

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2014

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant requested information concerning two named companies relating to their expulsion from a defence industry exhibition held in London in September 2013. The Metropolitan Police Service (MPS) refused to confirm or deny whether it held this information under the following exemptions from the FOIA:

30(3) (information held for the purposes of an investigation)

31(3) (prejudice to law enforcement)

40(5) (personal information)
2. The Commissioner's decision is that MPS cited section 30(3) correctly and so it was not obliged to confirm or deny whether it held the requested information.

Request and response

3. On 20 September 2013, the complainant wrote to MPS and requested information in the following terms:

"(i) Were representatives of Tianjin Myway International Trading Co or Magforce International arrested and charged for breaches of the Export Control Order 2008, or any other law, at any time subsequent to their ejection from the DSEI exhibition on Wednesday 11 September 2013?"

(ii) If representatives from Tianjin Myway International Trading Co or Magforce International were arrested, please provide the grounds for their arrest and the date of their arrest.

(iii) If representatives from Tianjin Myway International Trading Co and / or Magforce International were not arrested, please provide any documents setting out why police decided not to arrest.

(iv) Please disclose any information you have relating to a possible offence by Tianjin Myway International Trading Co or Magforce International in relation to promotion of Category A goods at the DSEI exhibition 2013.

(v) Please confirm if police are investigating Tianjin Myway International Trading Co or Magforce International for breaches of the Export Control Order 2008, or breaches of any other law, and if so please provide details.

(vi) Please provide any documentation between HMRC and the Met Police discussing possible offences by / or enforcement action against Tianjin Myway International Trading Co or Magforce International, or any other exhibitor, attendee or stakeholder of the DSEI exhibition.

(vii) Please provide any documents sent by the police to Tianjin Myway International Trading Co or Magforce International (or their representatives or agents) relating to possible offences at the DSEI exhibition 2013."

4. MPS responded on 11 November 2013, outside 20 working days from receipt of the request.
5. The complainant responded on 12 November 2013 and requested an internal review. The MPS responded with the outcome of the internal review on 16 January 2014 and stated that it neither confirmed nor denied whether it held this information under the following exemptions from the FOIA:

30(3) (information held for the purposes of an investigation)

31(3) (prejudice to law enforcement)

40(5) (personal information)

6. On 18 November 2013 the complainant made a further information request to the MPS:

"In relation to the companies 'Tianjin Myway International Trading Co' and 'Magforce International', or individuals working for these companies,

suspected of breaching any law at the Defence Security and Equipment International (DSEI) Exhibition held at the ExCel Centre in London Docklands, on the following dates:

6-12 September 2003

10-16 September 2005

11-14 September 2007

7-10 September 2009

13-17 September 2011

5-12 September 2013

(i) I seek disclosure of the number of separate allegations received and the number of separate police investigations that have been pursued in relation to these allegations.

(ii) I seek disclosure of the number of people proceeded against."

7. The MPS responded to this request on 14 January 2014, again outside 20 working days from receipt. It refused to confirm or deny whether it held this information, in reliance upon the same exemptions as listed above. This refusal to confirm or deny was upheld at internal review.

Scope of the case

8. The complainant's representatives contacted the Commissioner on 23 January and 12 February 2014 to complain about the refusal of the requests listed above and indicated that the complainant did not agree with the reasoning given for the refusal of the requests.

Reasons for decision

Sections 10 and 17

9. Sections 10 and 17 of the FOIA require that a response to an information request must be provided within 20 working days of receipt. In this case the MPS failed to respond to the requests within 20 working days and in so doing breached sections 10 and 17 of the FOIA. The Commissioner comments further on this breach in the 'Other matters' section below.

Section 30(3)

10. Section 30(3) provides an exclusion from the duty to confirm or deny whether information is held in relation to any information, whether or not it is held, that would fall within any of the classes described in sections 30(1) or 30(2). In this case, the MPS has specified that if it did hold information falling within the scope of these requests, this would be within the class described in section 30(1)(a)(i). This subsection covers information that was at any time held for the purposes of an investigation which the public authority had a duty to conduct with a view to it being ascertained whether a person should be charged with an offence.
11. Consideration of section 30(3) is a two-stage process. First, the exemption must be engaged, which it will be where the wording of the request suggests that any information falling within the scope of it would be within any of the classes described in sections 30(1) or 30(2). Secondly, this exemption is qualified by the public interest, which means that the confirmation or denial must be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
12. The first step here is to address whether, if the MPS did hold information falling within the scope of the complainant's requests, this would fall within the class specified in section 30(1)(a)(i). The wording of the requests are specifically for information relating to a police investigation. Given this, the Commissioner considers it clear that any information held by the MPS falling within the scope of the requests would be within the class described in section 30(1)(a)(i); that is it would be held for the purposes of an investigation into whether a person should be charged with an offence. The exemption provided by section 30(3) is, therefore, engaged.
13. The next step is to consider the balance of the public interest. In reaching a conclusion on the balance of the public interest in this case, the Commissioner has considered two key factors. First, he has considered whether disclosure of the confirmation or denial would be likely to harm an investigation being carried out by the MPS, which would be counter to the public interest, and what weight to give to this public interest factor. Secondly, he has considered what public interest there is in confirmation or denial.
14. On the issue of whether disclosure would be likely to harm an investigation, an important consideration is whether and to what extent the information in question is in the public domain. In the situation in this case this means considering whether there is any information in the

public domain that suggests that the MPS did carry out an investigation relating to the circumstances described in the requests.

15. The Commissioner has been unable to locate information in the public domain that relates to any investigation by the MPS relevant to the requests. However, he does note that there was significant coverage shortly before the time of the requests that records that the two companies referred to in the request were ejected from the 2013 Defence Security and Equipment International exhibition, which was held in London. A statement issued by the organisers of this exhibition records that this ejection was carried out due to suspected breaches of the law by those companies¹.
16. The information in the public domain is a relevant factor in this case but should not be determinative. The MPS submitted to the Commissioner that they had not publicly confirmed or denied an investigation. The Commissioner accepts that there is difference between the information on the website referred to above and formal, official confirmation or denial by a police force. However, the Commissioner does accept that it is harder for the MPS to argue that confirmation or denial would have very severe effects when this information is available.
17. The section 30 exemption exists to ensure the effective investigation and prosecution of offences. Given the complexity of the types of allegations the requests relate to the Commissioner accepts that it is likely that either confirmation or denial could be disruptive. The Commissioner also notes that the requests were made in close proximity to the date of the exhibition in September 2013. The Commissioner accepts that MPS had a legitimate requirement for a safe space in which to operate and premature confirmation or denial could hamper their considerations of how to proceed or investigate. Strong weight should therefore be accorded to maintaining the exemption.
18. Turning to whether there is public interest in confirmation or denial in response to the complainant's requests, the allegations made against the companies named in the requests are serious. These concern the promotion of items of defence industry equipment the trade in which is not permitted in the UK. Given the serious nature of these allegations and that they took place within the MPS area, the Commissioner's view is that there is a significant public interest in confirmation or denial, to enable the public to understand what steps, or not, the MPS may have

¹ <http://www.dsei.co.uk/page.cfm/action=Press/libID=1/libEntryID=184/listID=4>

taken in response to these serious allegations. However, the Commissioner finds that there is no evidence to suggest that this factor should be given any greater weight.

19. The scope of the request of 18 November 2013 extends beyond the allegations made in 2013 to cover previous DSEI exhibitions. In relation to any allegations made about the actions of the two companies in question at previous exhibitions, it would be reasonable to assume that these would also relate to the promotion of prohibited defence industry equipment. Therefore, the Commissioner believes that the same public interest in confirmation or denial as described above would apply. Given the interconnected nature of the requests the Commissioner also accepts that confirmation or denial in respect of both these requests could also have a harmful impact on the effective investigation or prosecution of offences.
20. The Commissioner also notes the specific public interest factors related to maintaining the exemption in relation to request (vi) from 20 September 2013. Confirmation or denial in relation to that request would have the effect of indicating that HMRC may be carrying out an investigation of the companies named in the request. The Commissioner is aware of no information in the public domain that suggests that HMRC are involved and also notes that it is not obvious from his understanding of the circumstances that are referred to in the request that HMRC would be involved in this matter. The Commissioner recognises that a confirmation or denial that provides an indication as to whether or not HMRC is carrying out an investigation could be harmful to any such investigation, which would not be in the public interest.
21. Having considered all the circumstances the Commissioner has concluded that the public interest in the maintenance of section 30(3) outweighs the public interest in confirmation or denial in response to all the requests. MPS was not, therefore obliged to confirm or deny whether it held this information. Given this conclusion, it has not been necessary to go on to consider the other exemptions cited by the MPS.

Other matters

22. As well as the finding above that the MPS breached sections 10 and 17 of the FOIA in failing to respond to these requests within 20 working days, the Commissioner has also made a separate record of this breach and this may form evidence in future enforcement action.

Right of appeal

23. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

24. 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.
25. 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

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF