

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 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 Incident Command Logs for 'Insulate Britain' and 'Just Stop Oil' from the Metropolitan Police Service (the "MPS"). The MPS refused to provide the requested information citing sections 30(1)(a) (Investigations and proceedings), 31(1)(a)(b) (Law enforcement) and 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the MPS has failed to clearly identify what information is being withheld under sections 30 / 31 of FOIA. As these are mutually exclusive he has determined that neither is engaged. The complainant is happy for any personal information to be redacted so names / contact details can be withheld.
3. The Commissioner requires the MPS to take the following steps to ensure compliance with the legislation:
 - disclose the logs, after any personal information, and information about other events, has been redacted.
4. 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

5. On 2 February 2023, the complainant wrote to the MPS and requested the following information:

"Please accept this request under the Freedom of Information Act. I'm seeking:

- All emails and/or WhatsApp messages exchanged between Met Police commissioner Sir Mark Rowley, or assistant commissioner Matt Twist, and home secretary Suella Braverman between 6-11 November 2022.
- All emails and/or WhatsApp messages exchanged between Met Police commissioner Dame Cressida Dick, or assistant commissioner Matt Twist, and home secretary Priti Patel between 13-23 September 2021.
- Copies of any Public Order Incident Command Logs completed in relation to the Just Stop Oil protest actions in November 2022.
- Copies of any Public Order Incident Command Logs completed in relation to the Insulate Britain protests in September 2021."

6. On 15 February 2023, the MPS responded. It refused to provide the requested information citing section 30(1)(a)(i) of FOIA.

7. The complainant requested an internal review on 16 February 2023.

8. The MPS provided an internal review on 20 April 2023 in which it revised its position. It said that searches had shown that no emails or WhatsApp messages were held that were relevant to the request. It also added reliance on sections 40(2) and 31(1)(a) and (b) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 27 April 2023 to complain about the way his request for information had been handled.

"As stated in my request to the MPS for an internal review, the College of Policing guidance on public order command structure states that command logs are intended to 'provide a clear audit trail'. The guidance does not indicate that command logs should be used for the purpose of a criminal/police investigation or suggest that command logs would be used to record intelligence or confidential sources. It is therefore reasonable to assume that much of the information in the command logs can be provided and any sensitive information redacted. Instead, the MPS has refused to disclose the logs at all.

The MPS also states: 'The Command Logs contain information related to the policing of public order events such as strategic intentions, tactical planning information and deployment plans. Disclosure of the information requested, would likely cause operational harm to the MPS and affect our ability to fulfil our core function of law enforcement.' However, information about the strategic and tactical policing of public order events has previously been published by both the MPS and the College of Policing, including via live updates on the MPS Twitter account. In light of this, it is unreasonable to suggest that the audit trail record in public order incident command logs would cause 'operational harm' to the MPS.

Finally, the MPS has relied on a Section 40 exemption to refuse disclosure. However, the vast majority of information recorded in public order incident command logs does not constitute personal information and any such information can easily be redacted".

10. The complainant has made no reference to the MPS' response regarding no emails and/or WhatsApp messages being held so this will not be considered.
11. The complainant has confirmed that he is happy for any personal information to be withheld. The Commissioner considers this to include names and contact details. Therefore, any information that is withheld under section 40 will not be further considered.
12. As the Commissioner noted that some of the logs contain information about events that are separate to Just Stop Oil and Insulate Britain, he asked the complainant if he was happy for these events to be scoped out of the investigation. The complainant confirmed that he was only interested in any matters which directly referred to Just Stop Oil and Insulate Britain so information about other events can be withheld.
13. The Commissioner will consider the citing of exemptions below.

Reasons for decision

Commissioner's view on the case

14. The Commissioner requested copies of the logs caught within the scope of the request on 17 May 2023. These were eventually provided on 6 July 2023, with more being added on 11 July 2023.
15. On 11 July 2023, the Commissioner asked the MPS:

"Please will you clarify which exemptions you are relying on for the logs. Are all of them being withheld 'blanket' fashion under the exemptions cited? Please remember that sections 30 / 31 are mutually exclusive so cannot be cited together. You should mark up where each exemption has been applied".

16. On 19 July 2023, the MPS advised it was still reviewing the logs. It said that it was minded to cite both section 30 and 31 of FOIA and that it would mark up the documentation accordingly; it said it should be able to complete this by 24 July 2023. It added:

"Section 31 is the main exemption. However, there are specific mentions of arrests and other matters that section 30 applies to although these are relatively minor.

... in relation to Just Stop Oil action in November, there are [redacted] defendants across [redacted] cases awaiting trials across a range of dates up to September 2025.

In relation to Insulate Britain actions in September 2021, there are [redacted] defendants across [redacted] cases that will be split into smaller trials with the trial dates unknown (likely 2024).

As far as I am aware, the logs themselves have not been held for the purpose of investigations or proceedings although they may be relevant to the court cases".

17. On 8 August 2023, the Commissioner chased a response to his email of 11 July 2023, saying he would issue an Information Notice if the requested detail was not provided.
18. Following further correspondence, on 14 September 2023 the Commissioner issued an Information Notice formally requiring the MPS to clarify its position, as set out in paragraph 15 above.
19. On 19 September 2023, the MPS provided a partial response in respect of the Just Stop Oil logs. Regarding these it provided a key which said:

Green – Potentially suitable for disclosure e.g. rank and time associated with the creation and closing of the log and related handovers

Yellow – Additional information that may be less harmful to disclose such as public statements by JSO or the MPS –

Red – Additional harm - Mostly where section 30 applies. Some of the earlier logs may also have names highlighted in red.

Unhighlighted – Not for disclosure".

20. On 20 September 2023, the MPS provided its response in respect of the Insulate Britain logs. It said:

"Where the note states s31 this applies to the whole document. The first document listed includes text highlighted in green that could arguably be disclosed although it is very repetitive and only provides the rank of the person doing the log and the associated date/time. I have not highlighted similar information in the remainder of the Insulate Britain logs for the sake of expediency. Such information was highlighted in the JSO documents I sent previously".

21. It additionally explained:

"... the MPS disclosure position remains unchanged i.e. that the logs are exempt from disclosure (s30(1), s30(1) [sic] and s40(2) & (3A)(a)).

With this in mind, please refer to the internal review which covers the requested information. My earlier emails highlight where section 30 applies to the information (e.g. details of arrest) and areas where the harm is arguably reduced. Section 31 applies where s30 has not been indicated.

Although I have also highlighted information that would be covered by section 42, please consider this within the context of section 31".

22. The key provided in paragraph 19 above alludes to some of the withheld information being "Potentially suitable for disclosure", some of it being "less harmful to disclose" and then "Mostly where section 30 applies". This is not a clear position for the Commissioner to be asked to consider in a decision notice. What does "less harmful" indicate - if it can be disclosed then the information should have been disclosed? And what does "mostly" mean - it is either section 30 or it is something else? Many of the logs contain information that is not highlighted so, according to the key, should not be disclosed. However, other than the file's title which, for example, says something like "suggested s30", it is not clear why the content is being withheld.
23. There were also some additional comments made in a separate table which was emailed to the Commissioner by the MPS. However, these were limited and included comments such as "Sensitive material - Not to be disclosed" and "Suggested redactions", without further details.
24. Whilst the Commissioner considers it likely that the MPS' arguments could properly provide for **some** of the information within the logs to be withheld, the MPS has failed to clearly present its view on which exemption applies to each piece of information. It has also failed to

clarify what, in its view, is actually suitable for disclosure, although it has indicated that some of it is.

25. It is appreciated that there is a reasonably large amount of information falling within the scope of the request. However, the response which the Commissioner eventually received was ambiguous and was not clearly labelled. In view of the already considerable delay, the Commissioner does not consider it appropriate to allow additional time in which to further engage. Whilst it is very likely that some of the information could be properly withheld under one of the exemptions cited, it is not the Commissioner's role to try to 'tease out' what is or isn't suitable for disclosure. As a major police force that is familiar with FOIA, particularly with the police-related provisions provided in sections 30 and 31 of the legislation, the Commissioner would expect the MPS to be able to both readily undertake the task of determining which exemption it should rely on and also to know what level of detail is required in its response.
26. Accordingly, although he expects that the MPS will appeal his findings, the Commissioner has not been provided with sufficient details to accurately engage either section 30 or 31 of FOIA. Unfortunately, his decision must be that the logs must be disclosed, albeit personal information and details about any events which do not relate to Just Stop Oil or Insulate Britain can be withheld.

Other matters

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

Engagement - timeliness

28. The Commissioner requested copies of the logs caught within the scope of the request on 17 May 2023 but these were not provided until 6 July 2023, with more information provided on 11 July 2023.

Information Notice

29. Despite a number of time extensions, the MPS failed to respond to the Commissioner's enquiries in a timely manner so it was necessary for him to issue an Information Notice in this case, formally requiring a response.
30. The Information Notice will be published on the Commissioner's website.
31. The delays and subsequent poor response to the Commissioner's enquiries will be logged for monitoring purposes.

32. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our FOI and Transparency Regulatory Manual¹.

¹ https://ico.org.uk/media/about-the-ico/documents/4020912/foi-and-transparency-regulatory-manual-v1_0.pdf

Right of appeal

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

Website: 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
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