

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 March 2022

Public Authority: Commissioner of Police of the Metropolis
Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested information about royal protection officers and Prince Andrew from the Metropolitan Police Service (the "MPS"). The MPS denied holding some of the requested information. It also refused to confirm or deny holding any information relating to Prince Andrew, citing sections 24(2) (National security), 31(3) (Law enforcement), 38(2) (Health and safety) and 40(5) (Personal information) of FOIA.
2. During the Commissioner's investigation the MPS revised its position. It aggregated all parts of the request and cited section 12(2) (Cost of compliance exceeds appropriate limit) of FOIA. The Commissioner's decision is that the MPS was entitled to rely on section 12(2) and there was no section 16 (Advice and assistance) breach. No steps are required.

Request and response

3. On 19 August 2021, the complainant wrote to the MPS and requested information in the following terms:

"- Answering yes or no, can you please specify whether any records for royal protection officers under the category 'day to day working history', (outlined in the Met's record management toolkit) and created since January 1, 2001 have been retained AFTER the two-

year official retention period? I.e. Not disposed of after two years.
 (I am not asking for an exhaustive list but simply a yes or no if this has happened on any occasion in this time period, for any type of record under day to day working history).

Complaints investigated internally	Group 4 [Subset 10] - Complaints against Police	work (FAW), Rightline [anonymous reports of wrong doing]	Retain for 6 years after last action
Staff career history	Group 4 [Subset 11] - Management of Resources	For police officers and police staff including: Personnel file, staff recruitment, sickness history and OH recommendations, probationary period reports / PDRs and training records	Retain until subject is 100 years old
Staff Pension records	Group 4 [Subset 11] - Management of Resources	For police officers and staff	Whichever is longer; 5 years from the death of employee, or 5 years for death of nominated beneficiary
Day to Day working history	Group 4 [Subset 11] - Management of Resources	Including annual leave, flexi sheets, application forms, shift rosters, registers, audit logs	Retain for 2 years from the date of creation, or 6 years if part of disciplinary case papers.
Dog and Horse career history	Group 4 [Subset 10] - Management of Resources	Including selection process, training history, deployment history, welfare history	Retain for 6 years from end of animals operational service

- Can you outline, as per the above day to day working history category, what kind of records have been retained after the two-year period? i.e. Is that 'shift rosters', 'registers' or 'audit logs'; etc. Again, not asking for an exhaustive list but, simply using the terms

in the above table, what has been retained under day to day working history.

- If information from 'day to day working history' is retained after two years, under what policy is the decision made to retain these records?

- Answering yes or no, have any records created since January 1, 2001, under day to day working history for royal protection officers protecting Prince Andrew, the Duke of York, been retained after the two year period?

- In relation to the above question, and using the day to day working history category, what kind of records have been retained?

- In response to a question by a former Met Police royal protection officer of 23 years standing, who requested his shift roster which covered the period protecting Prince Andrew, the Duke of York, in March 2011, he received a response in July 2020 from the Met's information rights unit which read: 'I conducted a number of searches. However the Retention and Disposal Policy states that Duty Records and Annual Leave records are only held for 2 years. Therefore, there is no information the Commissioner is required to supply you.'

Does this mean the records are still held and have not been supplied or that they have been disposed of?

- If the records relating to the above question were disposed of, when were they disposed of?"

4. On 9 September 2020, the complainant clarified:

"If that previous question cannot be located, and I believe it was a subject access request by a Met officer, then pls discount it and proceed with the rest of the FOI".

5. On 13 October 2020 the MPS responded. It denied holding some of the requested information. It also refused to confirm or deny holding any information relating to Prince Andrew, citing sections 24(2), 31(3), 38(2) and 40(5) of FOIA.

6. The complainant requested an internal review on 17 February 2021.

7. The MPS provided an internal review on 16 April 2021 in which it maintained its original position.

8. During the Commissioner's investigation the MPS revised its position. It aggregated all parts of the request and cited section 12(2) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 6 May 2021 to complain about the way his request for information had been handled. He said:

"I have been clear that I am asking whether the Met holds any records **at all** for its officers day-to-day shift rotas protecting Prince Andrew since January 1, 2001.

I don't believe it can be argued that the royal family, and Prince Andrew's, use of royal protection officers can be categorised as a secret in of itself".

10. On 16 February 2022, following the MPS's revised position, the Commissioner contacted him again to ask him for his revised grounds of complaint. These were provided as follows:

"I see MPS's position has been modified to say that they do hold archived records that may include the relevant information but can't search for it.

My first question is asking for a yes or no answer on whether they hold any records on day to day working history since 2001? How can they not reply to that or work that out?

Similarly for the second and third questions, these are very general in their nature.

They seem to be obstructing the Freedom of Information request in its totality".

11. The Commissioner will consider the citing of section 12(2) below.
12. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of FOIA. FOIA is concerned with transparency and provides for the disclosure of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.

Reasons for decision

Section 12 – Cost of compliance exceeds appropriate limit

Aggregation of requests

13. Multiple questions within a single item of correspondence are considered to be separate requests for the purpose of section 12 of FOIA. In the present case, this means that there are several requests to be considered. However, where requests relate to the same overarching theme, a public authority may aggregate two or more separate requests in accordance with the conditions laid out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations). Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
14. In the Commissioner's guidance¹ on exceeding the cost limits, he explains that:

"Regulation 5(2) of the Fees Regulations requires that the requests which are aggregated relate "to any extent" to the same or similar information. This is quite a wide test but public authorities should still ensure that the requests meet this requirement.

A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested".
15. The Fees Regulations wording of "relate, to any extent, to the same or similar information" makes clear that the requested information does not need to be closely linked to be aggregated, only that the requests can be linked.
16. The MPS advised:

"The MPS has decided to aggregate all of the questions, by virtue of section 5 of the Fees Regulations. This is because they were

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

received at the same time and relate to a similar overarching theme of the day to day working history for royal protection officers”.

17. The Commissioner is satisfied that there is an overarching theme to the requests. This is because the individual questions all refer to information about royal protection officers and their working practices over a particular time period. Therefore, the MPS was entitled to aggregate the costs of dealing with each question.

Section 12(2)

18. Section 12(2) provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit. In other words, if the cost of establishing whether information of the description specified in the request is held would be excessive, the public authority is not required to do so.
19. The appropriate limit is set at £450 for the MPS by the Fees Regulations.
20. The Fees Regulations also provide that a cost estimate must be calculated at the rate of £25 per hour, giving an effective time limit of 18 hours work, and specify the tasks that can be taken into account when forming a cost estimate as follows:
- determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
21. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. The question for the Commissioner here is whether the cost estimate by the MPS was reasonable. If it was, then section 12(2) was engaged and the MPS was not obliged to confirm or deny whether the requested information was held.
22. The MPS explained to the complainant that:
- “... unfortunately, our initial response had not taken into account any archived records stored remotely and had taken into account only reasonable local searches for the information requested. I apologise for this oversight.
- I have been informed that the archived material held remotely would need to be fully reviewed, to determine whether or not it contains any relevant information in connection with your request.

To provide you with some further context on the amount of data stored remotely, enquiries were made to consider what might be held in storage for the relevant area of business. These records relate to the entire department and could therefore potentially contain thousands of items of information that would need to be manually read to determine whether they contained any pertinent information. All the information held remotely for the entire business area would need to be reviewed, as it would not be known whether or not they contained any information relevant to your request...

To provide you with a reasonable estimation if it took just 3 minutes to read each item of correspondence to determine whether the requested information was or was not held, would equate to 25 hours for every 500 items of correspondence. All items of correspondence would need to be read, as it would not be known whether or not they contained any pertinent information. It is this aspect of your request which will exceed the appropriate threshold to determine if the requested information is or is not held”.

23. In response to further enquiries raised by the Commissioner, the MPS provided the following information. As the most likely holder of any information, it advised that it had contacted its Royalty and Specialist Protection Command (RaSP) in order to progress the complaint. Having done so it explained:

“To provide some further context on the amount of data stored remotely, enquiries were made on the various sources of data showing what might be held in storage for RaSP. It should be pointed out that RaSP was formed following a merger in 2015 of the Royalty Protection Command (SO14) with the Specialist Protection Command (SO1). It was estimated that approximately 426 boxes of data would need to be considered”.

24. It added that the 426 boxes, which are held in remote storage, were slightly bigger than A3 in size and would contain a variety of paper records. From experience, the MPS advised that reading through paper records held in similar sized A3 boxes, which may consist of both hand written and/or typed individual paper records, would take an estimated 3 minutes per item. It added that, whilst a record would have been made when the boxes were submitted for storage, their content was not indexed.
25. The Commissioner enquired further regarding the sort of ‘record’ the MPS was referring to, or whether it held any list which would describe the contents of the boxes. He was advised:

"... from local knowledge a spreadsheet was created ... at the time when SO1 & SO14 merged into RaSP and there was a move from their respective bases. Those boxes that were deposited in storage on this specific move were logged and indexed. Examples of index titles are **Senior Leadership Team, London Operations, Scotland Operations etc.** The important point to highlight here is that this spreadsheet does not accurately reflect what is necessarily in storage (and which facility). It is also unclear how many other documents that SO1 & SO14 had deposited in storage prior to this 2016 move and those that RaSP may have deposited after 2016. OSS [Operational Support Services] have been requested to provide a comprehensive list of what documents RaSP (SO1 & SO14) have in storage, but at this stage they are only able to provide a numerical figure of how many boxes there are".

(The Commissioner understands that the request for a 'comprehensive list' was not made as a result of this request but was something which has already been asked for, but not yet provided.)

26. In an effort to assist with at least part of the request, the Commissioner enquired as to whether or not the MPS knew the age of the oldest piece of information that it holds in the boxes. He was told that this information is not known and would therefore require the boxes to be reviewed. He was further advised that the boxes are not stored chronologically but are held in a racking system.
27. When dealing with a complaint to him under FOIA, it is not the Commissioner's role to make a ruling on what information a public authority should hold, or how it should hold it. He is not concerned with how a public authority deploys its resources, on how it chooses to hold its information, or the strength of its business reasons for holding information in the way that it does as opposed to any other way. Rather, in a case such as this, the Commissioner's role is simply to decide whether or not the requested information can, or cannot, be provided to a requestor within the appropriate cost limit.
28. On that point, the Information Tribunal in the case of Johnson / MoJ (EA2006/0085) has commented that FOIA:

"... does not extend to what information the public authority should be collecting nor how they should be using the technical tools at their disposal, but rather it is concerned with the disclosure of the information they do hold".
29. Having considered the estimate above, the Commissioner considers it to be a reasonable one. He has not verified the retention periods referred to by the complainant in his request, but they indicate that 'day-to-day' working history records will generally be kept for 2 years, but that this

could be up to 6 years. However, the boxes which may contain this information were deposited in storage in 2016 and the age of their content, or subject matter, is not known.

30. The request is very wide-ranging and even were the reading time of 3 minutes overestimated, the sheer number of boxes which could contain relevant information indicates that it would readily exceed 18 hours to try and determine whether or not any relevant information is held.
31. The Commissioner therefore concludes that section 12(2) is engaged and the MPS was not obliged to confirm or deny holding any of this information.

Section 16 – advice and assistance

32. Section 16(1) of FOIA provides that a public authority is required to provide advice and assistance to any individual making an information request. In general, where section 12 is cited, in order to comply with this duty a public authority should advise the requester as to how their request could be refined to bring it within the cost limit, albeit that the Commissioner does recognise that where a request is far in excess of the limit, it may not be practical to provide any useful advice.
33. In this case the MPS advised the complainant that it was unable to suggest how he might refine his request saying:

“This is because even if you narrowed the request to fewer questions, it would still require a member of police staff manually reading through many archived records for the business area to determine whether or not they contained any relevant information”.
34. Although it has been unable to assist with narrowing the request sufficiently to allow disclosure of any information, the Commissioner recognises that, on this occasion, this has not been practicable. The Commissioner therefore finds that it has complied with its section 16 duties.

Other matters

35. Although they do not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Information Notice

36. As the MPS failed to respond to the Commissioner's enquiries in a timely manner it was necessary for him to issue an Information Notice in this

case, formally requiring a response. The Information Notice will be published on the Commissioner's website.

37. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance function. This will align with the goal in his draft Openness by Design strategy² to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in our Regulatory Action Policy³.

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

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

Right of appeal

38. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

39. 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.
40. 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

Carolyn Howes
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