that information relating to a personal matter such as the possible existence of a criminal investigation and any associated details about that investigation will usually be inherently 'private' in nature. As such he recognises that the party concerned will have a high expectation that such matters will not generally be placed in the public domain and that their privacy will be respected, even when they are carrying out a public role such as being an MP. As such, the Commissioner considers that the MP's reasonable expectation would be that the MPS would not disclose this type of information.
23. The Commissioner notes the complainant's submission that the MPS initially confirmed holding information so it could not now properly go back on that position. However, the Commissioner will not take this argument into account as the MPS is entitled to revise its position and any prior correspondence will therefore be disregarded for the purpose of this decision notice.
24. Furthermore the complainant has advised that he believes that:

*"Information is, indeed, already in the public domain which evidences that the MPS definitely commenced some sort of investigation into Ms Miller:*

*On 4th March, 2015, [name removed] for the Office of the Parliamentary Commissioner for Standards [contact details removed], wrote to me as follows:*

*".....in Mrs Maria Miller's case, I understand that the Metropolitan Police have previously said that, following allegations from members of the public, in December 2012, officers assessed the information and concluded that the threshold for a criminal investigation had not been met."*

25. However, the Commissioner does not consider that this evidences that there is anything in the public domain to support that correspondence. Not only is this a letter written to the complainant personally, ie not something that is available publically, the author only says that she 'understands' that an investigation may have taken place. The MPS has made no such public statement and the Commissioner has been unable to find any public information to corroborate this comment.
26. The allegations were previously considered by the appropriate parliamentary body and its findings were published. Accordingly, confirmation as to whether or not any criminal enquiries were pursued by the MPS, and their outcome, could cause the MP unnecessary and

unjustified distress. While he accepts that there is a limited legitimate interest in the disclosure of this information, he does not consider that this outweighs these other factors. The Commissioner therefore finds that the MP would not reasonably expect the MPS to confirm whether or not it has had any subsequent involvement with her and he considers that such confirmation – or denial – would be unfair.

### ***Correspondence with other parties – part 3***

27. In the Commissioner's view, if someone writes to a police force to raise concerns they would not normally expect that force to disclose any content of the correspondence to the general public; indeed they would not generally expect the police to even confirm whether or not they are in correspondence over any issues. The Commissioner therefore considers that personal correspondence with parties such as those suggested by the complaint will be inherently 'private' in nature. Were the parties suggested by the complainant 'open' to such confirmation he would expect them to have made public their correspondence, which they are obviously entitled to do on a personal basis. Although the Commissioner has viewed one letter alleged to have been sent by a party to the MPS, no response of any sort has been published.
28. The Commissioner considers that the parties referred to by the complainant will have a high expectation that their correspondence will not generally be placed in the public domain by the MPS and that their privacy will be respected. As such, the Commissioner considers that their reasonable expectation would be that the MPS would not disclose details about any involvement – or lack of involvement - with them.
29. With due regard to the reasonable expectations of the parties concerned, and the potential impact on them if the existence of their personal data were to be confirmed or denied, the Commissioner considers that it would be unfair for the MPS to confirm or deny whether it has corresponded with them about the MP.

### ***Conclusion***

30. The Commissioner appreciates that there is a general public interest in accountability and transparency, and that the public is entitled to be reassured about the integrity of an MP.
31. However, the Commissioner recognises that this legitimate interest must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the MP as well as those parties who may have corresponded with the MPS about her, all of whom would be affected by the confirmation or denial that any requested information is held.

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. A confirmation or denial in the circumstances of this case would reveal to the public information which is not already formally in the public domain.
33. With due regard to the reasonable expectations of the data subjects, and the potential impact on them if the existence of their personal data were to be confirmed or denied, the Commissioner considers that it would be unfair for the MPS to do so. While he accepts that there is a limited legitimate interest in the disclosure of this information, he does not consider that this outweighs these other factors.
34. The Commissioner therefore finds that, if held, it would be unfair to disclose it and to do so would be in breach of the first principle of the DPA. All information would accordingly be exempt from disclosure under section 40(2) and therefore, under section 40(5)(b)(i), the MPS is not required to confirm or deny that it is held under the terms of the FOIA.

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

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