

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 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 a file about homosexual activity from the Metropolitan Police Service (the "MPS"). The MPS refused to disclose the requested information citing sections 30(1) (investigations and proceedings), 38(1) (health and safety) and 40(2) (personal information) of the FOIA. The Commissioner's decision is that the MPS was entitled to rely on section 30(1) of the FOIA to withhold the requested information. No steps are required.

#### Background

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2. The MPS has explained to the Commissioner:

*"File MEPO 26/3451/1 ... is currently held by Operation Winter Key ...*

*The file is classified as a closed file until 2061. The file was accessioned to the National Archives (TNA) in 2010 and was closed for 85 years from 1975 under FOIA exemption Section 40."*

3. In respect of Operation Winter Key it has explained:

*"Operation Winter Key is the overarching MPS response to the Independent Inquiry into Child Sexual Abuse (IICSA)<sup>1</sup> / Operation Hydrant<sup>2</sup> and provides specialist capacity and capability to investigate high profile or complex criminal investigations into non-recent child sexual abuse.*

*The remit of Operation Winter Key is:*

- 1. Act as the MPS single point of contact for the Independent Inquiry into Child Sexual Abuse (IICSA).*
- 2. In conjunction with MPS Sexual Offences Exploitation & Child Abuse Command and Met Intelligence record all new allegations of child sexual abuse referred to the MPS through IICSA/Operation Hydrant.*
- 3. Investigate criminal allegations of non-recent child sexual abuse referred to the MPS through IICSA, or by other reports or referrals to the MPS, where the alleged abuse was committed before 2012:*
  - a) by people of prominence in public life,*
  - b) in the context of educational or religious organisation, where it would appear that there is repeated institutional failing*
  - c) within Local Authority premises or within voluntary organisations, where it would appear that there is repeated institutional failing*
  - d) within national and private service organisations (such as the BBC), where it would appear that there is repeated institutional failing, or*
  - e) as otherwise agreed by Gold Commander*
- 4. In accordance with an agreed protocol with the MPS Directorate of Professional Standards (DPS):*
  - a) investigate complaints and police misconduct in relation to the MPS investigations or response to non-recent child sexual abuse that meets the criteria as defined by the IICSA investigations, or as required by Gold Commander,*

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<sup>1</sup> <https://www.iicsa.org.uk/key-documents/9660/view/MPS003548.pdf>

<sup>2</sup> <https://www.npcc.police.uk/NPCCBusinessAreas/OtherWorkAreas/OpHydrant/OperationHydrant.aspx>

- b) refer cases to the Independent Office for Police Conduct (IOPC), where the cases meet the referral criteria.*
- 5. Provide disclosure to IICSA, via the MPS Directorate of Legal Services (DLS), of all relevant material held by the MPS, in accordance with the IICSA statutory requirement.*
  - 6. Provide the MPS response to Freedom of Information requests, and other disclosure requests in relation to Operation Winter Key.*
  - 7. Provide a Major Incident Room capability, including Home Office Large Major Enquiry System (HOLMES); to enable Operation Winter Key investigations to be indexed and identify potential links with other investigations. This includes links with non-MPS investigations identified via the national police coordinating body, Operation Hydrant*

*File MEPO 26/345/1 is relevant to scoping exercises and investigations conducted by Operation Winter Key. Details of these linked scoping exercises / investigations are detailed in evidence provided by Commander Catherine Roper to the IICSA in February 2019”.*

## **Request and response**

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4. On 31 January 2019 the complainant wrote to the MPS and requested information in the following terms:

*“Would you release under FOI MEPO 26/345/1: Part 1 of 2 (Homosexual activity in the West End of London: correspondence Orderable at item level. With photograph albums and plans).*

*I believe there is a strong public interest element to its release and time has now passed to make it possible to release it”.*

5. On 23 February 2019 the MPS responded. It refused to provide the requested information and cited the following exemptions as its basis for doing so: 40(2) and 30(1)(a)(b) of the FOIA.
6. The complainant requested an internal review on 11 March 2019, repeated on 26 March 2019, and added the following wording to his request:

*“Would you confirm whether Lord Mountbatten is mentioned / figures in this file?”*

7. The MPS provided an internal review on 10 April 2019 in which it maintained its original position, adding reliance on section 38(1)(a)(b) (health and safety) of the FOIA. It made no response in respect of the additional wording referred to above.
8. In response to the Commissioner's enquiries, the MPS recognised that no response had been provided to this additional wording. It reconsidered its position and advised the complainant that no information was held in respect of this, explaining as follows:

*"The link below relates to Operation Jordana. This was an investigation which commenced in 2014 and concerned allegations that Operation Circus, a confidential police operation in 1984 which targeted 'rent boys' in and around Piccadilly Circus, had been closed down early and evidence suppressed to protect persons of prominence:*

<https://www.iicsa.org.uk/key-documents/9649/view/IPC000842.pdf>

*The MPS compiled the Operation Jordana report having had sight of File MEPO 26/345/1 (the file referenced in your request) as well as reviewing other material.*

*Paragraph 199 on page 37 of the Operation Jordana report contains the line "There was no reference to any high profile suspects being identified" which encompasses all the material reviewed.*

*As Lord Mountbatten was clearly a person of public prominence and given the above statement, it follows that he did not appear in File MEPO 26/345/1 or any other material reviewed in the course of the Operation Jordana investigation.*

*Please note that the MPS would in general provide a neither confirm nor deny response for the type of request you have made, however, in this case, we are able to provide an answer to this specific question about an individual because material that answers this question has been published and is readily available in the public domain as detailed above".*

## **Scope of the case**

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9. The complainant wrote to the Commissioner on 12 April 2019 to complain about the way his request for information had been handled.
10. The complainant asked the Commissioner to consider the application of exemptions to the request. The Commissioner will consider these below.

11. As a response has now been provided in respect of the supplementary request made on 26 March 2019 the Commissioner will not consider this element any further.

## Reasons for decision

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### Section 30 – investigations and proceedings conducted by public authorities

12. 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,*

*(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct".*

13. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1)(a) of the FOIA if it relates to a specific ongoing, closed or abandoned investigation.
14. Consideration of section 30(1)(a) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

*Is the exemption engaged?*

15. The first step is to address whether the requested information falls within the class specified in section 30(1)(a) of the FOIA.

16. The Commissioner has issued guidance on section 30<sup>3</sup> which states that section 30(1)(a) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence.
17. The Commissioner's guidance describes the circumstances in which the subsections of section 30(1) might apply. With respect to section 30(1)(a), the guidance says:

*"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged.*

*Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are guilty of it.*

*It is not necessary that the investigation leads to someone being charged with, or being convicted of an offence..."*

18. As a police force, the MPS clearly has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. The Commissioner is therefore satisfied that it has the power to carry out investigations of the type described in section 30(1)(a).
19. Although the file is of some age, as evidenced in the Background section, above, the MPS has explained that this file is relevant to the current Operation Winter Key and the wider Independent Inquiry into Child Sexual Abuse ("IICSA") enquiry<sup>4</sup>. It has further explained to the Commissioner:

*"The investigation relates to Operation Circus, an investigation centred on paedophile activity in and around Piccadilly Circus in London in 1984.*

*Although the title of File MEPO 26/345/1 (MPS Ref CR/209/74/212) is 'Homosexual activity in the West End of London', the file specifically contains material from an investigation concerning six accused persons for offences connected with procuring youths under the age of 21 for sex. It is not a piece of general research examining the prevalence of crime or anything similar as is perhaps suggested by the title".*

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1205/investigations-andproceedings-foi-section-30.pdf>

<sup>4</sup> <https://www.iicsa.org.uk/>

20. The MPS has described the file contents as follows:

*"This and the other associated files contain the paperwork generated in the course of the original investigation into the abuse taking place in Piccadilly Circus, and is specifically focused on the group of men behind it. The files include material submitted to the CPS and used during the subsequent trials and include extensive personal details as well as victim and witness accounts including those obtained from boys under the age of consent at the time".*

Adding:

*"The original investigation took place in the 1980's and the victims were teenagers at the time. They would be in their 50's now, so many are likely to still be alive. All the victims will have lifelong anonymity by virtue of the Sexual Offences (amendment) Act 1992".*

21. In respect of the status of the investigation at the time of the request being made, the MPS further explained:

*"The investigation was complete at the time of the request, however as mentioned, the file is required by Operation Winter key as it relates to historic child sexual abuse and may be of relevance to Operation Winter Key's work with the IICSA.*

*Operation Circus became the subject of a DPS [Directorate of Professional Standards] investigation in 2014 under the name Operation Jordana which investigated allegations that evidence had deliberately been suppressed during the operation in order to protect high profile suspects. (Those allegations were fully investigated by the DPS strand of Operation Winter Key and it was concluded that there was no evidence to support the allegations of suppression.)*

*The contents of file CR/209/74/212 were reviewed in February 2018 as it was relevant to Operation Winter Key and Operation Jordana.*

*Details of Operation Jordana can be found on pages 55 & 56 of the link below:*

*<https://www.iicsa.org.uk/key-documents/9651/view/IPC000830.pdf>*

*The file is retained by Operation Winter Key in case of further related allegations of either criminal offences or police misconduct".*

22. Referring to the wording of the request and the arguments provided by the MPS, the Commissioner is satisfied that the requested file was held

in relation to an investigation conducted by the MPS of the type described in section 30(1)(a). She is therefore satisfied that the exemption provided by section 30(1)(a) is engaged.

*The public interest test*

23. Section 30(1)(a) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
24. In accordance with her guidance, when considering the public interest in maintaining exemptions, the Commissioner considers that it is necessary to be clear what they are designed to protect.
25. 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 disclosure of the requested information 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.
26. It is again noted that the withheld information in this case consists of a file which contains material from an investigation for offences connected with procuring youths under the age of 21 for sex. The MPS has further described the file as including:

*" ... detailed witness statements and interview transcripts which the providers would have no expectation would be released at this stage, particularly in view of the passage of time. The subjects and in particular the accused would not expect them to now be disclosed to the general public under the FOIA, as they would consider the matter to be formally closed having served their sentence for offences committed".*

*Arguments in favour of disclosure*

27. The MPS has argued:

*"Disclosure of this information would enlighten members of the public as to the action taken by the MPS during investigations. This may go some way to promoting awareness and accountability where expenditure of public funds is concerned and would reinforce the MPS's commitment to openness and transparency".*



*Arguments in favour of maintaining the exemption*

28. The MPS has argued at refusal stage that:

*"Disclosure of information obtained for an investigation could risk the identity of the victims and those who may have assisted police being revealed. This may affect any ongoing investigations into similar cases and could undermine the confidence in the police".*

29. It further argued:

*"The MPS is unable to disclose information which has being [sic] used as part of an investigation. There is a legal requirement to refrain from disclosing information which would place the integrity of an investigation or any future investigations at risk. Once the investigation or legal process is complete, some information may be deemed suitable for disclosure.*

*In addition, disclosure of the information requested could identify living persons captured by the scope of this request. Individuals could analyse the information (and along with local knowledge and information already disclosed) identify those concerned as part of the investigation.*

*This would hinder the prevention and detection of crime and also prejudice the MPS's ability to fairly conduct an investigation and future investigations of this nature.*

*The MPS has a statutory role in establishing whether any person has failed to comply with the law. It also, in reviewing police action in specific cases, performs a key role in ascertaining whether any person is responsible for any conduct which is improper... The release of police information that is linked to a criminal investigation and / or a subsequent review of police action, would be likely to adversely impact upon the ability of the MPS to obtain information in connection with future investigations and / or inquiries. This would occur because those involved directly or indirectly in the investigation, would not expect the MPS to make this information available under the Freedom of Information Act. Over time, the perceived breach of trust that would result from the release of information of this nature, would be likely to adversely affect the ability of the police to obtain information in connection with future investigation / inquiries. This would be contrary to the public interest".*

*Balance of the public interest*

30. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest in the MPS disclosing

the requested information. The Commissioner has also considered whether disclosure would be likely to harm any investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.

31. As set out above, the purpose of section 30 is to protect the effective investigation and prosecution of offences. Clearly, it is not in the public interest to jeopardise the ability of the police to investigate crime effectively.
32. Set against this, the Commissioner recognises the importance of the public having confidence in public authorities that are tasked 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.
33. The MPS itself has concluded that the strongest reason favouring disclosure is that it would reinforce public awareness, which would in turn enhance transparency and accountability. Against disclosure, it has centred on the negative impact on future investigations and its core function of law enforcement. It is also of high significance that the requested file is part of a live, on-going police Operation and the wider IICSA enquiry.
34. The Commissioner recognises the public interest in transparency and accountability with regard to the scrutiny of historic investigations, ensuring their integrity and that all lines of enquiry were appropriately dealt with at the time. Disclosure would ensure that the public were able to reach an informed view as to whether such matters were investigated fully by the police at that time along with the integrity of the officers concerned. However, the information which is under consideration here includes CPS submissions, transcripts and witness statements and interview details which the providers would have no expectation would be released at this stage, particularly in view of the passage of time. Related cases did go to court and any of the subjects involved, be they the victims or the perpetrators, would not expect this type of information to now be disclosed to the general public under the FOIA, as they would consider the matter to be formally closed.
35. As well as potentially having repercussions for the parties directly involved in this investigation, disclosing such information could create a perception among the wider public that witness statements and interviews may be disclosed to the world at large. Whilst some of the information will have formed part of a court hearing/s at the time, any such public disclosure will only have been made within the constraints of the judicial system and for the specified purpose of the court hearing/s in question. Such disclosure is obviously fundamental for the purpose of a fair hearing and a trial. However, subsequent disclosure under the

FOIA, many years later as is the case here, may deter people from coming forward and cooperating with prosecuting authorities, particularly where criminal offences of a sexual nature are concerned. There is a very significant public interest in avoiding that outcome and it is a factor of some weight in favour of maintenance of the exemption in this case.

36. Having given due consideration to the arguments put forward by both parties, the Commissioner is satisfied that section 30(1)(a) has been applied appropriately in this case and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
37. As the Commissioner has concluded that this exemption is properly engaged in respect of all the withheld information she has not considered any other exemptions cited.

## Right of appeal

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38. 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)

39. 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.

40. 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**