

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 February 2017

**Public Authority:** Commissioner of the Metropolitan Police  
Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

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1. The complainant has requested information about the late Lord Mountbatten (1900-1979) from the Metropolitan Police Service (the "MPS"). The MPS disclosed some information but refused to disclose the remainder citing the exemptions at sections 27(1) (international relations), 30(2) (investigations and proceedings), 31(1) (law enforcement), 38(1) (health and safety) and 40(2) (personal information) of the FOIA; it would also neither confirm nor deny holding further information by virtue of sections 23(5) (information supplied by, or relating to, security bodies) and 24(2) (national security). During the Commissioner's investigation this position was revised. The MPS advised that it was unable to locate one file and therefore did not hold it. In respect of the remaining information it advised that it found the request to be vexatious under section 14(1).
2. The Commissioner's decision is that, on balance of probabilities, the missing file is no longer held. She also finds that the MPS was entitled to rely on section 14(1). No steps are required.

### Background

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3. Lord Mountbatten, one of his twin grandsons and a local boy who was employed as a "boat boy" were killed when a bomb planted by the IRA

exploded on their boat in Mullaghmore, County Sligo, Ireland on 27 August 1979. Another passenger died the following day.

4. The files about Lord Mountbatten which are held by the MPS have been offered to The National Archives ("TNA") and they have agreed to accept them. However, there is currently no specified time table for when they will be physically transferred to TNA.
5. This notice refers to 'Operation File Safe'. The MPS has explained that this consists of a small team of records management experts working in support of the Assistant Commissioner's Public Inquiry Team. They are: *"tasked with sweeping buildings and archives to ensure that all records requiring retention and or disposal are properly logged and archived"*. Coincidentally, they were due to sweep Southwark during this investigation so, with the complainant's agreement, the Commissioner waited until this was completed before finalising her decision.
6. The MPS added that:

*"During the Op File Safe deployment we will clear all the paper records from the local archive areas, and offices except the last 2 years which will remain in situ..."*

*... It is not unusual to expect a number of files to be recovered from each site we visit. Most registered files are recovered from local safes or secure storage, which given that many files have been on borough for a lengthy time means that they are not necessarily lost or missing but simply have been put in a safe place".*

## Request and response

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7. On 7 February 2016 the complainant wrote to the MPS and requested information in the following terms:

*"I am writing a life of Lord Mountbatten (1900-1979) and would be grateful for the release of any files on him including allegations made against or investigations into him".*

8. On 10 February 2016 the MPS sought clarification regarding the scope of the request, asking whether he also wanted information regarding the funeral arrangements. The complainant clarified that he required this as well as:

*"... any references in the Metropolitan Archives to allegations made against him or investigations into his activities and communications*

*with his office and liaison with other police forces with regard to his death".*

9. Following an extension to the time limit in which it considered the public interest, on 20 May 2016 the MPS responded. It provided some information within the scope of the request but refused to provide the remainder. It cited sections 27(1), 30(2), 31(1), 38(1) and 40(2) as its basis for doing so. It would also neither confirm nor deny holding further information by virtue of sections 23(5) and 24(2).
10. Following an internal review the MPS wrote to the complainant on 21 June 2016. It maintained its position.
11. During the Commissioner's investigation this position was changed. The MPS advised the complainant that it considered his request to be vexatious. It further advised that one file was recorded as "missing" since 1979 and confirmed that, on the balance of probabilities, it considered it was no longer held.

### **Scope of the case**

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12. The complainant initially wrote to the Commissioner on 7 July 2016 to complain about the way his request for information had been handled. He disputed the citing of exemptions and added:

*"Mountbatten's homosexual activities were extensively reported to MPS and have been revealed in numerous books and in publicly available FBI files. No mention is made of these reports nor investigations into them which I would like released".*

13. During the Commissioner's investigation the MPS revised its position and wrote to the complainant to advise him accordingly. It explained that it now considered the request to be vexatious. It did not cite any other exemptions.
14. The Commissioner asked the complainant for his views on this position. The complainant was dissatisfied with the citing of section 14(1) so the Commissioner will consider this below.
15. It also came to light during the investigation that a file had been "missing" since 1979. The Commissioner will consider whether or not it is held below.
16. The Commissioner would like to confirm that her representative has visited the MPS and has had unrestricted access to all the information held.

## Reasons for decision

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### Section 1 – general right of access

17. Section 1 of the FOIA states that anyone making a request for information to a public authority is entitled to be informed whether the public authority holds the information, and if so, to have that information communicated to them.
18. The Commissioner is mindful that when she receives a complaint alleging that a public authority has stated incorrectly that it does not hold the requested information, it is seldom possible to prove with absolute certainty whether the requested information is held. In such cases, the Commissioner will apply the normal civil standard of proof in determining the case and will decide on the 'balance of probabilities' whether information is held.
19. When searching for information held within the scope of the request, the MPS found an entry on its Records Management System which referred to a file about Lord Mountbatten being booked out to its Southwark Division on 1 October 1979. The file was not shown as having been returned.
20. The Commissioner has therefore sought to determine whether, on the balance of probabilities, the MPS holds the file listed as 'missing'. Accordingly, she asked the MPS to explain what enquiries it had made and she was provided with the following information.
21. The MPS had undertaken searches at its outsourced storage providers, its SO15 archive, its Repository and had also checked its old manual records of destroyed registered files. It also confirmed:

*"Our colleagues from the Operation File Safe [see 'Background' above] have been made aware of the missing Lord Mountbatten file and they have made staff at Southwark Police aware of this file, should they come across it which I believe will be highly unlikely as records held at any station should be destroyed after 7 years, so if an allegation had been made against Lord Mountbatten during his life and had not been registered in the corporate records management system it should no longer exist".*

22. The MPS further explained:

*"Our Op File Safe Team met with the Borough Commander at Southwark Police 25th October and explained the situation regarding the Lord Mountbatten missing file and also asked for a*

*full audit of all safes and secure cabinets to be carried out over the next couple of weeks. If any files are discovered they will be handed to our Op File Safe team for processing and they will let me know asap should they discover the missing file."*

23. The thorough search conducted would be expected to uncover any missing file which may have been stored somewhere in the Division and forgotten.
24. The Commissioner was advised on 7 February 2017 that the Operation File Safe search had been completed and the file about Lord Mountbatten had not been found.

### **Conclusion**

25. The file is listed as being passed to Southwark Division on 1 October 1979. There is no further audit trail available and no name is listed as requesting the file. In any event, the Commissioner considers it extremely unlikely that the relevant employee from 1979 would still working at the MPS or, if they were, that they would remember requesting the file. As there will have been many staffing changes in the last 37 years it would also be extremely difficult to try and trace any party who may have known about the file.
26. The Commissioner considers that asking the Borough Commander at the file's last known location, and making the staff working on Operation File Safe aware of the file, is the method by which the file would most likely to be uncovered. She also notes the additional searches which were made of both the MPS's internal and external systems.
27. Based on the information provided the Commissioner is satisfied that, on the balance of probabilities, the missing file is no longer held. She is therefore satisfied that the MPS has complied with the requirements of section 1 of the FOIA in relation to this file.

### **Section 14 – vexatious requests**

28. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious.
29. The term 'vexatious' is not defined in the FOIA. The Upper-tier Tribunal considered the issue of vexatious requests in the case of The Information Commissioner and Devon County Council vs Mr Alan

Dransfield (GIA/3037/2011) (*Dransfield*)<sup>1</sup> and concluded that the term could be defined as “*manifestly unjustified, inappropriate or improper use of a formal procedure*”.

30. The *Dransfield* case identified four factors that may be present in vexatious requests:

- the burden imposed by the request (on the public authority and its staff)
- the motive of the requester
- harassment or distress caused to staff
- the value or serious purpose of the request.

31. The Commissioner has identified a number of ‘indicators’ which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests<sup>2</sup>. In short they include:

- Abusive or aggressive language
- Burden on the authority
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence
- Frequent or overlapping requests
- Deliberate intention to cause annoyance

32. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

33. The Commissioner’s guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.

34. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. However, it is

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<sup>1</sup> <http://www.ossccsc.gov.uk/judgmentfiles/j3680/GIA%203037%202011-01.doc>

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-withvexatious-requests.pdf>

important to recognise that one request can in itself be vexatious depending on the circumstances of that request.

### The MPS's position

35. In its submission MPS has argued that complying with the request would cause it a disproportionate and unjustified level of disruption, irritation and distress, citing the Commissioner's guidance, which states that, although a public authority cannot claim section 12 for the "*cost and effort associated with considering exemptions or redacting exempt information*", it may apply section 14(1) "*where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.*"
36. The MPS also referred to the guidance in respect of there being a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
- The requester has asked for a substantial volume of information **AND**
  - The authority has real concerns about potentially exempt information **AND**
  - Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.
37. In support of its position the MPS advised the complainant as follows:

*"On further investigation into this matter it is now my view that this request would impose a significant burden on the MPS as the files requested contain 1,250 pages.*

*The documents contain a considerable amount of information which would firstly require us to photocopy the original files due to the age of the files. The files are put together with treasury tags and some stapled together we would therefore have to detach each attached document. Each page would then require someone to read and review the information contained in order to identify information likely for disclosure and only then could we consider redacting each page. The documents are also held in files marked 'Secret', we would be unable to make any necessary redactions on our case management system as it is only suitable for files marked up to 'restricted' anything above as in this case would have to be redacted before formatting into electronic form.*

*The information contained within the files which would require consideration includes policing arrangements, visiting dignetries [sic] and all details relating to their stay, security arrangements,*

*briefing notes, extensive list of passes with names, addresses and ages of persons, press enclosures/arrangements and communication, list of press passes including names and locations, various letters from members of the public providing information, timings after the committal service, funeral arrangements, letters of thanks, The Queen and the royal family's route/details to the funeral, briefing notes, protections details, intelligence, traffic arrangements, medical arrangements, meeting notes, details of procession, public address messages, VIP movements and patrols, funeral rehearsal directions, passes, various branch notes etc.*

*A conservative estimate to just go through the documents to read and redact at an estimated 10 minutes per page would equate to 208 hours and 20 minutes. This would equate to a member of MPS staff spending 8 hours well over 26 days. This time does not include the further time required for consultation and the time we have already spent identifying the information. I believe this would put a significant burden on the MPS when we average 400-450 requests per month not including internal reviews and appeals.*

*Through open source searches a vast amount of information is already available in the public domain and do not believe there is further public interest in this matter to justify one member of staff to spend over 26 days on one case. The MPS is required to ensure that resources are spent wisely and clear in its respect and appreciation to meet the requirements of FoIA. I believe responding to this request would present a disproportionate and unjustified level of disruption and burden on the MPS in terms of distraction and expense particularly taking into account the lack of public interest. I do not feel it would be of any tangible benefit to the public".*

38. The MPS also advised the complainant:

*"I have since made enquiries with our Records Management Branch which have revealed that the files relating to Lord Mountbatten have since been selected for transfer to The National Archives (TNA)".*

### **The complainant's position**

39. Having received the above response from the MPS the complainant submitted counter arguments. These are summarised as:

- The late citing of section 14.
- Whether it is necessary to photocopy every page of the files.
- Whether the condition of the papers, eg treasury tags, is relevant.



- Why the categorisation of the files as 'secret' is relevant.
- Because the event happened almost 40 years ago, can much remain sensitive?
- The MPS's assertions of a lack of public interest and the volume of information already in the public domain is subjective and, in any event, the information on MPS files will not be available.

### **The Commissioner's position**

40. The burden on the MPS in this matter arises principally from the resources and staff time that would need to be spent on addressing the complainant's information request. The MPS would need to spend considerable staff time in considering and redacting exempt information from the paper files held prior to disclosure of any non-exempt material, if any additional disclosure were subsequently deemed appropriate. The costs provision (section 12 FOIA) cannot be claimed on the basis of time spent applying exemptions, however, the Commissioner's published guidance on section 14(1) FOIA allows for the possibility that a request can be refused as vexatious on the basis of the time that would be taken in addressing it.
41. As previously mentioned, the Commissioner would like to confirm that her representative has had full access to all the files held by the MPS. She is therefore fully aware of their condition and the volumes of paper concerned as these were viewed first hand. The papers are fragile, some are double-sided, and many are stapled / tagged together. The papers were counted whilst she was in attendance and the volumes cited are accurate.
42. Unlike information which is held electronically, the Commissioner also accepts that it would not be possible to properly consider the information for disclosure without first separating the individual pages where these are stapled / treasury-tagged because, without doing so, such action would result in them being damaged. Furthermore, any notation of the papers in respect of considerations for disclosure under the terms of the FOIA would require that a working copy be created, and any onward disclosure would necessarily require photocopies to be made as the papers are all original hard copy only. It needs to be borne in mind that because these are original documents they therefore need to be handled very carefully.
43. The complainant has also queried what is meant by the MPS when it refers to its IT systems not being available for use with the files which

are held. The Commissioner understands this to be in reference to the Government Protective Marking Scheme<sup>3</sup> and the files being classified as 'secret' on their covers. This classification means that they cannot be scanned onto the MPS's case handling system to be worked on as their IT system can only be used to hold documents which are classified up to the level of 'restricted'. Therefore, the papers would need to be read and manually redacted (which would obviously necessitate prior photocopying) before being added onto the IT system and converted to electronic format. Whilst this process may not be strictly necessary as disclosure could be made in hard copy via the postal system, it demonstrates that photocopies would be required were any disclosable information to be made available in an electronic format.

44. The Commissioner also notes the complainant's position that the MPS should have previously been aware of the amount of work that would be required had it properly considered the request in the first place. She understands this view, and notes that the late reliance on section 14 is unfortunate and agrees that the MPS should have recognised this position when the request was received. However, whilst she notes that this is unfortunate for the complainant, following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
45. In respect of the amount of time estimated by the MPS, the complainant has argued that: *"It will be for the ICO to decide whether the figures cited by [the MPS] are reasonable/credible"*. As cited by the MPS above, and accepted by the Commissioner, there are 1,250 pages on the files caught within the scope of the request. The MPS has cited 10 minutes per page in its estimate, however, the Commissioner does not agree that this is a realistic figure. She has based her reasoning on Salford vs ICO and TieKey Accounts Ltd (EA2012/0047)<sup>4</sup>, where the Tribunal decided that a reasonable estimate of time to examine a page was five minutes. Based on this, it would amount to approximately 104 hours for the MPS to examine 1250 pages, ie approximately 14 days' work for a suitably qualified member of staff.

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<sup>3</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/251480/Government-Security-Classifications-April-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251480/Government-Security-Classifications-April-2014.pdf)

<sup>4</sup><http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i873/20121030%20Decision%20amended%2031-10-12%20EA20120047.pdf>

46. The Commissioner also notes the MPS's reference to 'consultation' that would be required prior to any onward disclosure. Based on the subject matter, and the exemptions initially cited by the MPS, she accepts that other parties are likely to require involvement so it is not just the work of one party reading and redacting that can be taken into account.
47. With reference to her guidance on vexatious requests, the Commissioner is satisfied that the three elements (as set out above) of volume, concerns about potentially exempt information and the difficulty in isolating that potentially exempt information have been met in this case.
48. The Commissioner has also considered whether the request has a serious purpose or value and has concluded that it did. However, she also finds that information already available in the public domain goes a long way to addressing this and diminishes the value that responding positively to this request would achieve. For example there are several published books about Mountbatten and his life, including details taken from his personal diaries, and many articles are available online which include commentary about him and his family.
49. In conclusion, the Commissioner has accepted the evidence from the MPS that addressing the information request would impose a significant burden. As to whether the request was nevertheless of such value that this burden would be proportionate, the Commissioner's view is that it would not. Whilst the Commissioner accepts that there may be a degree of value in this request, she considered that any value further disclosure might add to the public understanding of the matter would not be proportionate to the burden and distress that would be placed on the MPS. Much information already exists in the public domain about Lord Mountbatten and the MPS has confirmed that the files concerned will be transferred to TNA in the future. Accordingly, the Commissioner can see little value in requiring the MPS to undertake the considerable task that would be required for complying with this request.
50. Therefore, the Commissioner's decision is that the request viewed as a whole was vexatious and that the MPS was not obliged to comply with it.

## Right of appeal

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51. 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)

52. 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.
53. 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** .....

**Carolyn Howes**  
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**Information Commissioner's Office**  
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**Wilmslow**  
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