

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

### **Decision notice**

**Date:** 27 July 2023

**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 a specified file from the Metropolitan Police Service ('MPS'). MPS had previously disclosed some information from the file to the complainant, however it refused to disclose the remainder, citing sections 23(1) and 31(1)(a) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that MPS has correctly applied section 23(1) to the complainant's request. As he is satisfied that this applies in full, he has not considered MPS' application of section 31(1)(a).
3. Therefore the Commissioner requires no steps to be taken by MPS.

#### **Request and response**

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4. On 17 October 2019 the complainant requested a specified file from MPS. On 6 March 2020 MPS refused to release the file citing Section 23(1) of FOIA as a basis for non-disclosure.
5. The complainant sought an internal review of that decision on 18 March 2020. On 30 April 2020 MPS stated that it was unable to review the file due to the COVID 19 pandemic and government restrictions which were in place.

6. On 20 December 2021 after correspondence with the complainant and the Commissioner, MPS disclosed the requested file with redactions under sections 31(1)(a) and 23(1) of FOIA. The complainant subsequently complained to the Commissioner, however they withdrew their complaint on 14 February 2022.
7. On 26 April 2023 the complainant decided that they wished to re-open their complaint. The Commissioner accepted the complaint, although it was out of time, and notified MPS. The Commissioner dispensed with the requirement for an internal review in this instance due to the lapse of time. MPS agreed to provide submissions as to its application of sections 23(1) and 31(1)(a) to the remaining requested information ('the withheld information').

### **Scope of the case**

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8. The Commissioner has considered MPS' application of the exemptions to the complainant's request as set out in FOIA .

### **Reasons for decision**

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9. In the first instance, this reasoning focuses on MPS' reliance on section 23(1) of FOIA to withhold the remaining requested information. If necessary, the Commissioner will also consider the exemption at section 31(1)(a) applied by MPS.
10. Under section 23(1) of FOIA, information 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).
11. MPS noted that the phrase 'relates to' has been interpreted broadly. In the case of *Lownie v IC & FCO 20181* the Upper Tribunal found that 'relates to' includes both a direct and indirect connection (paragraphs 59 and 60). Furthermore, the Commissioner's guidance on section 23 explains the interpretation of 'relates to' as including any information concerning or linked to the activities of a security body.
12. MPS has provided evidence to the Commissioner in confidence that the withheld information 'relates' to a body specified in subsection (3). The Commissioner is satisfied that this is the case. As such, the Commissioner's decision is that MPS has correctly applied section 23(1) of FOIA to the complainant's request and is entitled to withhold it.

13. Section 23 is an absolute exemption and is not generally subject to the public interest test. The exception is in the case of historical records held by The National Archives or the Public Records Office Northern Ireland. Although the withheld information in this case is a historical record, the Commissioner is satisfied that it was not held by The National Archives at the time of the request as it had been retained by MPS under section 3(4) of the Public Records Act 1958.
14. Because the Commissioner has found that the information can be withheld in full under section 23(1) of FOIA it has not been necessary to consider the exemption at section 31(1)(a) which was also applied by MPS.

## **Right of appeal**

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15. 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)

16. 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.
17. 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**