

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 21 September 2022

**Public Authority:** Commissioner of Police of the Metropolis  
**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 (MPS) relating to a certain named file. MPS applied section 14(1) of FOIA to the complainant's request due to the burden caused by difficulty in retrieving the file during the Covid pandemic.
2. The Commissioner's decision is that MPS correctly applied section 14(1) of FOIA at the time of the request, however as it has failed to communicate with the complainant and keep them updated as to the review of the file, it has failed to comply with its duty under section 16 of FOIA to provide advice and assistance to the complainant.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Communicate with the complainant to let them know the position regarding the review of the file and whether section 23(1) of FOIA applies to the entire file or whether the review shows that some information contained in the file can now be disclosed to the complainant.

4. The public authority 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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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4. On 17 October 2019, the complainant wrote to MPS and requested information in the following terms:

“Following an initial request to the National Archives, who have directed me to you, I would be grateful for the release of MEPO 2/9844 under FOI.”

6. On 13 November 2019 MPS responded, stating that at this stage it was not able to provide the complainant with a full response to his request, however it was considering section 31 of FOIA (law enforcement).

7. On 22 January 2020 the complainant submitted the following request to MPS:

“I am requesting under FOI MEPO 2/9844 and on what grounds it has been retained, under section 3(4) of the Public Records Act by the Metropolitan Police Service (MPS). This record was retained when MEPO 2/9800-9904 were transferred to the Public Records Office (now the National Archives) in January 1985.”

8. On 6 March 2020 MPS responded, refusing to disclose the requested information under section 23(1) of FOIA. It also stated that it had amalgamated the complainant’s requests of 17 October 2019 and 22 January 2020 and had dealt with them both together. It stated that the file had been retained by MPS as it contained references to a security body.

9. On the same date the complainant wrote to MPS asking specific questions about its application of section 23(1). On 18 March 2020 the complainant requested an internal review of MPS’s handling of his request.

10. Following an internal review MPS wrote to the complainant on 30 April 2020. It stated that it was now applying section 14 to the complainant’s request as it was considered to be vexatious and disproportionate.

11. The reason given by MPS for now applying section 14 to the complainant’s request was that to respond fully to the request would

require a manual review of the file by MPS staff as it was not available in digital format. As the offices where the file was contained were closed to non-essential staff due to the Covid-19 pandemic, asking any member of staff to enter the premises to retrieve it would be likely to cause distress. MPS also stated that any staff who were present in the offices would have been engaged in essential frontline services and asking them to review the file would create an unnecessary diversion of resources, which would impose a significant burden on MPS.

## **Scope of the case**

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12. The complainant contacted the Commissioner initially on 16 July 2021 to complain about the way his request for information had been handled.
13. The Commissioner has considered MPS' handling of the complainant's request.

## **Reasons for decision**

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### **Section 23 – Information supplied by, or relating to, bodies dealing with security matters**

14. Section 23(1) of FOIA provides that: "Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."
15. To successfully engage the exemption at section 23(1), a public authority need only demonstrate one of the following:
  - that the information was supplied by any of the named security bodies, either directly or indirectly; or
  - that the information relates to any of the named security bodies.
16. The 'named security bodies' are listed at section 23(3) of FOIA.
17. If the requested information falls within either of the classes listed at paragraph 14 of this notice, it is absolutely exempt from disclosure under FOIA. There is no requirement for the public authority to demonstrate that disclosure would result in harm, and the exemption is not subject to the public interest test.

## **The complainant's position**

18. The complainant appears to accept that the requested information, namely the specified file, may contain information supplied by or relating to the relevant security bodies. However, they do not accept that the entire file can definitely be withheld under that exemption and have asked MPS to review the file to see whether any such information can be redacted and the remaining information disclosed to them.

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

19. The Commissioner has not reached any conclusion regarding section 23(1). MPS suggests that at least some of the file will fall under this exemption but without having sight of the file the Commissioner can make no judgement on this.
20. In any case, MPS upon internal review has varied its stance to the effect that the file does contain information which would be exempt under section 23(1) however it could not at that time retrieve the file in order to check whether the entirety of the requested information fell under section 23(1) or whether some information could be redacted and the rest disclosed.

### **Section 14 of FOIA**

21. Section 14 of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."

22. The term "vexatious" is not defined within FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
23. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
24. Dransfield also considered four broad issues:
  - (1) the burden imposed by the request (on the public authority and its staff),
  - (2) the motive of the requester,
  - (3) the value or serious purpose of the request and

(4) harassment or distress of and to staff.

It explained that these considerations were not meant to be exhaustive and also explained the importance of: "...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests." (paragraph 45).

25. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
26. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner's guidance states: "In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress."
27. As the MPS explained that its offices, like the majority of offices during the Covid-19 pandemic, were only open to essential staff engaged in frontline tasks, and that at that time it was necessary for it to target its resources towards critically important tasks, the Commissioner accepts that retrieval and review of the file at that time in order to fully respond to the complainant's request would have been disproportionate and caused a significant burden to MPS. The circumstances of the pandemic were unprecedented and the Commissioner fully accepts the point in relation to the offices only being open to essential staff engaged in critically important front-line tasks. MPS as an organisation carrying out those tasks would have been crucial at the height of the Covid-19 pandemic and would not have had spare resources to deploy in tasks such as reviewing files.
28. Therefore the Commissioner considers that MPS correctly applied section 14(1) of FOIA to the complainant's request.

### **Section 16 – duty to provide advice and assistance.**

29. Section 16 of FOIA provides that a public authority should provide advice and assistance to persons making requests for information, where reasonable to do so.
30. The complainant did not appear to object to MPS's application of section 14(1) of FOIA to the request. This was due to the fact that MPS stated that the complainant would be welcome to contact it again about the

request once lockdown had ended. It also stated that it would keep the complainant updated as to whether the file was able to be retrieved and reviewed as time moved on.

31. The complainant kept in touch with MPS during the next period of months and requested updates as to whether or not the file could yet be reviewed. MPS kept him updated as to whether staff had yet returned to offices and on 2 July 2021 MPS advised the complainant that review of the file had begun but had not yet been completed and that it did not know when this would be complete. This was the last correspondence the complainant received from MPS about the request.
32. Since accepting the complaint, the Commissioner has contacted MPS on several occasions for an update on the request and no reply has yet been forthcoming.
33. As lockdown restrictions have been lifted for some considerable time and offices have now opened up, there appears to the Commissioner to be no reason why the review of the file could not have concluded, as it began over a year ago. As MPS has not informed the complainant about the review of the file and whether or not information can be redacted, also as to whether the file still needs to be retained or can be transferred to the National Archives, the Commissioner considers that MPS has not complied with its obligation under section 16 of FOIA to provide advice and assistance.
34. The Commissioner concludes that MPS should now advise and assist the complainant by communicating with him to let him know the position regarding the review of the file. It should also inform the complainant whether the review enables it to disclose some of the requested information or whether it can now definitively apply section 23(1) to the entirety of the file.

## Right of appeal

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35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

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)

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**