

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 November 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 requested information about a database of drill rap gang music videos.
2. The Metropolitan Police Service (MPS) refused to disclose the requested information citing the section 30(1) (investigations and proceedings), section 38(1) (health and safety) and section 40(2) (personal information) FOIA exemptions.
3. The Commissioner's decision is that the MPS was entitled to rely on section 30(1) FOIA to withhold the requested information.
4. The Commissioner also decided that the MPS had breached section 17(1) FOIA as it took longer than 20 working days to inform the complainant which exemptions it was relying on.
5. No steps are required.

Request and response

Background to the request

6. The complainant drew the Commissioner's attention to several press reports about drill rap music. On 15 June 2018 the Independent newspaper reported that drill rap often features lyrics about gang disputes, guns, drugs and stabbings, as well as containing lines personally taunting rivals which detectives warned could escalate gang rivalries. The Independent reported that Metropolitan Police Commissioner Cressida Dick had blamed social media for fuelling a surge in murders in London, singling out drill videos as inflaming gang tensions. In 2015 the MPS established, as an investigative tool, a database of information about drill rap videos known to it and which the MPS has continued to develop.

7. On 8 June 2018 The Independent had reported the outcome of a prosecution which followed a MPS investigation. The report said:

"[members of the 1011, a London gang] face possible jail terms and an unprecedented court order preventing them from making drill, a confrontational genre of rap, after they were found with an array of weapons in November last year. ... they had planned a revenge attack on 12 World, a rival gang from Shepherd's Bush that harassed, abused and threatened [name redacted] grandmother for entering their area, the court heard. Members of 12 World address [name redacted], who raps under the name [name redacted], in a Snapchat video of the incident which was later uploaded onto YouTube.

In the clip, played in court, they tell him: "[name redacted] come get your grandma, she's lacking [without protection] on our strip."
*One gang member adds: "You're lucky I don't rock [punch] her face. [name redacted] come get your f**king nan."*

Police say the five members of 1011 were planning a revenge attack on 12 World when they were arrested in Notting Hill.

They were found with three machetes, a Rambo knife and two baseball bats when officers swooped in on 9 November last year."

The information request

8. On 15 November 2018 the complainant put the following information request to the MPS under FOIA:

"Could you please provide the database of 1400 videos held by the Met as mentioned in this article:

<https://www.independent.co.uk/news/uk/crime/drill-rap-gang-ban-music-videos-met-police-court-order-ladbroke-grove-a8400371.html>

Could you also provide details of the 60 videos the Met have requested that Youtube remove?"

MPS response to the request

9. On 20 March 2019 the MPS refused to provide the requested information citing the section 30(1) (Investigations and proceedings), section 31(1) (Law enforcement), section 38(1) (Health and safety) and section 40(2) (Personal information) FOIA exemptions.
10. On 8 May 2019, following an internal review, the MPS wrote to the complainant maintaining that position.

Scope of the case

11. The complainant contacted the Commissioner on 14 June 2019 to complain about the way his request for information had been handled. He said that the MPS had not responded within the required timescales and had asked for more time. He said that the MPS had given some information about the application of each exemption, and had applied a public interest test to the exemptions in sections 30, 31 and 38. He said that the MPS had not given very specific points in their reply to justify refusing the request, but rather appeared to have relied upon generic statements and assumptions
12. The Commissioner considered the application of the section 30(1), section 31(1), section 38(1) and section 40(2) FOIA exemptions. In her investigation, she had regard for representations received from the complainant and the MPS. She also noted media reports about drill rap videos as background information. In addition, the Commissioner received additional evidence from the MPS, some of it given to her in confidence for the purposes of her investigation only, describing the information being withheld.

Reasons for decision

Section 30 – investigations and proceedings conducted by public authorities

13. Section 30(1) FOIA states:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of –

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained—

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct".

14. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1)(a) of the FOIA if it relates to a specific ongoing, closed or abandoned investigation.
15. Consideration of section 30(1)(a) FOIA is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Is the exemption engaged?

16. The first step is to address whether the requested information falls within the class specified in section 30(1)(a) FOIA. The Commissioner has issued guidance on section 30¹ which states that section 30(1)(a) can only be claimed by public authorities that have a duty to investigate whether someone should be charged with an offence.
17. The Commissioner's guidance describes the circumstances in which the subsections of section 30(1) FOIA might apply. With respect to section 30(1)(a), the guidance says:

"The exemption applies to both investigations leading up to the decision whether to charge someone and investigations that take place after someone has been charged. Any investigation must be, or have been, conducted with a view to ascertaining whether a person should be charged with an offence, or if they have been charged, whether they are

¹ <https://ico.org.uk/media/for-organisations/documents/1205/investigationsandproceedings-foi-section-30.pdf>

guilty of it. It is not necessary that the investigation leads to someone being charged with, or being convicted of, an offence...."

18. As a police force, the MPS has a duty to investigate allegations of criminal offences by virtue of its core function of law enforcement. The Commissioner is therefore satisfied that it has the power to carry out investigations of the type described in section 30(1)(a).
19. The complainant said that the MPS had failed to specify which offences it was investigating and that it was not clear how releasing a list of videos held by the MPS and requested to be taken off YouTube would prejudice its ability to investigate any offences. He argued that given the very large number of videos on the MPS database, it was difficult to see how this information could allow members of the public to identify MPS investigative tactics or specific lines of enquiry.
20. The complainant added that the MPS had argued disclosure "*could reveal operational methodology [which] could have a prejudicial impact on the investigation of crime generally.*" He said that was not the case as a list of videos held by the MPS did not contain strategies or operational data. Just because information could potentially be pieced together in a way which could ultimately affect MPS investigations, did not mean it would be likely to occur. He said that concerns should be more than merely hypothetical to justify refusing an information request.
21. The MPS explained in its representations that it had created a database in September 2015 as part of a policing initiative, Operation Domain; the database had been set up to facilitate action against videos encouraging violence. Officers had been investigating whether drill rap music and videos associated with the genre had led to, or contributed to, any acts of serious violence in London. The database was a spreadsheet, containing 22 columns, and a row for each video. It was used to analyse each of the audio-visual materials the MPS had assessed. As of 23 September 2019, some 2,000 audio-visual files were linked to this database which remained live.
22. The MPS said that it was relying on section 30(1)(a)(i) and (ii) FOIA to withhold the requested information. The database had been used by officers working on Operation Domain. Therefore, the information contained within the database and the videos extracted from various internet platforms were held solely for the purpose of ascertaining whether a person should be charged with an offence, and whether any individuals charged with related offences were guilty of them. The specific items of information related to multiple investigations, at different stages.

23. The MPS said that the format of the database itself was also exempt information, as it would describe to interested parties exactly what type of information the MPS recorded and where MPS intelligence was acquired. Disclosing information obtained as part of a police investigation might reveal to others how current investigations were conducted and were likely to be conducted in the future. That in itself would be likely to prejudice the prevention of serious gang related crime and MPS investigations.
24. The MPS added that disclosure might enable criminals to conceal information and prevent it being identified by the police. Methods used which had historically been tried, tested and proven would need to be changed if criminals knew what they were and how to avoid detection. Publishing information that revealed operational methodology would prejudice the investigation of crime generally.
25. The MPS said that section 30(1) FOIA provided an exemption from the duty to disclose information that a public authority has held at any time for certain investigations or proceedings. As long as the other requirements of the exemption were satisfied, the exemption would continue to protect information even if it was no longer being used for a specified investigation or proceeding. It was only necessary for the information to have been held at some point for those purposes. The exemption applied to information, rather than to documents, so it was possible that information contained in a document created after the conclusion of an investigation or set of proceedings could still attract the exemption.
26. The Commissioner saw that the request was for the database of videos held by the MPS and the details of those which the MPS had discussed with the social media platform operators. The complainant referred to 1400 videos but a recent count by the MPS showed this number to have risen to over 2000; the database was therefore a live tool that was being updated.
27. The complainant argued that disclosure of the database would not reveal strategic or operational methodology but the MPS said, and the Commissioner accepts, that it was being used for investigative and evidential purposes, the gathering of evidence to support prosecutions and to further investigations into serious violence and gang related offending.
28. The complainant also said that releasing a list of videos would not impact on the investigation of crime. However the Commissioner noted that his request had been for "details", not a "list", of the videos referred to social media platform operators. She saw the former as seeking a far more comprehensive disclosure of information than simple

disclosure of a list of video titles and it would be far more revealing of MPS investigative methodologies and priorities.

29. Having carefully considered the evidence before her, the Commissioner is satisfied that the information requested relates to investigations that the MPS has power and a duty to conduct with a view to ascertaining whether a person or persons should be charged with offences and whether any persons charged with offending are guilty of it. She therefore decided that the section 30(1) FOIA exemption was engaged.

Balance of the public interest

30. The section 30(1) FOIA exemption is qualified, and so the Commissioner has considered the public interest balancing test. In reaching a conclusion on the balance of the public interest, the Commissioner has considered the public interest factors affecting the possible disclosure of the requested information. The Commissioner has considered what weight to give to the competing public interest factors.
31. The purpose of section 30 FOIA is to protect the effective investigation of offences and related prosecutions. Clearly, it is not in the public interest to jeopardise the ability of the MPS to investigate crime effectively.
32. Set against this, the Commissioner recognises the importance of the public being able to have confidence in public authorities whose purpose it is to uphold the law. Public confidence is increased by enabling scrutiny of public authority performance which may sometimes involve examining the decisions taken in particular cases.
33. In his submissions, the complainant said that much relevant information was already in the public domain through MPS announcements about the scale of its database, and its seeking Criminal Behaviour Orders to prevent certain songs being performed live. He added that the MPS had been unable to provide a statement of its policy outlining when a video should be referred to a social media platform operator. He said it was therefore crucial for the public to be able to examine the detail of what had been referred for those decisions to be accountable.
34. The complainant added that disclosure could not reveal operational methodology as "the list of videos" held by the MPS did not contain any strategies or operational data.
35. He added that just because the information could potentially be pieced together in a way which could ultimately affect MPS investigations, that did not mean it would be likely to occur. In his view, police concerns should be more than merely hypothetical to justify refusal.

36. The MPS said that publication of the information requested could prejudice other investigations and compromise the safety of the public.
37. The MPS noted the complainant's concern that its actions, and the serving of Criminal Behaviour Orders, infringed freedom of speech. The MPS said however, that the information requested had been obtained as part of a police investigation and disclosing it would be likely to prejudice MPS investigations. Disclosure would reveal exactly where the MPS looked and the information it looked for when assessing such videos, potentially leading those seeking to use videos in this way to find alternative ways to express such views and threats, which would be harder to monitor and prevent. This would impede MPS investigations, which were heavily based on intelligence derived from using tried and tested investigative techniques.
38. The MPS said that its database contained information dating back to September 2015. It contained information relating to a number of investigations, some completed and others ongoing or linked to ongoing investigations. Information relating to completed investigations was needed for intelligence purposes, or because it was relevant to other investigations.
39. The MPS told the Commissioner that Operation Domain remained live. Officers were still assessing videos that appeared on the various social media platforms. The videos, and information contained within them and captured on the database as a summary, formed the basis of MPS investigations. The videos were evidence that a crime had been committed, and formed part of the case for whether someone could be charged with an offence or found guilty of it.
40. The MPS added that the decision to remove video material from a social media platform was for the platform itself, not the MPS. Social media companies were well aware of the need to balance freedom of expression against the risk of increased criminality from content which encouraged and incited violence. That was the balance they made when carrying out their own assessment.
41. The MPS said it worked closely with key channels and some artists to reduce the likelihood of threats being perceived, leading to a clearer understanding of the unique issues a small percentage of content caused. The small percentage of videos that the MPS had referred so far indicated that by no means all video content was considered harmful. Since November 2015, 1,900 pieces of video content had been indexed, all of it of an open source nature. Only 7% (148) of content had been referred to platforms, with 80% (124) of the referrals then being removed.

42. The Commissioner has noted that the information requested was essential to the conduct of investigations that were live at the time of the request and in determining whether or not offences were being committed. She saw a strong public interest in the MPS safeguarding its ability to investigate violence and gang related offending, as well as its operational methodologies, the disclosure of which would, rather than would be likely to, impede investigations.
43. Based on the evidence before her, the Commissioner was satisfied that the MPS had adopted a proportionate approach in establishing and maintaining its database. She has not seen evidence of the MPS limiting legitimate freedom of expression, noting that the MPS had been influential in the removal of only relatively small amounts of content.
44. Having given due consideration to the arguments put forward by both parties, the Commissioner decided that section 30(1)(a) of the FOIA has been applied appropriately in this case and that the public interest in maintaining the exemption outweighed the public interest in disclosure.
45. As the Commissioner has concluded that this exemption is properly engaged in respect of all the withheld information she did not go on to consider the other exemptions cited.

Section 17 – Refusal of a request

46. Section 17(1) provides that if a public authority wishes to refuse a request it must issue a refusal notice within the statutory 20 working day time for compliance, and cite the relevant exemptions.
47. The Commissioner decided that the MPS had breached section 17(1) of the FOIA in taking more than 20 working days to inform the complainant which exemptions it was relying on.
48. The Commissioner will use intelligence gathered from individual cases to inform her insight and compliance function. This will align with the goal in her Openness by Design² strategy to improve standards of accountability, openness and transparency in the digital age. She aims to increase the impact of FOIA enforcement activity through targeting

² <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

systemic non-compliance, in accordance with the approaches set out in her Regulatory Action Policy³.

³ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

49. 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

50. 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.
51. 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

Dr Roy Wernham
Senior Case Officer

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