

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 21 September 2021

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Section 51

Under section 51 of the Freedom of Information Act 2000 (the "Act"), which is set out below, the Information Commissioner (the "Commissioner") has the power to serve a notice on a public authority requiring it to furnish her with any information she requires to enforce the requirements of the Act.

51. – (1) If the Commissioner –

(a) has received an application under section 50, ...

she may serve the authority with a notice (in this Act referred to as "an information notice") requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Application under section 50

1. The Commissioner has received an application under section 50, reference IC-80690-N4L9, for a decision whether a request for information made by the complainant to the Metropolitan Police Service (MPS) on 9 November 2020 has been dealt with in accordance with the requirements of Part I of the Act.

Nature of complaint

2. On 9 November 2020, the complainant made the following request for information under the FOIA:

"Was any investigation or enquiry carried out by The Met as result of Dominic Cummings' widely-publicised movements in March, April and May 2020? Please specify if Mr Cummings was spoken to or if any evidence was gathered. I also require details of any subsequent decision by the Met in its assessment of the matter, especially any decision on whether or not to investigate".

3. On 3 December 2020 the MPS responded. It refused to confirm or deny holding the requested information, citing sections 40(5), 30(3) and 31(3) of the FOIA.
4. The MPS provided an internal review on 22 December 2020 in which it maintained its position.
5. On 28 December 2020, the complainant wrote to the Commissioner to complain about the response.
6. On 25 January 2021, the Commissioner wrote to the MPS raising various queries to assist with her investigation. At the time of writing this notice, she has received no acknowledgement or response.

Information required

7. In view of the matters described above the Commissioner hereby gives notice that in the exercise of her powers under section 51 of the Act she requires that the MPS shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information.
8. The MPS is required to respond to the email which the Commissioner sent to it on 11 August 2021 namely:

"Please answer the following questions in relation to the exemptions cited.

Section 30 – investigations and proceedings

You have advised that you are relying on sub-sections 30(1)(a) in respect of the confirmation or denial cited under section 30(3).

Please provide any further public interest arguments which you

would like to rely on which are specifically relevant to this exemption only.

Section 31 – law enforcement

You have advised that you are relying on sub-sections 31(1)(a) and (b) in respect of the confirmation or denial cited under section 31(3).

Please clearly explain why confirmation or denial as to the holding of the requested information would prejudice, or would be likely to prejudice, the function which that particular sub-section is designed to protect.

Please ensure that you provide evidence which demonstrates a clear link between provision of the confirmation or denial and any prejudice which may occur.

Please confirm the level of likelihood being relied on.

Please provide any further public interest arguments which you would like to rely on which are specifically relevant to this exemption only.

Section 40 – personal information

Clearly any information held would relate to Dominic Cummings.

Has the MPS considered whether any of the withheld information, if held, would also constitute criminal offence data or special category data?

Please confirm which of the data protection principles you believe would be breached if the confirmation or denial were provided.

Presuming this would be the first principle, in assessing whether disclosure would be unfair and thus constitute a breach of the first data protection principle the ICO takes into account a number of factors such as:

- Does the information relate to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life)?*
- What reasonable expectations does the individual have about what will happen to their personal data?*
- Has the individual named been asked whether they are willing to consent to the disclosure of their personal data?*

Therefore in explaining why you believe that confirmation or denial would be unfair and/or unlawful please consider the questions set out above.

Has the MPS considered whether any of the conditions in schedule 2 would allow the confirmation or denial to be provided, for example the sixth condition?

I strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate our approach to the exemptions and procedural sections of the FOIA. These can be found on our website.

Having revisited the request, you may decide to apply a new exemption. We will consider new exemptions but it is your responsibility to tell the complainant why the new exemption applies and to provide me now with your full submissions.

For the avoidance of doubt, you should now do the following.

- Consider whether to change your response to the information request, and let us know the outcome.*
- Send us your full and final arguments as to why you think the exemptions apply.*
- Answer all of the questions in this letter”.*

Failure to comply

9. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of appeal

10. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@Justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

11. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed

**Carolyn Howes
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**