

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about crime-handling from the Metropolitan Police Service (the "MPS"). The MPS engaged with the complainant and provided some information but this did not satisfy his request. The MPS ultimately advised the complainant that it considered he was seeking "commentary, opinion and explanations" which it was not required to respond to.
2. The Commissioner finds that the request was a valid request for recorded information under section 8 (Request for information) of FOIA. He requires the MPS to take the following steps to ensure compliance with the legislation.
 - Confirm or deny whether it holds information in any policy, or similar recorded information, which explains how it deals with potential crimes which come to its attention when these have not been reported by a third party. If it does hold the information, it should either disclose it or issue a refusal notice which complies with section 17 of FOIA.
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. Following an earlier request, which was informally resolved, on 11 December 2022 the complainant wrote to the MPS and requested the following information:

“What is your policy with regards to crime that happens right in front of you but for which you do not receive any allegations relating to?

For example, if somebody deliberately kicked one of your officers in the teeth, or a prime minister lied to your face in an attempt to pervert the course of justice?”

5. On 2 January 2023, the MPS responded. It said: “The Metropolitan Police will investigate all recordable crimes that we are aware of”.
6. The complainant raised further questions on 3 January 2023 (numbering added by Commissioner for reference). He said:

“Thank you for your prompt attention. I am pleased to hear that you investigate all recordable crimes as I was beginning to believe the common tittle tattle which suggests that the service suffers from serious problems with corruption.

I am very glad to hear that this is not the case.

1) Can you please tell me the current status of your investigation into the former prime minister, Mr Boris Johnson for his various acts of misconduct in public office?

...

2) Are you also aware of the lies he told to get elected, and have you recognised that as misconduct?

3) Is there a reference number that I can pass out?

I believe there are a number of people who may have information to share”.

(The Commissioner does not consider this to be a request for an internal review as no comments have been made in respect of the response to the previous request.)

7. The MPS responded on 8 February 2023. In its response it gave details of its investigation into alleged breaches of Covid regulations at Downing

Street and Whitehall, under Operation Hillman¹. It added that it did not consider part (2) to be a valid request under FOIA and that no reference number was held for part (3).

8. On 22 February 2023 the complainant responded, setting out why he disagreed with the MPS' response.
9. On 22 March 2023, the MPS responded. It reiterated that it had provided the complainant with information regarding Operation Hillman and that it had "not received any allegations in relation to Misconduct in Public Office in relation to former Prime Minister Boris Johnson", therefore it had "not conducted any assessment or investigation and hold[s] no relevant material". It also advised:

"In your FOIA request and your email dated 22/02/2023, you appear to be seeking commentary, opinion and explanations from the MPS. As previously advised to you, this is not what the Freedom of Information Act was designed for. In general, any response provided under FOIA is based on information held by the MPS. Under FOIA, the MPS is not obligated to create new information to satisfy a FOIA request if there is no specific policing purpose for that information".

Scope of the case

10. The complainant contacted the Commissioner on 13 April 2023. His grounds were that the MPS did not address what he asked. Rather:

"... they kept referring to the investigation into his breaches of the pandemic regulation.

Since then, we have established that they have a policy to investigate "Any crime that they are aware of", and that they are aware of the criminal misconduct ... so the question becomes one of how the investigation into that is going.

...

Obviously, the answer is that they have done no investigation and do not intend to start one, and the reason for that is [sic] that they

¹ The MPS inquiry into alleged breaches of Covid-19 regulations in Downing Street and Whitehall is named Operation Hillman

are incredibly corrupt, but I would like to know the official reason, and that is the subject of this FOI request”.

11. The Commissioner considers that the point which the complainant is making is why the MPS did not commence an investigation itself, ie if it was aware of the allegations, why it did not voluntarily commence its own investigation, irrespective of whether or not it received an official complaint from a third party. As its response to his initial enquiry was that it “will investigate all recordable crimes that we are aware of”, the complainant considers that it should therefore have undertaken its own investigation.
12. The Commissioner will consider the MPS’ response below.
13. The Commissioner’s duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 8 – request for information

14. Section 8 of FOIA deals with the validity of requests for information and states:
 - “...any reference to “a request for information” is a reference to such a request which-
 - (a) is in writing,
 - (b) states the name of the applicant and an address for correspondence, and
 - (c) describes the information requested”.
15. The MPS considers that the complainant is seeking “commentary, opinion and explanations”, and that where doing so this does not qualify as a request for recorded information.
16. Section 84 of FOIA defines ‘information’ for the purposes of section 1(1) of FOIA (ie information which an applicant can request under FOIA) as “information recorded in any form...”.

17. Therefore, not only must the complainant's request satisfy the criteria in section 8 of FOIA, it must also be a request for recorded information in order to constitute a valid request for information under FOIA.
18. In his guidance on section 8, the Commissioner states: "There is a low threshold for meeting the requirement to describe the information. A description will be valid if it contains sufficient detail for the requested information to be distinguished from other information held by the authority".
19. The Commissioner also acknowledges that a request in the form of a question will be valid under section 8(1)(c), provided it still describes distinguishing characteristics of the required information.

The Commissioner's view

20. The Commissioner considers that the complainant is seeking information about the MPS' proactive recording and investigation of crimes that come directly to its attention. Therefore, any policy or instruction that explains why the MPS may take it upon itself to investigate a crime would fall into the scope of the request. It may be the case that there is no such policy, or other supporting information, but the MPS would then need to argue, having undertaken adequate searches, that no information is held.
21. It follows that the Commissioner is satisfied that the request is for recorded information and that the MPS should address it and respond accordingly, either disclosing it or issuing a valid refusal notice.

Right of appeal

22. 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

23. 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.
24. 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**