

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2020

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 about crimes reported in (and in the grounds of) Royal Palaces from the Metropolitan Police Service (the "MPS"). The MPS provided some information but withheld the remainder citing sections 31(1)(a)(b) (law enforcement), 24(1) (national security) and 38(1)(health and safety) of the FOIA. It also refused to confirm or deny whether any further information was held citing sections 30(3) (investigations and proceedings) and 40(5) (personal information) of the FOIA, which was not contested by the complainant.
2. The Commissioner's decision is that none of the exemptions are engaged. She requires the MPS to take the following steps to ensure compliance with the legislation:
 - disclose the withheld information.
3. The MPS must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 2 July 2019, the complainant wrote to the MPS and requested information in the following terms:

"Please inform me of the number and type of crimes reported in (and in the grounds of) Royal Palaces for the period 1st July 2018 to 30th June 2019, listing the types of crime and the Palace where the offence occurred. I also wish to know which crimes are shown as "detected"."

5. On 12 September 2019, the MPS responded. It explained that there were limitations in what it could provide based on the wording of the request and suggested that the complainant amend it to *"All crimes reported in (and in the near vicinity) of Royal Palaces for the period 01/07/2018 - 30/06/2019"* in an attempt to avoid citing the cost limit at section 12 of the FOIA.

6. In response, the complainant revised his request to ask for:

"All crimes reported as committed in Royal Palaces for the period 01/07/2018 – 30/06/2019. Please also show if "detected"."

7. On 13 September 2019, the MPS explained that this wording would also invoke the cost limit. On the same day, the complainant agreed to the revised wording as previously suggested by the MPS on 12 September 2019.

8. On 16 September 2019, the MPS responded. It provided some information within the scope of the request but refused to provide the remainder. It cited the following exemptions as its basis for doing so: 31(1)(a)(b) (law enforcement) and 24(1) (national security) of the FOIA. It also refused to confirm or deny whether any further information was held citing sections 30(3) (investigations and proceedings) and 40(5) (personal information) of the FOIA.

9. On 2 October 2019, the complainant requested an internal review, saying only: *"I do not agree that there is a national security risk"*, ie only referring to 'national security'.

10. On 10 October 2019 the MPS responded. It maintained its position and added reliance on section 38 (health and safety) of the FOIA.

11. During the Commissioner's investigation the MPS provided some further information to the complainant. It maintained its position regarding the remaining withheld information and citing of exemptions.

Scope of the case

12. The complainant contacted the Commissioner on 26 December 2019 to complain about the way his request for information had been handled. The Commissioner required further information from him which was provided on 29 January 2020.

13. In his complaint, the complainant again referred only to 'national security' rather than any of the other exemptions cited, saying:

"The Met Police has refused to disclose details of crimes committed in Royal Palaces. They are using National Security as the reason. If crimes are committed in these venues, drugs, burglary, theft etc - this is a matter of public interest. The exact details of entry points (for the likes of burglars) are not required".

14. When commencing her investigation the Commissioner advised him that, as this was the only exemption he had complained about he should contact her if there were any other issues. No such contact was made. However, if the Commissioner finds that section 24 is not engaged, then she must necessarily consider the other exemptions being relied on before any disclosure can be required - she therefore found it necessary to consider the other exemptions cited.

15. The complainant did not dispute the MPS's refusal to confirm or deny whether further information is held, so the citing of sections 30(3) and 40(5) has not been considered.

16. The Commissioner has viewed the withheld information in this case.

Reasons for decision

Section 31 – law enforcement

17. The MPS has applied sections 31(1)(a) and (b) to the 33 crimes it confirmed as holding and identified as falling within the scope of the request. In respect of one, which involved trespass, it disclosed details of the crime and the outcome as this was reported to the media at the time.

18. Section 31 of the FOIA creates an exemption disclosure if disclosing the information would, or would be likely to, prejudice one or more of a range of law enforcement activities.

19. In this case, the MPS is relying on sections 31(1)(a) and (b) of the FOIA in relation to the withheld information. These subsections state that

information is exempt if its disclosure would, or would be likely to, prejudice:

- (a) the prevention or detection of crime;*
- (b) the apprehension or prosecution of offenders.*

20. In its submission to the Commissioner, rather than differentiate between the subsections of the exemption, the MPS has presented one set of arguments. The Commissioner recognises that there is clearly some overlap between subsections 31(1)(a) and 31(1)(b) and she has therefore considered these together.

The applicable interests

21. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the law enforcement activities mentioned in sections 31(1)(a) and (b) – the prevention or detection of crime and the apprehension or prosecution of offenders.

22. With respect to law enforcement activities, the Commissioner recognises, in her published guidance¹, that section 31(1)(a) will cover all aspects of the prevention and detection of crime. With respect to section 31(1)(b), she recognises that this subsection:

"... could potentially cover information on general procedures relating to the apprehension of offenders or the process for prosecuting offenders".

23. The Commissioner acknowledges that the MPS has referred to prejudice to the prevention or detection of crime and the apprehension or prosecution of offenders in its rationale and that the appropriate applicable interests have therefore been considered.

The nature of the prejudice

24. The Commissioner next considered whether the MPS has demonstrated a causal relationship between the disclosure of the information at issue and the prejudice that sections 31(1)(a) and (b) are designed to protect. In her view, disclosure must at least be capable of harming the interest in some way, ie have a damaging or detrimental effect on it.

25. In its correspondence with the complainant the MPS advised:

¹ <https://ico.org.uk/media/for-organisations/documents/1207/lawenforcement-foi-section-31.pdf>

"Disclosure of the requested information would prejudice the prevention of crime. To provide details of which crimes had occurred at or within the vicinity of a specific Royal Palace would highlight to a criminal which crimes are likely to go undetected at that Palace or within the immediate surrounding area. This may encourage them to commit further similar offences or modify their criminal behaviour to reduce the probability of being apprehended.

Modern-day policing is intelligence led and information of this nature, needs to be treated with extreme sensitivity as it could have a detrimental effect on the operational effectiveness of the MPS. There are significant risks associated with the release of such information, as to provide the requested data would allow criminals of today with an insight to how the police operate, and people who wish to harm visitors, staff or Members of the Royal Family and members of the public with the opportunity of disrupting police activity.

This could be to the detriment of providing an efficient policing service and a failure in providing a duty of care to all members of the public and might require the MPS to actually have to increase the amount of officers available to them thus increasing the cost to the public purse".

26. In correspondence with the Commissioner the MPS added:

"Disclosure of any further information would compromise security arrangements by providing terrorists, criminals or fixated individuals with vital intelligence as to the levels of protection that might be afforded to Royal residences and to the level of resistance that they may encounter in committing criminal or terrorist acts. To provide the requested information would assist offenders in gauging what type of crime is likely to go undetected at a specific location and could therefore increase the probability of crimes being committed, which cannot be in the public interest".

Likelihood of prejudice

27. With regard to the likelihood of prejudice in this case, the MPS has not stated which level it is relying on and its arguments pertain to both levels. The Commissioner has therefore considered the lower level of 'would be likely to' prejudice.

Is the exemption engaged?

28. The Commissioner considers that the prejudice test is not a weak test and a public authority must be able to point to prejudice which is 'real, actual or of substance'.

29. It is not enough for the information to relate to an interest protected by section 31(1), its disclosure must also at least be likely to prejudice those interests. The onus is on the public authority to explain how that prejudice would arise and why it is likely to occur.
30. Mindful of the wording of the request, and relying on a broad definition of the terms "*prevention or detection of crime*" and "*apprehension or prosecution of offenders*" the Commissioner accepts that, as the MPS had recorded the incidents covered by the scope of the request, it would hold the related information for the purposes of one or more of the activities listed in section 31(1)(a) and (b).
31. With respect to protecting the law enforcement interests, the Commissioner recognises the importance of protecting information which, if disclosed, would undermine law enforcement activity or make someone more vulnerable to crime.
32. However, paying due regard to the actual withheld information under consideration, she does not consider that the MPS has provided realistic evidence to support its view that disclosure of the types of crimes caught within the scope of the request, and whether or not they have been detected, would be likely to highlight to a criminal which crimes are likely to go undetected. Nor is she persuaded that disclosure would be likely to encourage the committal of further similar offences or the modification of criminal behaviour to reduce the probability of being apprehended. There is insufficient detail to allow this and not enough data to allow for any crime-related patterns to be predicted or for any statistics to be drawn.
33. Furthermore, the Commissioner is not persuaded that disclosure would be likely to either effect the efficiency of policing, demonstrate a failure in a duty of care or result in an increased expenditure due to more officers being required. Based on the basic details and content of those crimes she has viewed, the Commissioner does not find such arguments to be realistic.
34. The Commissioner also notes that the MPS has additionally cited section 30(3), by which it refused to confirm or deny whether any further information is held in respect of the case. Although not considered by the Commissioner, as it was not part of the grounds of complaint, it is noted that any particularly sensitive crimes, or related concerns, may well be captured under this exemption.
35. From the evidence she has seen, the Commissioner is not satisfied that the MPS has demonstrated a causal relationship between the disclosure of the information being withheld and the prejudice which these exemptions are designed to protect.

36. As she is not satisfied that there would be a real and significant likelihood of prejudice to the prevention or detection of crime or the apprehension or prosecution of offenders through disclosure of the requested information, the Commissioner finds that the MPS failed to establish engagement of the section 31(1) exemption, either by virtue of section 31(1)(a) or 31(1)(b).
37. The Commissioner has next considered the MPS's application of section 38 to the same information.

Section 38 – health & safety

38. The MPS has cited sections 38(1)(a) and (b) to the withheld information. Sections 38(1)(a) and (b) of the FOIA states that information is exempt if its disclosure would, or would be likely to:

*(a) endanger the physical or mental health of any individual, or
(b) endanger the safety of any individual.*

39. In section 38 the word 'endanger' is used rather than the word 'prejudice' which is the term used in other similar exemptions in FOIA. However, in the Commissioner's view the term endanger equates to prejudice.
40. Consideration of this exemption involves two stages. Firstly, the exemption must be engaged as a result of endangerment to physical or mental health being at least likely to result. Secondly, this exemption is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

The endangerment test

41. In order to engage this exemption, the MPS must demonstrate that there is a causal link between the endangerment and disclosure of the information.
42. The MPS must also show that disclosure of the withheld information in this case would or would be likely to have a detrimental effect on the physical or mental health of any individual. The effect must be more than trivial or insignificant.
43. The MPS explained to the complainant that:

"FOIA is considered to be a release to the world as once the information is published the public authority in this case the MPS has no control over what use is made of that information. Whilst not questioning the motives of the applicant it could be of use to those who seek to cause harm to any person living at or

frequenting Royal Palaces. To provide a detailed breakdown of reported crimes at Royal Palaces and details of those crimes that were undetected would enable those who sought to threaten the safety of individuals to calculate which buildings that might be most at risk.

Members of the Royal Family, their homes and accommodation are at times the target of criminal and fixated elements and terrorist threats. To provide you with a detailed breakdown of crimes, would be providing valuable intelligence to criminals and/or the mentally ill. This would be detrimental to the safety of individuals who use the Royal Palaces”.

44. The Commissioner notes that the complainant has not requested a 'detailed breakdown'. Furthermore, having viewed the actual withheld information, the Commissioner does not consider these arguments to be relevant – albeit she cannot provide any detailed rationale without disclosing the actual content of the information itself.

45. The MPS also advised that:

“Disclosure of the requested information in full may reveal policing tactics used for ensuring the safety of the occupants of royal palaces. This might undermine protection arrangements generally. Those planning attacks are known to use a wide range of resources, including press reports and physical reconnaissance. Reducing the information available or making it more difficult to acquire is obviously desirable.

It also follows that any heightened risk to individuals in receipt of protective security arrangements represents a similar risk to a member of any organisation (e.g. the police) providing protection. Any physical attack on any person, regardless of whether they are a member of the Royal Family or not, is a crime and therefore where release would harm their safety (or that of any other person) the MPS cannot support any such disclosure under FOIA.

Those with the necessary criminal intent, inclination and capacity could use the information to gain an operational advantage over the MPS and other forces as the information can indeed be viewed as operational 'intelligence' and operationally sensitive. To provide information which reveals information about the level of protection of the royal palaces and their occupants would have a negative effect on the safety of those being protected, should the release of information be used and manipulated to try and attack the protected individuals and establishments, for example through mapping protection across forces.

To provide a breakdown of where undetected crimes have occurred would lead to these locations being viewed as weak/vulnerable targets with less policing resources allocated to protection duties. Such an occurrence could lead to harm of individuals as well as result in the allocation of additional policing resources due to a FOI disclosure”.

46. In further correspondence with the Commissioner, the MPS advised that it was relying on the lower level of likelihood, ie disclosure ‘would be likely to’ endanger the health and safety of any individual.
47. When asked who the MPS considered disclosure would be likely to endanger it advised that this would be both members of the Royal Household and those frequenting the buildings listed in the request. It said that the arguments would be stronger for those living and working within the royal palaces themselves, but also that anyone who may be visiting the palaces should also be considered at risk of harm.
48. It argued that disclosure of the crimes, particularly those classed as undetected:

“... would highlight vulnerabilities within security arrangements, which in turn would allow those with intent to target these areas putting members of the Royal Household and visitors at risk of harm”.

49. Finally, the MPS provided the following arguments to the Commissioner:

“There is a compelling argument that the release of small amounts of information would reveal the bigger picture of security arrangements in Royal Palaces. This would be likely to provide potential threat actors, protestors, single interest groups and fixated individuals with details on the capabilities of the search countermeasures applied to public access.

... persons who committed such [criminal] acts as a “rehearsal” could then pieces together information from such disclosures to find vulnerabilities.

Furthermore, with regards to “trespass” crimes, Buckingham Palace, is listed as one of 16 sites designated as protected sites this

Act² which came into creation following an intrusion at Windsor Castle and Buckingham Palace”.

Is the exemption engaged?

50. In order to engage the section 38 exemption, a public authority must be able to evidence a causal relationship between the potential disclosure and the identified endangerment.
51. The Commissioner initially notes that no individuals are named within the requested information and the request itself does not seek such level of detail. Furthermore, the Commissioner does not consider that the information itself would allow for any such identification to be made.
52. As mentioned earlier in this notice, it is again noted that the MPS has also relied on section 30(3) which presumably has been used to 'conceal' any particularly sensitive crimes which may, or may not, exist. However, in respect of those provided to the Commissioner, she does not consider that the arguments provided are relevant. Whilst they are persuasive arguments, they must necessarily relate to the actual information that is being withheld.
53. The Commissioner therefore considers that the arguments offered are generic in nature and are unrealistic, having no actual bearing on the withheld information in this case.
54. Having considered the arguments put forward by the MPS, alongside the withheld information itself, the Commissioner is not satisfied that it has demonstrated a causal link between the potential disclosure and endangerment. It follows that she does not find the exemption engaged.
55. As the exemption at section 38(1)(a) is not engaged the Commissioner has not gone on to consider the public interest test.

Section 24 – national security

56. Section 24(1) states that:

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security”.

57. FOIA does not define the term 'national security'. However in *Norman Baker v the Information Commissioner and the Cabinet Office*

² <https://www.gov.uk/government/publications/trespass-on-protected-sites-sections-128-131-of-the-serious-organised-crime-and-police-act-2005>

(EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

- 'national security' means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- action against a foreign state may be capable indirectly of affecting the security of the UK; and,
- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

58. Furthermore, in this context the Commissioner interprets 'required for the purposes of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.

59. The MPS advised the complainant that:

"... national security encompasses a wide spectrum and it is our duty to protect the people within the UK. Public safety is of paramount importance to the policing purpose and must be taken into account in deciding whether to disclose specific crime location data.

To disclose the requested information would allow interested parties to gain an upper hand and awareness of policing decisions used to safeguard national security. All Royal Residences are considered sites of national interest. Any possible threat to these buildings or individuals within, whether that be visitors, staff or Members of the Royal Family, would be considered a threat to the prime institution of the United Kingdom's constitutional arrangements and therefore a threat to national security. Disclosing which Royal Palace a specific crime occurred and the type of crime would render security measures less effective and compromise the security of individuals and the buildings if disclosed".

60. The MPS added that, to disclose crime location data as well as the type of crime could be harmful, particularly if a particular type of crime were shown to have a low detection rate. It explained that:

"... this could indicate relative vulnerabilities of security provisions at one of the Palaces. This would provide those intent on committing criminal or terrorist acts at those residences with valuable information as to the level of resistance they might expect to encounter and therefore to gain an understanding of the capabilities of a Force so that potential vulnerabilities can be more easily identified".

61. The MPS also referred to the threat from terrorism, saying that the current threat level to the UK is severe. It explained that *"...the international security landscape is increasingly complex and unpredictable"* and that the UK *"... faces a sustained threat from violent terrorists and extremists"*. Whilst the Commissioner accepts this reasoning, she fails to see any direct link between such arguments and the information which is being requested in this case. Whilst it may relate to information which the MPS has neither confirmed or denied holding, this is not under consideration as explained above.
62. Having viewed the withheld information in this case, the Commissioner is not convinced that it relates to 'national security' to any realistic degree. She also does not accept that withholding the requested information is 'reasonably necessary' to safeguard national security, with the arguments presented in this case being generic rather than specific to the information that is actually being withheld. On this basis, she concludes that section 24 is not engaged.
63. The MPS is therefore required to comply with the step at paragraph 2 of this notice.

Right of appeal

64. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

65. 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.

66. 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

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