

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 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 Notices of Intended Prosecution ("NIPs") from the Metropolitan Police Service (the "MPS"). The MPS disclosed some of the requested information, but withheld the remainder because it considered this to be the personal information of those concerned, therefore being exempt from disclosure under section 40 (Personal information) of FOIA.
2. The Commissioner's decision is that only some of the withheld data is personal information. The Commissioner requires the MPS to take the following steps to ensure compliance with the legislation:
 - disclose the remaining requested information, unless it is sourced from a member of the public or the source is unknown.
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.

Background

4. At a late stage in the investigation it became apparent that much of the recorded data within the scope of this case has been sourced from

members of the public reporting offences. In this regard, the MPS advised the Commissioner:

"I have identified the links below which may be relevant i.e. our online reporting form and road safety guidance:

- <https://www.met.police.uk/ro/report/rti/rti-beta-2.1/report-a-road-traffic-incident/>
- <https://www.met.police.uk/ro/report/rti/rti-beta-2.1/report-a-road-traffic-incident/report-a-road-traffic-offence-without-witnesses-or-evidence/?tid=602556&lid=930138e5-0a6c-4191-9caf-d82bf9a9d83b&cid=&rid=33028&stepid=1-1-2-1-1-2>
- <https://www.met.police.uk/ro/report/rti/rti-beta-2.1/report-a-road-traffic-incident/report-a-road-traffic-incident-with-a-possible-offence/?tid=602556&lid=d2e11e3b-96ea-4d1b-9833-1abc49d1251b&cid=&rid=&stepid=1-1-1-2-2-1-1>
- <https://www.met.police.uk/ro/report/rti/rti-beta-2.1/report-a-road-traffic-incident/report-a-road-traffic-incident-with-video-evidence/?tid=602556&lid=ac758014-186a-4e61-ba8b-5ffb2b895b83&cid=&rid=&stepid=1-1-1-2-2-2-2>
- <https://www.met.police.uk/ro/report/rti/rti-beta-2.1/report-a-road-traffic-incident/report-a-road-traffic-offence-with-evidence/?tid=602556&lid=b5f5f628-5602-4667-9960-3bbc5db4236b&cid=&rid=&stepid=1-1-2-1-1>
- <https://www.met.police.uk/advice/advice-and-information/rs/road-safety/>

There are a number of questions and options that direct members of the public to the correct form or guidance, some of which are linked above. The attached forms contain the type of offences that can be reported. Some of the options for non-collision offences refer the user to other processes.

Please see the links below for details of offences reported by the public that the Met Prosecutions team can investigate and serve NIPs along with a related policy.

https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2021/july_2021/alleged-traffic-offences-investigated-served-the-traffic-prosecutions-team

https://www.met.police.uk/SysSiteAssets/foi-media/metropolitan-police/disclosure_2021/july_2021/alleged-traffic-offences-investigated-served-the-traffic-prosecutions-team2

There is an option on the form to upload video or photo evidence (see the end of the 'incident details' webform attached). This is not

mandatory and is covered by the screening questions prior to being directed to the appropriate form”.

Request and response

5. On 20 February 2023, the complainant wrote to the MPS and requested the following information:

“Please provide a list of all alleged offences where a NIP was issued by the allegations team receiving a report with evidence. Please list individually in an Excel file with details (with date, time, location, URN, etc.) and means of disposal. I would like the data for all offences with offence dates in 2022.

Appreciate you may not be able to share the Vehicle Registration Number due to data privacy which is fine.

The data provided here by Norfolk and Suffolk is exactly what I would like to see except with the above date range and in handled [sic] by your force's third party allegations department.

https://www.whatdotheyknow.com/request/central_ticket_office_may_2022”.

6. On 12 April 2023, the MPS responded. It disclosed some of the requested information but withheld the remainder, citing section 40(2) of FOIA.

7. The complainant requested an internal review on 15 April 2023. She said:

“The data supplied has redacted the location field to just London for almost all the rows supplied making the data meaningless. Please provide the accurate data included in your system for the location. Please note there is no car registration or offense [sic] number etc so no personal information would be obtained by having the location details thus the reason given for redaction is not correct with regards to the location field.

The example FOI requests that I had shared links of in my request contained full location data so this is already in the public domain and has indeed been provided by the Met in previous requests ... and I want the same level of location data”.

8. On 17 April 2023 the complainant added:

“I am not happy that location has been redacted to just "London" for most the data for the last 3 months in the year rendering it

meaningless. when the specific street/road has been provided as response to previous request and also for most of the first few months of 2022".

9. The MPS provided an internal review on 22 April 2023, in which it explained:

"As part of my investigation of your complaint, I have contacted Met Prosecutions – Traffic. I have been advised that locations / roads have not been redacted from the information provided to you. To obtain location / road data for your request, data from four databases was interrogated and amalgamated. It has not been possible to obtain the full address in all instances for the dataset you require due to an IT problem which is currently under investigation. Once resolved, we will be able to report by local authority.

Unfortunately, to provide the full locations / roads for each incident now would require the manual review and collation of thousands of records. As you can see from the data provided to you, there were in excess of 12,000 records within the scope of your request. To manually review each record in order to provide more precise location details would far exceed the cost threshold allowed for Freedom of Information Act requests.

You have stated that similar data has been provided by other police services. It should be noted that these police services cover a much smaller area than the MPS, therefore, the numbers of records involved is significantly less than the MPS. Additionally, the databases used by police forces may vary".

10. On 6 June 2023, during the Commissioner's investigation, the MPS revised its approach as the IT issues it had previously experienced were resolved. In doing so it made a further disclosure to the complainant and advised her as follows:

"Further to my previous email, please find attached revised data.

Kindly note that there remains 431 records that still do not have a location. I have been advised that when a new computer system was implemented, the 431 cases were not given locations at the point of the disposal decision being made to NFA (no further action) each case. This incorrect process was identified and addressed by informing all relevant staff of the required procedures for imputing any information on the new system for all cases.

I have been advised that to locate the addresses retrospectively would exceed the FOI time limit. It is estimated that 7 minutes

would be required for each record to be manually reviewed which equates to in excess of 50 hours”.

11. It is noted that, when making this additional disclosure, the MPS revised its approach. Having previously disclosed actual ages of the parties concerned, it revised its position and gave them in age ranges, eg 17-25, 26-40, etc. Furthermore, having previously provided the offence and disposal for each entry, it removed these and instead gave the total numbers of each type of offence and disposal by month. It provided the Commissioner with a confidential submission to support this revision.

Scope of the case

12. The complainant initially contacted the Commissioner on 8 May 2023 to complain about the way her request for information had been handled, ie prior to the further disclosure which was made after the IT problem had been resolved. Her grounds of complaint were as follows:

“The MPS has refused to share model, make and colour of car even though it is provided by other police services for e.g. <https://t.co/gD2FwpzlpC> West Yorkshire police services on this publishes quarterly data in Excel with the details and an example Excel is here <https://t.co/MC2So44YRE>. There is no personal information in this and should not be redacted [sic].

In addition, MPS has changed the location to just "London" for a lot of responses rather than providing accurate data which makes it lose meaning and should not be done.

Other police forces even allow people who submit third party dash cam reports to see the results by the unique reference number or case number for e.g. Essex police here (<https://saferessexroads.org/extra-eyes> /results / bottom of this page) but the met has also redacted the case numbers / unique reference number. There is no personal information in this and should not be redacted”.

13. The Commissioner initially notes that the grounds of complaint refer to the provision of car make / model details. However, this information was not included in either the wording of the request or in the Norfolk / Suffolk disclosures that the complainant said was “**exactly** what I would like to see” (emphasis added). The Commissioner will therefore not consider this point any further.
14. It is also noted in these grounds, that the first two West Yorkshire Police examples provided do not include ages, dates or URNs. Furthermore, in respect of the Essex Police example, it would appear that only the person who has submitted the footage is able to follow up what has happened, ie this is not disclosure under FOIA to the world at large.

Therefore, the Commissioner has not taken these examples into consideration in his investigation.

15. It is further noted that the complainant has not made any reference to the incomplete 431 records referred to above in paragraph 10. Therefore, the Commissioner will not consider this matter.
16. In her original request the complainant refers to URNs being required. However, as stated above, she also states to the MPS that that the disclosure made by Norfolk and Suffolk is "**exactly** what I would like". The disclosure referred to as being an "exact" example for the MPS to follow does not include any URNs. She also did not query the lack of URN when requesting an internal review or in her grounds of complaint. The Commissioner has therefore not considered this point any further.
17. Following the further disclosure, made on 6 June 2023, the Commissioner asked the complainant whether she was now satisfied and, if not, on what grounds. She responded saying:

"I am still not satisfied. They have now included the location data but removed the means of disposal and date and time and summarised the information to make it meaning less [sic].

Previously they were disclosing data time location (which in most cases was stated just as London) and the disposal so eg training course fine etc. now they have included location in a separate table but removed all the other tags that made the information useful.

Other police forces display the location date time car make and car model and how the offence was disposed so the Met seems to be hiding information behind GDPR as there is no personal information that they are hiding".
18. Having considered the disclosed information, and made further enquiries, the Commissioner noted that the complainant had actually been provided with two tables alongside each other rather than one. As a result, the disposals were no longer aligned with each individual entry thereby making the data provided different to what was previously, partially disclosed.
19. The Commissioner queried this as it became apparent that he had also not been provided with a full disclosure of the data for his consideration.
20. On 15 August 2023, the Commissioner was provided with a full disclosure of the data. At the same time he was advised that:

"An additional concern is that 82% of the incidents were reported by a member of the public ... The individual reporting the incident

would reasonably know enough information to be able to link the data to an individual and learn something new”.

21. The information in the scope of this investigation, that the Commissioner considers not to have been disclosed (where known) is:
 - the actual date / time of the offence / alleged offence
 - the exact age of the offender / alleged offender
 - the disposal itemised for each offence / alleged offence
22. This information is withheld on the premise that it is the personal data of the parties concerned.
23. For information, in the spreadsheet which was provided to the Commissioner there are 12,607 records caught within the scope of this request. Of those records, 3,377 have no age recorded and other records have incomplete data.
24. The Commissioner will consider the citing of section 40 to withhold this information, below.

Reasons for decision

Section 40 - Personal information

25. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
26. In this case, the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
27. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

28. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

29. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
30. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
31. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
32. 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.
33. Having been advised at a late stage of his investigation that the majority of the NIPs were issued as a result of reports from the public, the Commissioner considers this has a direct bearing on his views in this case. This is because the offenders / alleged offenders may be known by the member of the public who reported the matter to the MPS and disclosure would mean that they could trace the incident that they reported and ascertain the outcome.
34. The MPS has explained:
- "... the redaction of dates and ages is a data minimisation measure to reduce the likelihood of identification. Typically, a combination of date/time, location and details of the incident(s) are required to identify an individual. It is not possible to know with certainty what information is available to a member of the public or 'motivated intruder' especially when the requested information relates to multiple incidents as it would be unrealistic to research the detail of each individual incident and individual may reasonably have witness an incident and/or have individuals in mind. A precise date significantly increases the likelihood that an individual can be identified or linked to a specific incident. The 'age' and 'disposal' is information that could be 'new' information to a 'motivated intruder' that may be unfair to disclose if it can be linked to a data subject, would significantly reduce the number of potential outcomes that can be linked to a data subject or else constitute criminal offence personal data".

35. The Commissioner will first consider whether the requested information would allow for the identification of any party. A test used by both the Commissioner and the First-tier Tribunal in cases such as this is to assess whether a 'motivated intruder' would be able to recognise an individual if he or she was intent on doing so.
36. The 'motivated intruder' is described as a person who will take all reasonable steps to identify the individual or individuals but begins without any prior knowledge. In essence, the test highlights the potential risks of reidentification of an individual from information which, on the face of it, appears truly anonymised.
37. The ICO's Code of Practice on Anonymisation² notes that:

"The High Court in [R (on the application of the Department of Health) v Information Commissioner [201] EWHC 1430 (Admin)] stated that the risk of identification must be greater than remote and reasonably likely for information to be classed as personal data under the DPA".
38. In summary, the motivated intruder test is that if the risk of identification is "reasonably likely" the information should be regarded as personal data.
39. The Commissioner considers that the data can be split into three categories which he will consider separately. These include NIPS that have been issued:
 - as a result of the general public's actions,
 - formally, as a result of camera or police officer action, or
 - those where no source has been recorded.

NIPs issued as a result of the general public's actions or where the source is unknown

40. In the cases of those offences which result from the general public's actions, which number 8,986, the Commissioner considers that there is a very reasonable chance that, with full disclosure of the date and location, those who reported an alleged offence would be able to recognise the details that they provided to the police. In doing so, they

² <https://ico.org.uk/media/fororganisations/documents/1061/anonymisation-code.pdf>

would be then able to ascertain the outcome and whether or not an offence was deemed to have been committed.

41. Whilst it may not be the case that those reporting are personally familiar with the alleged offender, the Commissioner considers it likely that at least some will know who the alleged offender is. In such cases, reidentification would be more than reasonably likely were all of the information to be disclosed.
42. The Commissioner therefore concludes that full disclosure would result in the disclosure of personal information.
43. The Commissioner notes that the MPS has tried to disclose as much as possible and taken steps to reduce the likelihood of reidentification. It has done so by removing precise dates, disclosing only months, and providing ages in ranges. Furthermore, the disposal information has not been disclosed for each entry, rather it has been provided in categories of disposal and numbers for each, for example, for the offence of "Overtake within pedestrian crossing limits" there are one "Potential Prosecution" and two "Retraining Course Attended and Completed".
44. Members of the public reporting issues may know the identity of the person they are making the report against and may therefore be very keen to know the outcome of the offence. The Commissioner is satisfied that, if the MPS disclosed all of the NIP data requested, where the alleged offence has been reported by a member of the public, it would be **reasonably** likely that this would result in the disclosure of a third party's personal data.
45. Regarding those offences where the source is not recorded, the Commissioner considers, erring on the side of caution, that these also should be considered under this category as they may have also been reported by a member of the public.
46. The first criterion set out above is therefore met.

If held, would the information be criminal offence data?

47. The MPS has also argued that disclosing the remaining information would result in the disclosure of information relating to the criminal convictions and offences of a third party.
48. 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.

49. Clearly the wording of the request relates to an alleged criminal offence. For the MPS to disclose all of the information would therefore result in the disclosure of information relating to criminal convictions and/or offences of identifiable third parties.
50. Criminal offence data is particularly sensitive and therefore warrants special protection. It can only be processed 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.
51. The MPS has explained to the complainant that:

“... disclosure of information related to specific investigations is done on a case by case basis. The MPS will only put information into the public domain relating to police matters when it considers that disclosure will not be prejudicial to investigations or cause harm to the interests of individuals. In this case, the data subjects have not provided their consent to the MPS for disclosure of their personal data and have not already made the information public.

... disclosure of the information you have requested in full, pieced together with other information in the locality of the incidents or already in the public domain could lead to the identification of individuals linked to traffic offences. The MPS has a legal obligation to protect personal information to ensure that the rights afforded to individuals under the Data Protection Act 2018 and the General Data protection Regulations are adhered to”.

52. The Commissioner has considered the MPS’s position and the conditions attached to Schedule 1, Parts 1 to 3. Taking into account the arguments advanced by the MPS and having regard to the restrictive nature of the conditions, he has concluded that none can be met.
53. As none of the conditions required for processing criminal offence data are satisfied there is no legal basis for its disclosure. Processing this criminal offence data would therefore breach principle (a) and so this information is exempt from disclosure under section 40(2) of the FOIA.

NIPs issued as a result of cameras or police actions

54. In circumstances where drivers have been caught committing offences on cameras or by officers, the Commissioner finds that it is not reasonably likely that they will be identifiable by any third party. Whilst there may have been passers-by in the vicinity, the likelihood of

reidentification in such circumstances is not the same as a member of the public witnessing and reporting an incident.

55. Whilst it is technically possible that an individual may be able to identify themselves from the disclosure of the withheld information, because they know what happened, where and when, the Commissioner is satisfied that that person would already know that information. Without further unique identifiers being available, such as a car make and model (which have not been requested), the Commissioner does not agree that any other party could identify the offender / alleged offender with any realistic degree of certainty. Without the likelihood of reidentification being reasonable, he does not accept that this data can be classed as personal information.
56. Consequently, the Commissioner has decided that any withheld information which has been sourced by either a camera or by an officer is not personal data. Therefore, where available, it should be disclosed in full, in line with the Norfolk and Suffolk example provided with the request.

Right of appeal

57. 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

58. 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.

59. 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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