

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 November 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 about breaches of COVID rules at 10 Downing Street from the Metropolitan Police Service (the "MPS"). The MPS refused to provide the requested information, citing sections 30(1) (Investigations and proceedings) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the MPS was entitled to rely on section 30(1) to refuse the request. No steps are required.

### Request and response

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3. On 9 February 2022, the complainant wrote to the MPS and requested information in the following terms:

"Did any Police Officers of any rank, raise concerns about breaches of Covid rules at no 10 Downing Street during any national lockdown periods.

If so - how many concerns were raised and by how many officers".
4. On 8 March 2022, the MPS responded. It refused to provide the requested information citing sections 30(1)(a)(i)(ii) and 40(2) of FOIA.
5. The complainant requested an internal review on 16 March 2022.

6. The MPS provided an internal review on 24 March 2022 in which it maintained its original position.

## **Reasons for decision**

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### **Section 30 – Investigations and proceedings**

7. Section 30 of FOIA states that:

“(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes 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...”.

8. The Commissioner considers that the phrase ‘at any time’ means that information can be exempt under section 30(1) of FOIA if it relates to a specific ongoing, closed or abandoned investigation.

9. Consideration of section 30(1) 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?**

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

11. In its correspondence with the complainant, the MPS advised:

“Your request relates to an ongoing MPS investigation. Disclosure of information pertaining to the investigation may be prejudicial to the outcome.

Disclosure of piecemeal information by way of FOIA disclosures could have an adverse impact on any future court proceedings if evidence is placed into the public domain prior to the completion of the judicial process”.

12. In his guidance<sup>1</sup>, the Commissioner states:

“Section 30 is a class based exemption. Information simply has to fit the description contained in section 30 to be exempt. There is no need for the information to prejudice, for example, the investigation or set of proceeding that it was obtained for”.

13. He also states:

“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. However, the purpose of the investigation must be to establish whether there were grounds for charging someone, or if they have been charged, to gather sufficient evidence for a court to determine their guilt. Section 30(1)(a) will still protect information if a police investigation fails to establish that an offence has been committed, or concludes that there is insufficient evidence to charge anyone”.

14. The Commissioner is satisfied that the withheld information is held by the MPS Police for the purpose of an investigation of the type described in section 30(1)(a) of FOIA; that investigation was also ‘live’ at the time of the request. He is therefore satisfied that the exemption provided by section 30(1)(a) is engaged.

### **Public interest test**

15. 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.

16. 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.

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

### **Public interest arguments in favour of disclosure**

17. The MPS accepted that disclosure would demonstrate its commitment to being an open and transparent organisation. However, it added that it considered the public interest had been met by its publishing official press statements concerning the subject matter of the request.

### **Public interest arguments in favour of maintaining the exemption**

18. Arguing against disclosure the MPS explained to the complainant:

“... Disclosure of information pertaining to the investigation may be prejudicial to the outcome.

Disclosure of piecemeal information by way of FOIA disclosures could have an adverse impact on any future court proceedings if evidence is placed into the public domain prior to the completion of the judicial process”.

And:

“Disclosure could lead to speculation and misinformation on where the investigation is directed and who may or may not be of interest to the MPS. The MPS would not wish to reveal who and what evidence / intelligence is relevant and the extent of their investigations as this would clearly undermine the law enforcement and investigative process.

Disclosure would generally have a negative on the relationship between the MPS and witnesses assisting with police investigations if through FOIA disclosures, details of their assistance with police is made public.

Additionally, when considering the harm of disclosure, the MPS has to be mindful that to release information that was obtained as part of police investigations might reveal to others how investigations are conducted and are likely to be conducted in the future”.

### **Balance of the public interest**

19. In accordance with his 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.
20. The purpose of section 30 is to preserve the ability of the police (and other applicable public authorities) to carry out effective investigations.
21. In reaching a conclusion on the balance of the public interest in this case, 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.

22. He has also taken into account that, at the time of the request, the related investigation was still ongoing.
23. The Commissioner recognises that there is a general public interest in promoting transparency and accountability. FOIA is a means of helping to meet that public interest, so it must always be given some weight in the public interest test.
24. The Commissioner acknowledges the importance of the public having confidence in public authorities that are tasked with upholding the law and he recognises that the public interest will be served by disclosures which serve that purpose. Alongside this, he has also taken into account the public statements regarding the investigation which the MPS has made and he considers that these go some way in meeting the public interest in transparency and accountability.
25. While noting the public interest arguments in favour of disclosure, the Commissioner is mindful that 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 allegations of crime effectively.
26. The Commissioner states in his guidance:

“When considering the public interest in maintaining the exemptions it is necessary to be clear what they are designed to protect. In broad terms, the section 30 exemptions exist to ensure the effective investigation and prosecution of offences and the protection of confidential sources. They recognise 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”.
27. In the circumstances of this case, the Commissioner has accorded greater weight to the arguments surrounding the public interest in protecting the ability of the MPS to conduct effective investigations.
28. He accepts that it would not be in the public interest to disclose information that would prejudice the investigatory and prosecution process by undermining the investigation and detection of criminal activities.
29. Such prejudice is particularly strong in a live investigation. It is the very activity which the exemption is formulated to protect.

30. Taking all the above into account, and having given due consideration to the arguments put forward by both parties, the Commissioner considers that the public interest in disclosure is outweighed by the public interest in ensuring that the investigation and prosecution of offences is not undermined.
31. The Commissioner is therefore satisfied that the MPS was entitled to rely on section 30(1)(a) of FOIA to refuse the request and that the public interest in maintaining the exemption outweighs the public interest in disclosure.
32. As the Commissioner has concluded that this exemption is properly engaged in respect of the withheld information in its entirety, he has not considered the other exemption cited.

## Right of appeal

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33. 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)

34. 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.
35. 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**