

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 January 2022

Public Authority: Commissioner of Police for the Metropolis
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about arrests and investigations related to drill music from the Metropolitan Police Service (the "MPS"). The MPS advised that some of the information is not held and that to confirm or deny whether or not the remaining information is held would exceed to appropriate limit at section 12(2) (Cost of compliance) of the FOIA.
2. The Commissioner's decision is that, on the civil standard of the balance of probabilities, where stated the information is not held. Where cited, the MPS was entitled to rely on section 12(2) of the FOIA. Also, there was no breach of section 16(1) (Advice and assistance). No steps are required.

Background

3. A decision about a similar, earlier request made by the same complainant is being issued at the same time as this notice - IC-54745-C7Y9.

Request and response

4. On 11 September 2020, the complainant wrote to the MPS and requested information in the following terms (these have been numbered by the Commissioner for convenience):

"I am writing to request access to the following information under the Freedom of Information Act 2000.

1) Please provide the number of 1a) arrests, 1b) charges 1c) prosecutions arising out of the publication of UK drill videos. This includes but is not limited to charging individuals for incitement of violence or other associated offences. It is noted that there is a dedicated team within the MET that specifically focuses on these sorts of alleged offences. The failure to engage with this straightforward request we consider obstruction and will be brought to the attention to the ICO and in the event that the ICO does not make a favourable decision before the FTT.

2) Please provide internal policy, memos or minutes of meetings touching on or concerning the investigation, arrest and charging of "gang members" and/or "Artists" the word should be searched alongside "UK Drill" and/or "hip-hop" and/or "rap".

3) Please provide memos and internal minutes of any meetings with UCL researchers [name redacted] and/or [name redacted].

5. The complainant also reiterated some previous requests which the Commissioner is not considering here as they are part of the request referred to in paragraph 3 above - this approach was not disputed by the complainant.
6. On 15 September 2020, the MPS wrote to the complainant requesting clarification as follows:

Request 1

"Please could you provide a timeframe or specify dates of interest?"

Post-charge data (Prosecutions)

"Please note that Prosecutions are the responsibility of the Crown Prosecution Service (CPS). The MPS can provide data up to this point which we record as People Proceeded Against. These are a range of detection methods sanctioned by Government and can range from a simple caution to charge for prosecution at court by the CPS. The MPS is not required to record on its own systems in any structured way, which of the proceeded against is actually

prosecuted, convicted and sentenced, as this is beyond our role within the Criminal Justice System. The Courts update the offender's Police National Computer (PNC) record with the conviction, prosecution and sentence imposed. The MPS can access this history via the PNC, however the PNC is only person searchable and is not searchable by offence. Any associated PNC searches would therefore be extremely extensive and costly, and as such would likely take this request over the appropriate cost limit.

You may therefore wish to revise or omit Question 1c) for Prosecutions data and re-direct it to the CPS or Ministry of Justice.

Please advise how you wish to proceed".

Request 2

"Please could you provide a timeframe or specify dates of interest in which you require memos or minutes for?

Please could you also clarify whether you require memos or minutes or both?"

Request 3

"Please could you provide a timeframe or specify dates of interest?

Due to the sheer size of the MPS, in terms of the number of staff and the number and size of departments, locations and buildings, please could you narrow the focus of this question to a particular unit or department, and/or specify a particular area or subject of interest?"

7. On 15 September 2020, the complainant responded. He advised:

"Request 1 we request this information for the last 5 years. We will seek information concerning prosecutions from the CPS and from the MoJ.

Request 2 we request this information for the last 10 years, for clarity we seek both memos and or memos [sic], so both.

Request 3 please provide this information for the past 5 years. We will not narrow the focus, [name redacted] and [name redacted] are outside researcher [sic], their meetings should be easily traceable it is not the fault of the requestor of this information that your organization continues to be opaque and inaccessible even for its own staff when addressing FOI requests".

8. On 9 October 2020, the MPS responded. It relied on the cost limit at section 12(1) of the FOIA to refuse part 1 of the request and section 12(2) to neither confirm nor deny whether any information is held in respect of part 2; it did offer to consider disclosure of a policy document related to its Social Media Hub if the complainant wanted this but the Commissioner does not know whether this offer was accepted. In respect of part 3 of the request, it advised that no information is held and explained why this was the case.
9. The complainant requested an internal review on 22 October 2020.
10. The MPS provided an internal review on 17 November 2020 in which it maintained its position.

Scope of the case

11. The complainant contacted the Commissioner on 22 December 2020 to complain about the way his request for information had been handled. The covering email with the complaint included:

"... these cases concern police overreach, brutality and inherent racism embedded within the police along with Article 10 ECHR. We consider that FOI should overwhelmingly be applied properly for disclosure to at least some if not all of the requests made".

12. The grounds in the associated correspondence, which are the same as for the other related request mentioned above, included the following further statements regarding the requests and the complaints.

13. The complainant said he understood that:

"... the ICO will inevitably refuse our application because the ICO has given the tools to the MPS to avoid answering questions in order to be more opaque and obfuscate requests for information that concern arts, culture and the need for anxious scrutiny when a public authority specifically and publically [sic] targets the black community".

14. The complainant did not provide any rationale to support why he did not agree that section 12 applied to the request. He said:

"It is simply not the problem of the applicant if MPS cannot organize their data and information in an easily accessible manner where it ought to be accepted that a particular issue has a disproportionate impact on the black community. In other words the MPS exemption relies on the pretence that they are so disorganized they couldn't

hope to answer the request without 92 hours of police work. This equates to the ICO rewarding disorganization and incompetence”.

And:

“There is good reason for the ICO to find in the applicants favour but there is no expectation that the ICO given the history of it’s findings will return a favourable outcome in the pursuit of information or illumination for intended for public consumption. The real underlying concern is the Metropolitan police’s approach to UK Drill music and what is easily classifiable as the denigration of black community art. If the ICO does not agree with this assertion then there ought to be real questions as to whether or not the ICO is an effective alternative to bringing proceedings where discrimination is alleged against a public body”.

15. The Commissioner will consider the application of section 12 to parts 1 and 2 of the request. He will also consider whether or not, on the civil standard of the balance of probabilities, any information is held in respect of part 3 of the request.

Reasons for decision

Section 1 – general right of access

16. This is being considered in respect of part 3 of the request.
17. Section 1 of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
18. In this case, the complainant suspects that the MPS holds information from which it could answer the request. The MPS position is that it does not.
19. In cases where there is some dispute about the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – following the lead of a number of First-tier Tribunal decisions – applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority holds information relevant to the complainant’s request.
20. The Commissioner will consider the complainant’s evidence and arguments. He will also consider the actions taken by a public authority to check whether the information is held and any other reasons offered

by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

21. Therefore, the Commissioner has sought to determine whether, on the balance of probabilities, the MPS holds any recorded information within the scope of part 3 of the request. The complainant did not offer any reasons as to why he believed the information would be held. Therefore, the Commissioner asked the MPS to explain what enquiries it had made in order to reach the view that it did not hold the information.

22. When initially refusing the request, the MPS advised the complainant;

"At the start of 2019 there were several informal discussions held between Detective Superintendent [name redacted], Dr [name redacted] and Dr [name redacted] from the University College London, who specialise in Security and Crime Science and data science. They agreed to complete some initial sentiment analysis research in respect of online gang-related content, but following discussions this was never pursued, and there is currently no collaboration".

23. In responding to the Commissioner's enquiries, the MPS advised it had consulted with the Chief Inspector named in the request, as well as the Chief Inspector currently undertaking this role. It said:

"Both of these Senior officers have worked within the area of business concerned with the nature of the subject around online gang-related content. DCI [name redacted] clarifies that, as discussions with [name redacted] and [name redacted] were only of an informal nature and either held face to face or on the phone there were no memos or meeting minutes.

This means that the only system searched that could potentially contain any relevant information would have been Outlook on the MPS network, for related emails addressed to [name redacted] and [name redacted], of which there were none".

24. It was also asked whether there was there a business purpose for which the requested information would be held, or any statutory requirement for it to retain this information. It responded saying it was:

"... satisfied that there are no business/policing purposes for which the requested information should be held. This is because these were only informal discussions on this particular topic held with

UCL. No formal arrangements or agreements were ever entered into and consequently, there is no relevant business/policing purpose such as a financial contract, memorandum of understanding, data sharing agreements or other statutory requirement for which information should be held".

The Commissioner's conclusion

25. When, as in this case, the Commissioner receives a complaint that a public authority has not disclosed some or all of the information that a complainant believes it holds, it is seldom possible to prove with absolute certainty that it holds no relevant information. However, as set out in the paragraphs, above, the Commissioner is required to make a finding on the balance of probabilities.
26. Furthermore, when dealing with a complaint to him under the FOIA, it is not the Commissioner's role to make a ruling on how a public authority deploys its resources, on how it chooses to hold its information, or the decisions it makes to hold some, but not other, information. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not, on the balance of probabilities, the public authority holds the requested information.
27. While anticipating the complainant's frustration that the MPS does not hold information within the scope of his request, the Commissioner is mindful of the comments made by the Information Tribunal in the case of *Johnson / MoJ* (EA2006/0085)¹ which explained that the FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".
28. The Commissioner considers that the MPS contacted the relevant parties to determine whether or not any information was held in respect of the request. Based on the information provided above, the Commissioner is satisfied that, on the balance of probabilities, no recorded information within the scope of the request is held. He is therefore satisfied that the MPS has complied with the requirements of section 1 in respect of part 3 of the request.

¹ <http://informationrights.decisions.tribunals.gov.uk//DBFiles/Decision/i90/Johnson.pdf>

Section 12 – cost of compliance

Section 12(1)

29. This is being considered in respect of part 1 of the request.
30. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
31. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:
- (a) *determining whether it holds the information,*
 - (b) *locating the information, or a document which may contain the information,*
 - (c) *retrieving the information, or a document which may contain the information, and*
 - (d) *extracting the information from a document containing it."*
32. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.
33. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "*sensible, realistic and supported by cogent evidence*"². The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the requests.
34. In respect of the first part of the request, the MPS advised the complainant that it was worded very similarly to part of the earlier request which is referred to above at paragraph 3.
35. It explained that it was:
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² <http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf>

"... unable to identify any information that may be held relating to drill music, or determine whether drill music featured as part of a wider investigation into gang-related crime, without manually interrogating individual gang-related case files. This cannot be achieved within the appropriate limit of 18 hours. Based upon a reading time of 1 minute for each case file, a costs estimation of 92 hours was previously provided to you under [previous request] for a period of approximately 3.5 years. Your current request for information spanning a 5 year period is therefore also not achievable within 18 hours, and would therefore exceed this estimation".

36. The Commissioner upheld the citing of section 12(1) in respect of the earlier request IC-54745-C7Y9 and he is relying on the same rationale here on the basis that this request is similar and covers a longer time period.
37. On that same basis the Commissioner finds that the cost estimate is realistic and reasonable. He therefore accepts that to provide the information would exceed the appropriate limit.

Section 12(2)

38. This is being considered in respect of part 2 of the request.
39. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
40. The fees regulations cited above also apply to section 12(2) so the rationale at paragraphs 31 and 32 also applies to the application of section 12(2) to this part of the request.
41. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the estimate provided by the MPS was reasonable. If it was, then section 12(2) was engaged and the MPS was not obliged to confirm or deny whether the requested information was held.
42. In respect of this part of the request the MPS advised that it was unable to confirm or deny whether it holds any information because of its broad scope. The Commissioner notes that this part of the request concerns any internal policy, memos or minutes *"touching on or concerning the investigation, arrest and charging of "gang members" and/or "Artists"*

the word should be searched alongside "UK Drill" and/or "hip-hop" and/or "rap", over a ten year period.

43. The MPS had previously explained to the complainant that:

"Any investigation into the publication of drill music would usually form part of a wider investigation, for example, where there is evidence of a criminal offence within a drill music video. For example, serious youth violence, an assault, or possession of a firearm, which could potentially be used as evidence to justify an arrest. It therefore follows, that any information that may be held that "relates to or touches upon" the publication of drill music would not be easy to retrieve, or held in a readily retrievable format, and would require the manual interrogation of individual case files in order to determine this information. This activity would require an in-depth review of the investigation details screens of crime reports ... which are free text".

44. In respect of this particular request it advised him:

"... this information would not be held by any one department, or in any one location within an organisation as vast as the MPS. The policy relating to drill, hip-hop or rap music, and the arresting and charging of gang members, falls within wider MPS and MOPAC [Mayor's Office for Policing and Crime] strategies regarding the reduction and prevention of violent and gang-related crime. Memos and minutes "touching on or concerning" the investigation, arrest and charging of "gang members" and/or "artists" could therefore be held by a large number of business areas, departments or individuals, or within various locations, buildings and systems within the MPS. Apart from information potentially being held locally by each of the 32 boroughs, some of these units include but are not limited to, Operation Domain, Social Media Hub, Prisons Teams, Proactive Teams, London Prison Unit, Intelligence Support Day Teams, Specialist Firearms Command, Organised Crime Partnership, Arts and Antiques Unit, and/or the Sensitive Intelligence Unit.

We do not know whether or how this information may have been retained by various departments over the last 10 years, and information could potentially encompass both electronic and paper files. Just to determine whether information relevant to this question is held, where it may be held, and the extent to which it may be held, would therefore require speculative, open-ended searches, which we estimate cannot be achieved within the 18 hour cost threshold".

45. As referred to in relation to the earlier request, the Commissioner notes the complainant's views that:

"The public mood is strong in favour of disclosure. There is an overwhelming interest information concerning police accountability".

And:

"The question that the Applicant wants the public to ask is whether or not the removal of these videos are a form of action taken by the police to diminish or criminalize the experience of those in the BME community. This can only be expressed through a full vetted understanding of what has been removed".

46. He also notes again the complainant's views that he has *"no expectation that the ICO ... will return a favourable outcome in the pursuit of information or illumination for intended for public consumption"*.

47. Whilst the Commissioner does not doubt the complainant's genuine concerns and his reasons for wanting disclosure of the requested information, there is no public interest test in respect of section 12 of the FOIA. It is not a 'choice' that the Commissioner is able to make. Quite simply, if confirmation or denial as to whether this information is held would exceed the appropriate limit then the MPS is not obliged to comply with a request.

48. The Commissioner further notes that the complainant has concerns that the Commissioner:

"... should be particularly concerned about the actions of the MPS in acceding that no formal policy exist when removing UK Drill music videos. This is facially unlawful as an informal policy is nothing more than capricious and arbitrary".

49. Such matters fall outside the Commissioner's jurisdiction. When dealing with a complaint to him under the FOIA, it is not the Commissioner's role to make a ruling on what information a public authority should hold, or how it should hold it. He is not concerned with how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the MPS is able to determine whether or not it holds the requested information within the appropriate cost limit.

50. Whilst the complainant may be disappointed, having considered the very broad wording of the request and the large time span covered, the Commissioner finds that the MPS's response and rationale is realistic

and reasonable. He therefore accepts that to confirm or deny whether the requested information is held would exceed the appropriate limit.

Section 16 – advice and assistance

51. Section 16(1) of the FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general where section 12(1) is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
52. The MPS advised the complainant as follows:

"Due to the volume of gang-related crime and intelligence records that are held by the MPS, it is difficult to identify a way in which Request 1 could be feasibly reduced, because even reviewing just three months' worth of gang-related case files would encompass approximately 400 records. In respect of Question 2, you could reduce the scope of your request to memos and minutes held by a particular unit or department, such as Operation Domain, or the Social Media Hub.

... the MPS has determined that it would assist if your request was put into context, and if information was provided that would further assist you with submitting a revised request for recorded information that can be located, retrieved and extracted within 18 hours. Please find this information below, I hope that it assists".

53. The MPS did offer to respond to a modified request, if one were sent, and tried to explain why it is unable to comply with parts 1 and 2 of the request. Based on the wide-ranging wording of this request, the Commissioner concludes that there was no easy way for the MPS to suggest how he could further refine it. He therefore finds there was no breach of section 16.

Other matters

54. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Engagement with the Commissioner and compliance with Information Notices

Information Notices IC-54745-C7Y9 and IC-79467-K9C4

55. The Commissioner would like to record here his disappointment that, due to the complete lack of engagement from MPS in this investigation, he found it necessary to issue the MPS with an Information Notice on this and the related case, in accordance with his powers under section 51 of the FOIA. In the interests of transparency, and as is his practice, the Commissioner will publish these Information Notices on his website.
56. Of even greater concern, however, is the egregious and unacceptable delay by the MPS in then complying with these Information Notices. The Commissioner's legal and casework teams experienced almost complete silence from the relevant individuals in the MPS's casework team despite numerous emails, phone calls and voicemails. These are ostensibly straightforward cases, and the lack of cooperation from the MPS led to the Commissioner pursuing contempt of court action under section 54 of the FOIA. Compliance was only achieved with the Notices shortly before the relevant paperwork for this action was due to be filed with the Court.
57. For context, the Information Notices were issued on 23 July 2021 and the MPS did not comply until 12 January 2022.
58. This is simply unacceptable. In light of the significant failings by the MPS in this case, the Commissioner will be keeping its compliance with the legislation and the quality of its engagement with his office and requesters under review. This will inform his view on whether further use of his statutory powers may be necessary to ensure better compliance with the law.

Right of appeal

59. 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

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

60. 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.
61. 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

Laura Tomkinson
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