

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2022

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 related to the 1985 Broadwater Farm riots from the Metropolitan Police Service (the "MPS"). The MPS would initially neither confirm nor deny ("NCND") holding the requested information. It subsequently revised its position, eventually advising that some information was not held, that it would exceed the cost limit at section 12(2) of FOIA to comply with part of the request and that some information was exempt by virtue of section 40(5B)(a)(i) (Personal information) of FOIA; it also relied on sections 31(1)(a) and (b) (Law enforcement) of FOIA.
2. The Commissioner's decision is that the MPS dealt appropriately with the request. No steps are required.

Request and response

3. On 21 June 2022, the complainant wrote to the MPS and requested information in the following terms:

"Under the Freedom of Information Act 2000, I wish to have sight of the following:-

1. A copy of the pro forma warrant drawn up for [name redacted] at the address of [address redacted] on [date redacted] 1985.

2. A copy of the custody record for [name redacted] against the address of [address redacted] on [date redacted] 1985.
3. A copy of all charges filed against [name redacted] against the address of [address redacted] on [date redacted] 1985.
4. An explanation of why Tottenham police station had been selected to give a 'trial run' to the Police and Criminal Evidence Act which was not in force at the time.
5. Confirmation as to whether the police officers listed below are still working for the Metropolitan Police. If not, the dates they left the Service and why (e.g. retirement).
 1. PC [surname redacted]
 2. Sergeant [surname redacted]
 3. PC [surname redacted]
 4. Detective Constable [first name and surname redacted]
 5. Inspector [surname redacted]
 6. Sergeant [surname redacted]
 7. Chief Superintendent [surname redacted]
 8. Chief Superintendent [surname redacted]

I would like the above information to be provided to me in paper format and sent to the following address as per below ...".

4. On 21 July 2022, the MPS responded. It would NCND holding the requested information, citing sections 30(3) and 40(5) of FOIA. Regarding part (4) of the request, it said that this: "... seems to ask for an explanation of something and not for recorded information, therefore this part of your request is not a valid FoIA request", adding that if it were to search the MPS to try to find out if any information was recorded anywhere, this would result in a cost refusal, as such a search would exceed 18 hours' work.
5. The complainant requested an internal review on 28 July 2022.
6. The MPS provided an internal review on 18 August 2022 in which it revised its position. In respect of parts (1) – (3), it refused to disclose the requested information, citing section 40(2) of FOIA. In respect of part (4), it said no information was held. In respect of part (5) it said that it would exceed the cost limit at section 12(2) to ascertain whether or not this information was held. It also removed reliance on section 30 and instead cited section 31(1)(a) and (b) (Law enforcement), to cover the whole request.

7. During the Commissioner's enquiries, the MPS confirmed that it wished to rely on section 40(5) for parts (1) – (3) of the request, that nothing was held for part (4) of the request and that to ascertain whether any information was held for part (5) would exceed the appropriate limit at section 12(5) of FOIA. It also maintained its reliance on sections 31(1)(a) and (b) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 2 August 2022 to complain about the way her request for information had been handled. The Commissioner required further information from her which was provided.
9. The complainant did not provide any specific grounds of complaint. She said only that she wished the MPS to 'comply' with her request. The Commissioner will therefore consider the MPS' position below.

Reasons for decision

Parts (1) – (3) of the request

Section 40 – Personal information

10. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR') to provide that confirmation or denial.
11. Therefore, for the MPS to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, the following two criteria must be met:
 - Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - Providing this confirmation or denial would contravene one of the data protection principles.

Would the confirmation or denial that the requested information, if held, constitute the disclosure of a third party's personal data?

12. Section 3(2) of the Data Protection Act 2018 ('the DPA 2018') defines personal data as:-

"any information relating to an identified or identifiable living individual".

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

14. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

15. The Commissioner understands that the request relates to a named, living person. Therefore, he is satisfied that if the MPS confirmed whether or not it held the requested information this would result in the disclosure of a third party's personal data. The first criterion set out above is therefore met.

If held, would the information be criminal offence data?

16. The MPS has also argued that confirming or denying whether it holds the requested information would result in the disclosure of information relating to the criminal convictions and offences of a third party.

17. Information relating to criminal convictions and offences is given special status in the UK GDPR. Article 10 of UK GDPR defines 'criminal offence data' as being personal data relating to criminal convictions and offences. Under section 11(2) of the DPA 2018 personal data relating to criminal convictions and offences includes personal data relating to:-

(a) The alleged commission of offences by the data subject; or

(b) Proceedings for an offence committed or alleged to have been committed by the data subject of the disposal of such proceedings including sentencing.

18. Clearly, the wording of the request relates to an alleged criminal offence. For the MPS to confirm publicly whether or not it holds any information would therefore result in the disclosure of information relating to criminal convictions and/or alleged offences of a named third party.

19. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes confirming

or denying whether the information is held in response to an FOI request, if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.

20. Having considered the information request, the Commissioner is satisfied that the complainant was seeking criminal offence data relating to a third party.
21. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed (which usually includes confirming or denying whether the information is held in response to a FOI request) if one of the stringent conditions of Schedule 1, Parts 1 to 3 of the DPA 2018 can be met.
22. Taking into account that disclosure under FOIA is to the world at large, the Commissioner determines it likely that only two of the Schedule 1, Part 3, conditions might ever justify such processing of personal information of this type. These are (a) that the data subject had given their explicit consent for the public authority to provide confirmation (or a denial) that information is held (para 29); or (b) that the data subject has manifestly made the information public themselves (para 32).
23. Neither relevant conditions have been met here. The Commissioner has seen no evidence or indication that the data subject has consented to the disclosure of the information or that the information has been made manifestly public by the data subject.
24. As none of the conditions required for processing criminal offence data are satisfied there can be no legal basis for confirming whether or not the requested information is held; providing such a confirmation or denial would breach data principle (a) and therefore the second criterion of the test set out above is met. It follows that the MPS is entitled to refuse to confirm or deny whether it holds the requested information on the basis of section 40(5B)(a)(i) of FOIA.

Part 4 of the request

Section 1 – General right of access

25. Section 1 of 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.
26. 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.

27. 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.
28. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the 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.
29. The complainant has not provided any evidence to suggest why she believes that the MPS would hold this information.
30. The MPS has explained to the Commissioner:

"The MPS Records Management Branch (RMB) are responsible for the retention and disposal of all registered files within the MPS. Enquiries were made with RMB who searched eArchive which is our records management system for paper records and confirmed at [sic] no files are held relating to [name redacted] or records relating to the Police & Criminal Evidence Act trial at Tottenham Police Station.

Enquiries were made with North Area Borough Command Unit which covers Tottenham Police Station who have confirmed No Information is Held regarding the 'trial run' at Tottenham Police Station regarding the Police and Criminal Evidence Act.

Enquiries were also made with DMC [Directorate of Media & Communication], no press lines have been logged and Continuous Policing Improvement Command (CPIC) and IRSC Independent Review Groups whom also confirm No Information Held.

The MPS believes this decision would have potentially been made by the Home Office and not the MPS see below transcripts¹ which mentions the MPS and other forces were chosen to run a trial:-

<https://hansard.parliament.uk/Lords/1986-04-21/debates/b1f67c95-1777-403d-aae5-5eff54011254/BroadwaterFarmDisturbancesStoppingAndSearching>

“However, a number of forces have been operating the provisions of the Act and the codes which do not require legislation for some little time, and the message that is emerging clearly is that it is not as difficult to do as they feared it might be. Once they have become familiar with the new procedures, police officers in these forces have found that initial difficulties are resolved and they are able to implement the Act effectively. A good example of this is in Reading, where the town's police have been operating a trial run now for about a year. Their experience has been successful, and they are by no means alone.”

31. The Commissioner considers that the MPS undertook a reasonable search based on the age of any material that would be held. Based on the information provided, he is satisfied that, on the balance of probabilities, no recorded information within the scope of part (4) of the request is held. As clarified in paragraph 26, FOIA does not require the MPS to create new information in order to respond to a request. He is therefore satisfied that the MPS has complied with the requirements of section 1 of FOIA.

Part 5 of the request

Section 12 – cost of compliance

32. 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.

¹ BROADWATER FARM DISTURBANCES: STOPPING AND SEARCHING
(Hansard, 21 April 1986) (parliament.uk)

33. The appropriate limit is set at £450 for the MPS by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the fees regulations').
34. The fees regulations also provide that a cost estimate must be calculated at the rate of £25 per hour (giving an effective time limit of 18 hours' work), and specify the tasks that can be taken into account when forming a cost estimate as follows:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
35. 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 cost estimate 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.
36. In response to his enquiries, the MPS has explained the following to the Commissioner.

"The current HR System was introduced at the beginning of 2018.

A decision was made by the Met, that this new HR system would not contain any officer who had already left the service.

We maintained the legacy system for a few months, but due to the cost of this another decision was made to turn this off.

Before this, a number of reports were run and this included data held for ex officers recorded on the legacy system.

We have checked, the current system, the legacy reports and all other nominal data we have available.

As I have previously said, electronic nominal lists are only available from the 2000's. Prior to this is was all paper based and this paper no longer exists.

Pensions data is held by our third party pensions provider".

37. The MPS said that it has computerised records containing names of employees from the year 2000. Therefore, it was unable to look up individuals who served in 1986 unless they were still serving after this date.

38. The MPS searched the current system for the names requested and there were multiple hits for some names but no hits for others. Whilst it would therefore have been possible to say that some of the officers were not currently working for the MPS, this would only have been a partial response which the MPS is not obliged to give under section 12. It would also not have provided their leave date or why they left, as requested by the complainant. Of the others, the fact that there were multiple hits for the surnames means that they would each need to be checked. However, the Commissioner considers it extremely unlikely that someone who was an active police officer 38 years ago is still employed.

39. The MPS further advised that it had contacted its Heritage Centre² which advised as follows:-

"We can check if we have the Central Record of Service for these officers but I will need full names and ideally dates of birth. If I search for say [name removed] I am going to get multiple results".

40. It added that the Central Record of Service does not provide details of the individual's status (retired, etc), only their Name, Rank, NI number, date of joining, date of birth, place of birth, education, marital status, examinations and promotions. If this record were held for any of the named officers it would therefore not be possible to provide the requested information from this record alone.

41. The MPS advised that its Records Management Team had also undertaken a search on its eArchive system. It advised that:

"... we searched [surname removed] as we do not have a warrant number or first name it resulted in 1,371 hits but the hits included all [surname removed] not just officers but individuals arrested with the name of [surname removed] which would be too huge a task to go through each individual record".

It added that HR files are not held on eArchive.

42. The Commissioner also asked whether or not the MPS held any reports about the Broadwater Farm riots that may give the full names / collar numbers of the officers, thereby simplifying any searches for any data that may be held about them. In response to this, the MPS was able to provide images of paper files that it holds which were used to undertake

² <https://www.met.police.uk/police-forces/metropolitan-police/areas/about-us/about-the-met/met-museums-archives/metropolitan-police-museum/>

a review of public order policing of the riots. There were more than 12 boxes of thick paper files. It said:

“These officers could have been involved in any part of the riots i.e. on the ground, in command, involved in the investigation of the officer’s murder, involved in the subsequent public order review/organisational learning. It’s unknown exactly how many files could contain these officers details but it will be significantly more than what is shown in the pictures”.

43. From viewing these images, the Commissioner accepts that it would take a considerable amount of time to read through them in order to ascertain whether or not they contain any further details about the named officers, ie their full names and collar numbers.
44. Having considered the explanations above, and with a lack of any argument to the contrary from the complainant, the Commissioner accepts the MPS’s position that it is unable to ascertain whether or not it holds the requested information within the appropriate limit.
45. It is noted that the MPS has not provided an actual time / cost estimation on this occasion. However, as there is insufficient detail in the wording of the request to assist with accurately identifying the officers, the Commissioner accepts that there is no reliable starting point from which the MPS can base its searches, other than by trying to trace their details from reading the paper files available. The Commissioner therefore concludes that section 12(2) is engaged and the MPS was not obliged to confirm or deny holding the information at this part of the request.

Section 16 – advice and assistance

46. Section 16(1) of 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 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.
47. As mentioned above, the Commissioner notes that this part of the request does not include full officer names or collar numbers, which would make identification particularly difficult, in view of the number of officers who will have been employed by the MPS over the last 38 years; as the request relates to events in 1985, it is also extremely likely that they all retired many years ago, and very probably prior to when HR records were made electronic. The Commissioner cannot, therefore,

envisage any realistic way of assisting the complainant with this part of her request.

48. In responding to the Commissioner, the MPS also included the following, which may be of assistance to the complainant:

"... The National Archives (TNA) holds open records which may be helpful to the complainant if she has not already had sight of them, some are as follows:-

File reference number HO 287/4014

Police investigation into the circumstances surrounding the death of Cynthia Jarrett in Tottenham on 5 October 1985

1985 Jan 1 - 1986 Dec 31

Open document

<https://discovery.nationalarchives.gov.uk/details/r/C17039133>

Police investigation into the circumstances surrounding the death of Cynthia Jarrett in Tottenham on 5 October 1985

File reference number HO 287/4015

1986 Jan 1 - 1986 Dec 31

Open document

<https://discovery.nationalarchives.gov.uk/details/r/C17039134>

Police investigation into the circumstances surrounding the death of Cynthia Jarrett in Tottenham on 5 October 1985

File reference number HO 287/3777

1985 Jan 1 - 1986 Dec 31

Open document

<https://discovery.nationalarchives.gov.uk/details/r/C16938331>".

Section 31 – Law enforcement

49. Based on his findings above, the Commissioner has not found it necessary to consider the application of section 31 to the request.

Right of appeal

50. 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

51. 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.
52. 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

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