

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 June 2016

Public Authority: Chief Constable of West Midlands Police

Address: Lloyd House
Colmore Circus
Birmingham
B4 6NQ

Decision (including any steps ordered)

1. The complainant requested information relating to the use of Thai speaking interpreters by West Midlands Police (WMP). WMP refused to confirm or deny whether it held this information and cited the exemption provided by section 30(3) (information held for the purposes of an investigation) of the FOIA.
2. The Commissioner's decision is that WMP cited section 30(3) correctly so it was not obliged to confirm or deny whether it held the requested information. The Commissioner also finds that WMP breached the FOIA through failing to respond to the request within 20 working days of receipt.

Request and response

3. On 22 July 2015 the complainant wrote to WMP and requested information in the following terms:

"the number of Thai interpreters working for [WMP] at Solihull and Chelmsley Wood on 06/03/12, 18/04/12 and 02/05/13."
4. After a delay, WMP responded on 8 September 2015. It refused to confirm or deny whether it held the requested information and cited the exemption provided by section 30(3) (information held for the purposes of an investigation) of the FOIA.

5. The complainant responded by letter dated 30 September 2015 and requested an internal review. WMP responded with the outcome of the review on 12 November 2015. The conclusion was that the refusal to confirm or deny under section 30(3) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 21 November 2015 to complain about the refusal of his information request. The complainant indicated that he did not agree with the reasoning given by WMP for the refusal of his request.

Reasons for decision

Section 17

7. Section 17(1) of the FOIA requires a response refusing an information request to be sent within 20 working days of receipt of the request. In this case WMP failed to respond to the request within 20 working days and, in so doing, breached this requirement of section 17(1).

Section 30

8. WMP cited section 30(3), which provides an exemption from the duty to confirm or deny in relation to any information which, if it was held, would be within any of the classes described in sections 30(1) and 30(2). Consideration of section 30(3) involves two stages; first, the exemption must be engaged as any information falling within the scope of the request would be in the relevant class. Secondly, this exemption is qualified by the public interest. This means that if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information must be disclosed.
9. Section 30(1)(a)(i) provides an exemption for information held for the purposes of an investigation with a view to ascertaining whether a person should be charged with an offence. Information held for the purposes of a police investigation will generally be within this class. The Commissioner accepts that any information that was held by WMP that fell within the scope of request (1) would have been held for the purposes of an investigation and so would be within the class described in section 30(1)(a)(i). The exemption provided by section 30(3) of the FOIA was, therefore, engaged.

10. The next step is to consider the balance of the public interests. The question here is whether there is a public interest in disclosure of the confirmation or denial that outweighs the public interest in the preservation of a safe space in which WMP is not obliged to confirm or deny whether it holds the requested information.
11. The Commissioner has proceeded on the basis that WMP would not hold information within the scope of the request that recorded that zero Thai speaking interpreters had been required on the dates and at the locations specified. Confirmation that information was held would, therefore, also act as confirmation that a Thai speaking interpreter had been employed, and denial the opposite.
12. The purpose of section 30 is to preserve the ability of relevant public authorities to carry out effective investigations. Key to the balance of the public interest in a case where this exemption is found to be engaged is whether disclosure of the confirmation or denial could have a harmful impact on the ability of WMP to carry out effective investigations. Clearly it would not be in the public interest to jeopardise the ability of the police to investigate crime effectively.
13. The main concern of WMP appeared to be that disclosure of the confirmation or denial could identify particular individuals. The Commissioner recognises that the information request is for specific, detailed information. Confirmation or denial in response to the request would provide a strong indication of whether or not a Thai speaker, whose English was insufficient to enable communication with the police, had spoken to the police in any capacity on these specific dates. This could be as victim, witness or suspect.
14. The Commissioner therefore accepts that there is some possibility that confirmation in response to the request could be linked to an identified individual, particularly in an area where there was only a small number of Thai speakers, and where that confirmation could be combined with existing knowledge. For example, where another individual suspected that a Thai speaker had witnessed a crime in the geographical areas specified in the request and around those particular dates.
15. The Commissioner is of the view, however, that more significant is the perception that disclosure of the confirmation or denial could create about how likely it is that cooperation with the police will remain confidential. Clearly it is vital that the police are able to give a guarantee of confidentiality to anyone who may be willing to cooperate with them. If the police were unable to give such a guarantee, this would be likely to disrupt the flow of information to them, with consequent serious harm to investigations.

16. Given the detail specified in the wording of the request, the view of the Commissioner is that disclosure of the confirmation or denial could result in disruption to the flow of information to the police. Due to the sensitivities that can apply in relation to the supply of information to the police, the Commissioner accepts that disclosure of the confirmation or denial in this case could give rise to a perception that WMP are not able to guarantee confidentiality to its sources of information. This perception could arise because of, as described in the preceding paragraph, the possibility, albeit quite slim, that a confirmation that information is held could be linked to an individual.
17. As the Commissioner's view is that confirmation or denial in response to the request could jeopardise investigations and proceedings, his view is that there is also a very significant public interest in avoiding that outcome. This is a factor in favour of maintenance of the exemption in this case of considerable weight.
18. Turning to factors in favour of disclosure of the confirmation or denial, the view of the Commissioner is that there is little public interest in the information requested by the complainant. Whilst it may be of personal interest to the requester, he is not aware of any particular public concern about the use of Thai speakers as interpreters by WMP, or any wider public concern about the use of interpreters by the police. In any event, the information request is too specific for any disclosure it results in to be likely to be of significant public interest.
19. There is public interest in maximising the openness and transparency of WMP and disclosure of the confirmation or denial in response to the complainant's request would give some indication of how WMP had utilised its resources in the area of employing interpreters. The Commissioner recognises some limited public interest in disclosure of the confirmation or denial on this basis.
20. Turning to the conclusion, the Commissioner has recognised some public interest in disclosure of the confirmation or denial. However, he has found that there is significant public interest in favour of maintaining the exemption in order to avoid jeopardising the flow of information to the police. As a result, his finding is that the public interest in the maintenance of the exemption outweighs the public interest in the confirmation or denial and so WMP was not obliged to confirm or deny whether it held the information requested by the complainant.

Other matters

21. As well as the finding above that WMP breached section 17(1), a separate record has been made of the delay that occurred in WMP's

handling of the complainant's request. WMP and the ICO have been in communication over issues concerning the ability of WMP to respond to requests within appropriate time scales. WMP has improved its performance in this regard and must continue to do so.

Right of appeal

22. 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>

23. 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.
24. 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

Ben Tomes
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