

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 June 2019

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested a particular file from the Metropolitan Police Service (MPS)
2. The Commissioner's decision is that the MPS has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA. The Commissioner also finds that the Home Office has breached section 10(1) of the FOIA.
3. The Commissioner requires the MPS to take the following step to ensure compliance with the legislation.
 - The MPS must issue a substantive response to the request in accordance with its obligations under the FOIA.
4. The MPS must take this step 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 9 February 2019, the complainant wrote to the MPS and requested information in the following terms:

"May I now request the remaining file, MEPO 2/9843 as suggested below".

6. The MPS acknowledged the request on 21 February 2019. On 7 March 2019, it wrote to the complainant again to confirm that it required additional time to consider the balance of the public interest test in relation to the exemption at section 31 (Law enforcement). It stated that the amended date for a response was 4 April 2019.
7. The complainant contacted the MPS on 4 April 2019 to ask for an update. The MPS replied on the same day, it stated that it anticipated it would not be able to provide a response until sometime in May.

Scope of the case

8. The complainant contacted the Commissioner on 12 April 2019 to complain about the MPS's failure to provide a substantive response to his information request.
9. On 8 May 2019 the Commissioner wrote to the MPS, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
10. Despite the intervention the MPS has failed to respond to the request.
11. The scope of this notice is to determine whether the delay in responding to the request is reasonable in the circumstances.

Reasons for decision

12. Section 1 of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

(b) if that is the case, to have that information communicated to him."

13. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of receipt."
14. Under section 10(3) of the FOIA, where necessary, a public authority may extend the time for compliance "until such time as is reasonable in the circumstances" in order to properly consider the balance of the public interest.
15. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
16. Although the FOIA does not define what constitutes a reasonable time, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
17. In this case, the total time taken by the MPS has exceeded 70 working days and a response to the request remains outstanding. The MPS has not contacted the Commissioner to provide any justification for the delay. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the MPS has not complied with section 17(3).
18. The Commissioner also finds that the MPS breached section 10(1) and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

19. 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@justice.gov.uk

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

20. 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.
21. 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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