

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 02 October 2019

**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 from the Metropolitan Police Service (the "MPS") about an incident in Salisbury on 4 March 2018. Having initially refused the two related requests in their entirety citing the exemption at section 30(1) (investigations and proceedings) of the FOIA, the MPS revised its position during the Commissioner's investigation. In doing so, it refused to confirm or deny whether it holds some of the requested information, citing sections 30(3) (investigations and proceedings) and 40(5) (personal information) of the FOIA.
2. The Commissioner's decision is that sections 30(1) and 30(3) of the FOIA are both engaged and that the balance of the public interest favours maintaining both exemptions. The Commissioner requires no steps to be taken as a result of this decision.

### Background

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3. This request relates to an incident which happened in Salisbury on 4 March 2018. The incident involved the attempted poisoning of a former Russian spy and his daughter who were found seriously ill on a bench. They had been poisoned by a nerve agent which is part of a group of nerve agents known as 'Novichok'. The two linked requests relate to the actions of a police officer at the scene and what is alleged to be CCTV footage from the area.

4. As is her usual practice, and to ensure compliance with the provisions of the Data Protection Act 2018, the Commissioner has redacted names where they relate to living individuals.
5. The MPS provided the complainant with the following "if asked" press lines to take about this incident as part of its internal review:

"... 'IF ASKED' press lines dated 04/06/2018 that state:

*'IF ASKED: Is Sgt [name redacted]'s body cam footage going to be released?*

*No.*

*IF ASKED: Will [name redacted]'s bodyworn camera footage be released? = Any footage from any source relating to the attempted murders of [name redacted] and [name redacted] is subject to the live and ongoing investigation. There are no plans to release any footage at this time.*

*IF ASKED: Did Sgt [name redacted] wear gloves?*

*The circumstances of Sgt [name redacted] form part of the live and ongoing investigation. NPTDF [Not prepared to discuss further].*

*IF ASKED: Where did Sgt [name redacted] become contaminated?*

*[Name redacted]'s movements form part of the live and ongoing investigation. NPTDF.'*

Earlier press lines stated:

*'IF ASKED: Re where [name redacted] came into contact with the nerve agent: NPTD.'* – 26/04/2018

*'IF ASKED: re movements of DS [name redacted] in relation to the Salisbury investigation? As we have previously stated, DS [name redacted] was amongst the first responders. Not prepared to discuss further.'* – 26/04/2018

*'IF ASKED: re why are we not releasing further details? As with all investigations, police have a duty to balance the release of information into the public domain as part of that process with protecting the integrity of our work and planning for any potential legal proceedings.'* – 28/03/2019

*'IF ASKED: where/how did [name redacted] come into contact with the nerve agent? As previously stated, Detective Sergeant [name redacted] was among the first responders to this incident. At this stage, we are not discussing further details of his movements as*

*they form a line of enquiry in the complex and ongoing investigation.'* - 28/03/2019

## **Request and response**

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6. On 16 December 2018 the complainant wrote to the MPS and made two related requests, via the "What do they know?" website:

*"CCTV footage of the Salisbury Incident March 4th 2018*

*Further to my previous refused FoIR (on the grounds of cost) I have a pruned down [sic] this request for some footage that should come within the allowed budget and for which other exemptions cannot sensibly apply*

*We have seen footage from the day taken from a CCTV camera at Step Fitness Gym, Market Walk. It has been aired on television, the internet and stills have appeared in newspapers.*

*The 1st shown was timed at 3:47pm and shows a couple who were initially mistaken by the media as the [name redacted], the police later asked for the public's help to identify them.*

*The 2nd was timed at 4:03pm and shows [name redacted] leaving her place of work (Snap Fitness), within a few seconds [name redacted] had encountered the collapsed couple on the bench.*

*We have seen the faces of all the people involved before, the crime occurred several hours beforehand, the pair charged with the crime had left Salisbury by this time by train. This was not a crime scene and we have already seen partial footage from it.*

*From CCTV footage held by the Met from the Maltings area Salisbury on the 4th March 2018:*

*I would like to see the moving footage of the CCTV from the Council's or any other systems that captured it of the movement of the pair (mistaken for the [name redacted]) as they emerge from Market Walk into the Maltings, I want to see where they go, what they do, for as long as they were in the Maltings area.*

*I would also like to see [name redacted]'s encounter with the pair stricken at the bench, [name redacted] says no one else was around at the time. I would like to see the encounter from any footage held by the police but especially from the Council's system that had cameras positioned above Market Walk and on Sainsburys.*

*I want to see [name redacted] and the pair sat on the bench for as long as [name redacted] was present”.*

And:

*“Actions of DS [name redacted] on the 4th March 2018 (Salisbury Incident)*

*[I realise that Wiltshire Constabulary were involved in the management of this in the very early stages but it appears the Met have taken complete ownership of the matter, I therefore address the enquiry to you]*

*The public have been given a good deal of information by the police through official statements and media briefings about the involvement of DS [name redacted] on the 4th March, it is clear the police want the public to know what he did, when and why.*

*I certainly am interested to know. Sadly however many of the police statements released regarding DS [name redacted] are contradictory, conflicting and irreconcilable.*

*The statements set up confusion in the public’s understanding of events and I can find no corrections or clarifications of the facts. This FoIR is intended to give me (and hopefully others) a clearer understanding of what actually happened that day regarding events which involved [name redacted].*

*On top of the confusing police accounts there have been many other “informed descriptions” of what transpired some from those who claimed access to police “sources” (eg BBC’s Panorama program and [name redacted]’s book – The [name redacted] Files), there are other media inputs and even [name redacted]’s own account.*

*I shall not list all the conflicting versions of events here, there are too many but I do ask for confirmation of specific information regarding DS [name redacted] activities. The information I understand is available from various sources including CCTV, body worn cameras, reports, statements and witness evidence.*

*1. i) What time did [name redacted] go on duty that day? ii) What time was his shift due to end, iii) What time did he go off duty?*

*2. i) When did become aware of the incident in the Maltings, ii) Why did he attend? (Was he detailed or was it an act of initiative?)*

*3. Did anyone accompany him, if so how many and rank(s)?*

4. *At the bench scene, what did [name redacted] and / or his colleague(s) do?*

5. *Witness accounts say before the 4:15pm call was made to the emergency services (by a concerned member of the public) there were already police officers at the scene. Is this true and if so how many and rank(s)?*

6. *In a publicly aired CCTV recording taken within Market Walk (from [location redacted]) we see a police car moving towards the scene. i) Was this PC's [name redacted] and [name redacted] arriving? ii) Was [name redacted] already present at the scene when these two arrived? iii) Was the police car in Market Walk caught on CCTV at 4:15pm? (it was reported as such).*

7. *It was also reported that police were present at the [name redacted] home at 5pm i) Is this true, if so how many police officers were present (during that afternoon/evening /night) and rank(s)? ii) Was [name redacted] one of these officers? iii) If there was a police presence at the [name redacted] home at 5pm why were they there and iv) What did they do?*

8. *i) At what time did [name redacted] attend the [name redacted] home, ii) What was his purpose for being there, iii) Did he (or anyone) have a warrant to enter the property?*

9) *i) Who else attended the [address redacted] scene with [name redacted] numbers and rank(s)? ii) Was the time he attended after his normal shift time? iii) If on overtime why did [name redacted] attend?*

10. *i) What activities took place in the [name redacted] home, ii) By what route was entry gained? iii) Were [name redacted]'s house keys used to gain access? (how, where, when and why were these keys obtained) iv) How many officers entered the property? v) At what time did [name redacted] leave the [name redacted] home*

11. *Please give a detailed timeline of what [name redacted] did next, from leaving the [name redacted] residence, going to the police station, going to Salisbury and District Hospital for the Decontamination Process, returning home, becoming ill, returning to the hospital. Everything he did, everywhere he went and times and mode(s) of transport.*

12. *i) Did PC's [name redacted] and [name redacted] go to the hospital for the decontamination process, ii) What did the decontamination process entail? iii) How long did it last? iv) What tests were done to give the all clear? v) Did all police officers from*

*the bench and house scenes go for decontamination? vi) Had any of those officers been to their homes first? And if so vii) What decontamination precautions were put into effect?*

*The police have recognised that this matter is of immense public interest and concern, it is therefore vital that any misconceptions, ambiguities and inaccuracies that are in the public perceptions are dealt with transparently and with utmost honesty”.*

7. The MPS amalgamated the two requests and, on 14 February 2019, following an extension to the time limit in which it considered the public interest, it responded. It refused to provide the requested information citing section 30(1)(a) of the FOIA.
8. The complainant requested an internal review on 14 February 2019.
9. The MPS provided an internal review on 21 March 2019 in which it maintained its original position.
10. During the Commissioner’s investigation the MPS revised its position. It advised:

*“The MPS has decided to amend its position as we are not required to confirm or deny whether the requested information is held due to the following provisions of the Freedom of Information Act 2000 (FOIA):*

- *Section 30(3) – Investigation and proceedings*
- *Section 40(5B)(a)(i) (Personal Data)”.*

11. The Commissioner contacted the MPS about this revised response as she did not consider that a neither confirm nor deny (“NCND”) position in respect of all parts of the requested information was tenable.
12. This position was subsequently clarified further, with the NCND provision being applied to the request relating to CCTV footage and some parts of the request about the police officer’s actions – namely parts (5), (6), (7), (8)(iii) and (12). Section 30(1) FOIA was confirmed as being relevant to the remaining parts of the request relating to the police officer’s actions.

## **Scope of the case**

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13. The complainant contacted the Commissioner on 23 March 2019 to complain about the way his request for information had been handled, however, he did not provide any specific grounds of complaint, advising that he would do so once the case had been allocated to a case officer.



14. On 24 June 2019, the Commissioner wrote to him and asked for this information. On 30 June 2019 the complainant responded asking her to consider the application of section 30 FOIA to the request, his view being that it is not engaged as: *"The Information I have asked for was Never Held for the purpose of ascertaining whether to charge / determine the guilt of someone"* and *"The blanket application of Section 30 (1) (a) was a lazy, arrogant and dishonest attempt to prevent the truth emerging"*.
15. The Commissioner initially wrote to the MPS with her enquiries on 8 July 2019. Having received no response, on 5 August 2019 she issued an Information Notice under section 51 of the FOIA formally requiring a response within 30 calendar days. A further letter was subsequently required before a response was sent by the MPS on 17 September 2019. At this late stage, the MPS revised its position advising:

*"Although, the initial response to the request and internal review may appear to have confirmed that the requested information is held by citing section 30(1)(a), I believe that this was based upon differences in the interpretation of what would constitute 'held' information. Specifically, the hypothetical absence of information would have been interpreted as held information in the context of information that is known to the MPS. Due to the number of variables relevant to investigations in general, the specific complexities associated with the investigation relevant to this request and the specific nature of the requested information. I have taken the view that the hypothetical absence of information is tantamount to information that is not held by the MPS"*.

16. As explained above, the MPS again revised its position, relying on either 30(1), 30(3) or 40(5) of the FOIA as outlined in paragraph (10) above.
17. The MPS has not advised the complainant regarding this change in its position. However, in light of the already considerable delays, the Commissioner has used her discretion and investigated the case as it now stands without further input from the complainant as she does not consider he will be disadvantaged by this approach.

## **Reasons for decision**

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18. Section 1(1)(a) of the FOIA requires a public authority to inform a requester whether or not it holds the information specified in the request. However, there may be occasions when complying with the duty to confirm or deny under section 1(1)(a) would in itself disclose sensitive or potentially damaging information that falls under an exemption. In these circumstances, the FOIA allows a public authority to

respond by refusing to confirm or deny whether it holds the requested information.

19. The decision to use a NCND response will not be affected by whether a public authority does or does not in fact hold the requested information. The starting point, and main focus in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.
20. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is, in fact, held.
21. It is sufficient to demonstrate that either a hypothetical confirmation, or a denial, would engage the exemption. In other words, it is not necessary to show that both confirming and denying information is held would engage the exemption from complying with section 1(1)(a) of the FOIA.
22. The Commissioner also notes that the complainant's arguments all relate to the earlier position in which the MPS had cited section 30(1)(a) rather than its revised 'NCND' position. However, she considers that they still remain relevant as the substantive exemption is the same, so she has considered them in the revised context.
23. The two exemptions have been applied as follows:

Section 30(3):

- The request relating to CCTV footage in its entirety
- The request relating to the named officer - parts (5), (6), (7), (8) (iii) and (12)

Section 30(1)(a):

- The request relating to the named officer - parts (1), (2), (3), (4), (8) (i) and (ii), (9), (10) and (11)

### **Section 30 – investigations and proceedings**

24. Section 30(3) of the FOIA provides an exclusion from the duty to confirm or deny whether information is held in relation to any information which, if held, would fall within any of the classes described in sections 30(1) or 30(2) of the FOIA.
25. In this case, the MPS considered that section 30(3) applied, where cited, by virtue of section 30(1)(a).



26. Consideration of both sections cited involves two stages; first, the information described in the request must fall within the class described in section 30(1)(a) of the FOIA. Secondly, section 30 is qualified by the public interest. In respect of section 30(3), this means that if the public interest in maintaining the exemption does not outweigh the public interest in confirming or denying whether information is held, then confirmation or denial must be provided. In respect of section 30(1), if the public interest in maintaining the exemption does not outweigh the public interest in disclosure then the information must be disclosed.

27. Section 30(1) of the FOIA states:

*"Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –*  
*(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained –*  
*(i) whether a person should be charged with an offence, or*  
*(ii) whether a person charged with an offence is guilty of it".*

28. Section 30(3) of the FOIA states:

*"The duty to confirm or deny 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) or (2)".*

29. The Commissioner has issued guidance on section 30<sup>1</sup> of the FOIA which states that section 30(1) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence, or the power to conduct such investigations and/or institute criminal proceedings. Her guidance also states that section 30 is class based and that information which has been held *at any time* for the purpose of these investigations and proceedings will be exempt.

30. The Commissioner considers that the phrase "*at any time*" means that information can be exempt under section 30(1) if it relates to a specific ongoing, closed or abandoned investigation. The information requested (if held) must be held for a specific or particular investigation and not for investigations in general.

*Are the exemptions engaged?*

31. The public authority in this case is the MPS. As a police force the MPS clearly has a duty to investigate offences and allegations of offences.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-and-proceedings-foi-section-30.pdf>

32. In this case, the complainant does not accept that this exemption is engaged. He is of the view that the video he has asked for "... contains nothing relevant to the suspected crime that is alleged to have occurred that day" and that the "... second Request concentrated on a police officer's actions that day ...".

33. The complainant has further argued:

*"The police position appears to be that all information which they gather in connection with a case has Exempt status regardless of its content. The reality of the wording of the Act, the implicit purpose of the Act and logic demands that the Held Information Must be relevant to a charging / determining guilt decision for it to be Exempt under Section 30 (1) (a). The moment the Information is created determines its Exemption Qualification regardless of whether it is used or not ...*

*... The Information becomes Exemptable [sic] when it is created not when it is gathered, seized or analysed. The Information then only becomes Exempt when it is looked at by the police or Investigating authority when it is determined if the Information could be used to ascertain whether to charge or decide if someone is guilty of an offence.*

*... The blanket view (withholding all Information) can only serve a purpose that is at odds with principles of the Act but it also provides an opportunity for a more sinister objectives [sic], that of Cover Up (Hiding Malpractice or Corruption)."*

34. The MPS has explained to the Commissioner:

*"The requested information, if held, would be held by the MPS for the purpose of an investigation conducted with a view to ascertaining whether a person should be charged with an offence and was ongoing at the time of the request and at the time of writing.*

*Furthermore, the investigation relates to the:*

- *attempted murder of [names redacted] on 04/03/2018 (Salisbury incident)*
- *murder of Dawn Sturgess who died on 08/07/2018 in hospital after coming into contact with a nerve agent (Amesbury incident)*
- *use of chemical weapons in which the main suspects appear to have been acting on behalf of a foreign intelligence agency.*

*In the circumstances, this has led to the hospitalisation of 2 police officers and other members of the public following the use of a military grade chemical weapon in the UK. As a consequence, the*

*investigation is now being led by the MPS Counter-Terrorism Command who took command of the investigation on 06/03/2018. On 05/09/2018, an MPS statement announced that the investigation into the Salisbury incident would be linked with the investigation into the Amesbury incident so that it forms one investigation”.*

35. The MPS has further added:

*“The requested information, if held, would be held for the purpose of an ongoing investigation relating to an incident on the 4<sup>th</sup> March 2018 in Salisbury wherein [names and identifiers redacted] were found unconscious on a bench in Salisbury, having been exposed to a military-graded nerve agent.*

*Consequently, the investigation was less than a year old when the FOIA request was received on 16/12/2018.*

*The Crown Prosecution Service (CPS) published a statement dated 05/09/2018<sup>2</sup> that stated:*

*“ ... CPS Director of Legal Services, said:*

*“During the weekend of 4 March 2018 in Salisbury the former Russian spy [name redacted] and his daughter [name redacted] were poisoned with a military-grade nerve agent of a type developed by Russia, part of a group of nerve agents known as ‘Novichok’.*

*“A police officer, DS [name redacted], who was involved in searching the [name redacted]’s home address after this attack, was also poisoned with the same nerve agent.*

*“The Counter Terrorism Policing Network has conducted a thorough investigation into how this attack happened. They have recently submitted a file of evidence to the Crown Prosecution Service so we could make a decision whether criminal charges could be brought against anyone who was involved in these events.*

*“Prosecutors from CPS Counter Terrorism Division have considered the evidence and have concluded there is sufficient evidence to provide a realistic prospect of conviction and it is*

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<sup>2</sup> <https://www.cps.gov.uk/cps/news/cps-statement-salisbury>

*clearly in the public interest to charge [name redacted] and [name redacted], who are Russian nationals, with the following offences:*

- *Conspiracy to murder [name redacted]*
- *Attempted murder of [name redacted], [name redacted] and [name redacted]*
- *Use and possession of Novichok contrary to the Chemical Weapons Act*
- *Causing grievous bodily harm with intent to [name redacted] and [name redacted]*

*"A realistic prospect of conviction means the CPS is satisfied on an objective assessment that the evidence can be used in court and that an objective, impartial and reasonable jury hearing the case, properly directed and acting in accordance with the law, is more likely than not to convict these two individuals of the charges. It is of course for a jury to decide whether the evidence is enough for them to be sure of the suspects' guilt.*

*"We will not be applying to Russia for the extradition of these men as the Russian constitution does not permit extradition of its own nationals. Russia has made this clear following requests for extradition in other cases. Should this position change then an extradition request would be made.*

*"We have, however, obtained a European Arrest Warrant which means that if either man travels to a country where an EAW is valid, they will be arrested and face extradition on these charges for which there is no statute of limitations."*

*On 15/08/2019, the MPS issued an update on the investigation<sup>3</sup>, confirming that traces of the Novichok nerve agent have been found in a blood sample taken from a second police officer from Wilshire police who does not wish to be identified. The update in part stated:*

*'These forensic tests were carried out as part of what remains an ongoing investigation, which has been unprecedented in its complexity and scale and has involved thousands of exhibits. Officers continue to work closely with scientists and experts to meticulously and methodically review and examine the evidence available to us...*

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<sup>3</sup> <http://news.met.police.uk/news/update-on-the-investigation-into-the-novichok-attack-in-salisbury-378232>

*...The officer is the fourth person to be confirmed through forensic testing as a victim of the initial Salisbury attack. The higher levels of exposure to Novichok suffered by the [name redacted] and Detective Sergeant [name redacted] led to them falling critically or seriously ill.*

*Dawn Sturgess and [name redacted] also suffered high levels of exposure to Novichok following the incident in Amesbury in June 2018. Tragically, Dawn died some days later, whilst [name redacted] also became critically ill.*

*Detectives from the CTP network have also contacted a small number of other individuals whose blood samples were taken at the time, to seek their consent for forensic analysis to be carried out on the samples. There is no need for anyone who has not been contacted by police at this time to take any action...*

*As previously stated, two men known as '[name redacted]' and '[name redacted]' are wanted by UK police after the Crown Prosecution Service authorised charges against the pair, linked to the attack on [name redacted] and [name redacted] and Detective Sergeant [name redacted]. We believe they were using aliases and a European Arrest Warrant and Interpol Red Notices remain in circulation for the two men.*

*We continue to appeal to the public for any information regarding these two men whilst they were in the UK between 2 March and 4 March 2018. Anyone who knows them or saw them should call police in confidence on 0800 789 321 or email [salisbury2018@met.police.uk](mailto:salisbury2018@met.police.uk)*

*At its height, around 250 detectives from across the CTP network have worked on the investigation into the attack on the [name redacted] and poisoning of Dawn Sturgess and [name redacted] in Amesbury.*

*The investigation remains ongoing, and there are parts of the picture that we are continuing to piece together. We continue to urge anyone who has information that they have not yet passed to police to do so. In particular, we are keen to hear from anyone who may have seen the counterfeit 'Nina Ricci' perfume box or bottle that was recovered from [name redacted]'s address in July 2018.*

*We cannot account for the whereabouts of the bottle, nozzle or box between the attack on the [name redacted] on 4 March 2018 and when [name redacted] said he found it on 27 June 2018. Anyone who saw this pink box or glass bottle during this time is asked to call police in confidence on 0800 789 321 or email [salisbury2018@met.police.uk](mailto:salisbury2018@met.police.uk)*



*The investigation is still ongoing and as indicated by the CPS statement quoted above, there is sufficient evidence to provide a realistic prospect of conviction and it is clearly in the public interest to charge [name redacted] and [name redacted] with multiple criminal offences.*

*The death of Dawn Sturgess following the discovery of a discarded 'perfume bottle' containing the Novichok nerve agent in June 2018 highlights the potential for new information or lines of enquiry and/or the need for further steps to ensure public safety.*

36. The Commissioner notes the complainant's view that he does not consider that the information he has requested falls within the remit of this exemption. However, referring to the wording of the request and the explanation provided by the MPS, the Commissioner is satisfied that any information, if held by the MPS, would necessarily be held in relation to a specific investigation into the circumstances described above, and that, if held, it would therefore all fall within the class described in section 30. That is, if it is held, this would be for the purposes of an investigation into whether a person (or persons) should be charged with an offence.
37. In this case the Commissioner must also consider whether or not it is reasonable for the MPS to take a NCND approach, where applied.
38. When asking for further information regarding its change of response in respect of any video footage which may be held depicting the events referred to by the complainant, the Commissioner was advised by the MPS:

*"The NCND relates to the content and/or description of the CCTV. The MPS have made no comment in relation to the content, timing or source of any CCTV except that which captured the movements of the 2 main suspects, who had left the Salisbury area by the time [names redacted] were found on the bench, and statements as to the volume of CCTV viewed. The focus of police appeals has been on tracing the movements of the suspects.*

*Regarding the request for CCTV relating to 2 members of the public, the still photographs in the public domain are not sourced from the MPS or Wiltshire police. They are photographs of the CCTV monitor at Snap Fitness 24/7 Gym reportedly shown to the press association by the gym manager who claimed that the police were interested in this footage.*

*... The MPS are under no obligation to confirm or substantiate information published by the media, have not confirmed possession of, or interest in, the footage circulated in the media ... All of the applicant's queries are seeking detail beyond what has been*



*officially confirmed and appear to be seeking comment upon media reporting”.*

39. The Commissioner finds this explanation to be reasonable and finds that section 30(3) of the FOIA is, therefore, engaged in respect of the content of any CCTV footage which may, or may not, be held.
40. In respect of those parts of the request about the actions of the named police officer, the wording of some of these parts relates to facts which must have been established and it is obvious to the Commissioner that this information would be held so the NCND provision would be inappropriate. These would include the officer's tour of duty times, his own actions and those of any colleagues, what happened at the named address (attendance at which has been publicly confirmed by the CPS) and a timeline of his activities.
41. Conversely, where the NCND provision has been applied, this is in respect of information which has not been publically confirmed by the police. This includes whether other officers were at the scene at a specified time, whether a police car allegedly caught on CCTV contained named officers, whether other officers attended the named address at a particular time and their actions, whether there was a warrant for entry at the address and information about the 'decontamination' of other named officers.
42. Taking these factors into consideration, the Commissioner is satisfied that, where cited both sections 30(1)(a) and 30(3) are properly engaged in respect of any of the requested information which is confirmed as held or which may be held but which the MPS NCND holding.

*The public interest test*

43. The Commissioner must consider what public interest there is in confirmation or denial. She must also consider whether confirmation or denial would be likely to harm the investigation that the MPS is conducting, whether this would be counter to the public interest, and what weight to give to these public interest factors.

*Public interest arguments in favour of confirming or denying*

44. The complainant considers that the information which is available in the public domain is contradictory and that full disclosure would allow the public to have a clearer and more accurate knowledge about the incident. He also considers that there may have been some sort of 'cover up'. When requesting an internal review he argued:

*“The Met have already indicated that they do not have problem giving out the details of [name redacted]'s activities before, during and after the Incident and have already released such information.*

*Unfortunately parts of that information has been found to be dishonest, false and contradictory.*

*The Met has put that information out via several routes "Informed Sources", Formal Statements, Interviews and Media Announcements.*

*I have asked for a definitive and honest account it has been refused on the grounds of Ongoing Investigation.*

*If that was an honest reason for hiding the information you should not have put any out in the first place and certainly not dishonest information".*

45. The MPS has acknowledged that release of the requested information (or confirmation / denial as to its existence) would reinforce its commitment as an open and transparent organisation.

*Public interest arguments in favour of maintaining the exemption and / or the exclusion of the duty to confirm or deny*

46. The MPS has argued:

*"The release of any details relating to an ongoing investigation, such as what evidence was held, could hinder the prevention or detection of crime and impact upon the investigation. The full details surrounding the incident on the 4th March 2018 are still being investigated, therefore to release any information other than that which is in the public domain: <http://news.met.police.uk/news/ongoing-investigation-into-incident-in-salisbury-on-4-march309256>) might compromise our law enforcement investigative functions. Disclosure could lead to misinformation on where the current investigation is directed and who may or may not be of interest. The MPS would not wish to reveal who, what and when intelligence is recorded and the extent of their investigations as this would clearly undermine the law enforcement and investigative process. This would impact on police resources and more crime and terrorist incidents would be committed, placing individuals at risk".*

47. As part of its internal review the MPS also advised the complainant:

*"The MPS will only disclose information concerning investigations when it considers that no harm will be caused to the investigative process or any individual involved in the investigation. I consider that the public interest in this matter has been met by the publication of official MPS press statements concerning the matter".*

48. In correspondence with the Commissioner the MPS added:

*"There is a public interest in allowing investigators the necessary space to determine the course of investigations that they have a duty to conduct. Premature disclosure of the information requested prior to the conclusion of related investigations and proceedings may undermine these investigations, the future prosecution of individuals and the role of the criminal courts as the sole forum for determining guilt.*

...

*The investigation is still ongoing and as indicated by the CPS statement quoted above, there is sufficient evidence to provide a realistic prospect of conviction and it is clearly in the public interest to charge [names redacted] with multiple criminal offences".*

#### *Balance of the public interest*

49. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged, is whether the act of confirming or denying whether the requested information is held could have a harmful impact on the ability of the police to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.
50. The Commissioner recognises the importance of the public having confidence in those public authorities charged with upholding the law. Confidence will be increased by allowing scrutiny of their performance and this may involve examining the decisions taken in particular cases.
51. The Commissioner considers that there is clearly a public interest in the transparency and accountability of public authorities. She recognises that confirming or denying whether the requested information is held, or disclosing information which it has confirmed that it does hold, would meet the public interest in transparency and accountability of the MPS.
52. In this case, the complainant has referred to the existence of information in the public domain, some of which he considers to be contradictory and therefore misleading. However, the Commissioner has not seen any evidence that the MPS itself has deliberately misled the public. The MPS has managed its disclosure of information into the public domain in order to keep the public informed yet maintain the integrity of its own investigation – indeed there have been very recent disclosures made about the case as evidenced in the submission at paragraph 34 above. The Commissioner notes that the complainant is relying on publications and other media output which is 'unofficial' and

has not been corroborated, or refuted, by the MPS. The Commissioner accepts that there is a significant difference between the information that may be found online and formal, official disclosure or confirmation / denial by a police force.

53. In considering the balance of the public interest in relation to the application of both substantive exemption and the NCND provisions of section 30 in this case, the Commissioner's view is that significant weight has to be given to the need to protect the MPS's ability to adopt a consistent approach when responding to these types of requests about investigations into named individuals in the future.
54. This goes to the heart of what the section 30 exemption is designed to protect - the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and proceedings - and so the public interest in maintaining the exemption is particularly strong in such a case
55. Having considered the issues in this particular case, the Commissioner decided that the public interest factors in favour of either refusing to disclose the information, or maintaining the refusal to either confirm or deny whether information is held, outweigh those in favour of either disclosure or of the MPS issuing a confirmation or denial as to what is held. Therefore, the Commissioner finds that the MPS was entitled to rely on both sections 30(1)(a) and 30(3) of the FOIA where cited.
56. In light of her decision above, the Commissioner has not considered the MPS's application of section 40(5).

## Right of appeal

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57. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

58. 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.
59. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**