

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 27 July 2011

Public Authority: Metropolitan Police Service
Address: Public Access Office
20th Floor
Empress State Building
PO Box 57192
London
SW6 1SF

Summary

The complainant requested the total cost of the SO14 Royalty Protection unit of the public authority's Protection Command in the financial year 2009/2010. The public authority withheld the information on the basis of sections 24(1) (National Security), 31(1) (a) and (b) (Law Enforcement) and 38(1)(b) (Health and Safety).

The Commissioner found that the information was correctly withheld on the basis of section 24(1) and in all the circumstances of the case the public interest in maintaining the exemption outweighed the public interest in disclosure.

The Commissioner however found the public authority in procedural breach of the Act.

The Commissioner's Role

1. 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 the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 5 September 2010 the complainant wrote to the public authority and phrased his request as follows:

"What is the total cost of the SO14 ('Protection Command') unit of the Metropolitan Police?"

3. On 14 April 2011¹ the complainant agreed with the public authority that his request above was correctly interpreted as a request for:

"The total amount spent by SO14 for the financial year April 2009 – March 2010"
4. On 30 September 2010 the public authority issued a refusal notice on the basis of exemptions at sections 24, 31 and 38 of the Act. It informed the complainant, in accordance with sections 17 (2) and (3) that it needed more time to consider the public interest test.
5. On 27 October 2010 wrote back to the complainant. It explained that the information requested (the disputed information) was being withheld on the basis of the exemptions at sections 24(1), 31(1)(a), and 38(1) (a) and (b) and the public interest in maintaining the exemptions outweighed the public interest in disclosure.
6. On 30 October 2010 the complainant requested a review of the public authority's decision above.
7. On 9 December 2010 the public authority wrote back to the complainant with details of the outcome of the review. It withdrew its reliance on the exemption at section 38(1)(a) but upheld the original decision to rely on the exemptions at sections 24(1), 31(1)(a), 38(1)(b) and additionally relied on the exemption at section 31(1)(b).

The Investigation

Scope of the case

8. On 4 January 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to take into account a number of points. In his own words,

"....it is not credible for the Metropolitan Police to argue that any individual, organisation or the nation as a whole would be put under any risk of harm simply because the total budget of one unit is disclosed. I am merely asking for a total cost - not personnel numbers, locations or any other sensitive data. There is no realistic way any

¹ The circumstances leading up to this are described in the 'chronology section' below.

person looking to cause harm to any individuals could gain a practical advantage over the Police by knowing this total amount, whether it were to be £1m or £100m.

Further to this.....there is already clear precedent for releasing information about Police spending on security. The total cost of security for the House of Commons has already been disclosed as has the cost of individual government departments. Security costs for several high profile events have also been previously disclosed by various Police forces, including the G8 Summit at Gleneagles and rallies held in North London by radical cleric Abu Hamza.

In the case of the House of Commons, this is a location hosting higher profile targets than members of the royal household, including the Prime Minister, so it does seem rather odd for that information to be disclosed but not the total cost of the SO14 unit."

Chronology

9. On 23 March 2011 the Commissioner wrote to the complainant. He reproduced the request of 5 September 2010 in his letter and set out the parameters of his investigation. The Commissioner invited the complainant to respond if he had any concerns regarding the scope of the investigation. The complainant did not respond.
10. On 31 March 2011 the Commissioner wrote to the public authority. He asked to be provided with the disputed information and invited the public authority to make additional submissions to clarify the rationale for the application of the exemptions.
11. On 19 April 2011 the public authority forwarded the Commissioner an email of 14 April 2011 from the complainant in which he confirmed that his request was correctly interpreted by the public authority as the 'total amount spent by the SO14 unit for the financial year April 2009 to March 2010.'
12. On 31 May 2011 the public authority responded to the Commissioner's letter of 31 March 2011. The public authority provided the Commissioner with the disputed information to the nearest whole number and also made further representations on the rationale for applying the exemptions.

Findings of fact

13. The Commissioner understands that SO14 Royalty Protection unit is part of the Protection Command of the Metropolitan Police Service which is funded by a Home Office grant. The Protection Command

consists of 2 other units namely; SO1 Specialist Protection and SO6 Diplomatic Protection Group.

The SO14 Royalty Protection unit is responsible for:

- Personal protection for the Royal Family, both nationally and internationally
- Protecting Royal residences in London, Windsor and Scotland
- Protecting members of the public who visit Royal residences
- Personal protection for members of certain Royal families visiting the UK
- Special Escort Group mobile protection for protected persons, high risk prisoners and high value property
- The Fixated Threat Assessment Centre (FTAC) which is responsible for assessment and intervention in relation to people fixated on protected persons and sites²

Analysis

Exemptions

Section 24(1)

14. By virtue of section 24(1), information is exempt from disclosure if the exemption from the duty to disclose the information is required for the purpose of safeguarding national security. It should be noted that, in order to engage section 24(1), it is the exemption, rather than the 'information' which has to be required for the purpose of safeguarding national security. In the Commissioner's view, the wording in section 24(1) suggests that the focus is on the effect of disclosure rather than the original purpose of the information.
15. Furthermore, in the Commissioner's opinion, the word 'required' in the context of the exemption means 'reasonably necessary' and it is not sufficient that the information sought simply relates to national security. Whilst it is important to demonstrate that there would be a real possibility of harm to national security should the information be disclosed, there is no need to prove that there is in fact a specific,

² <http://www.met.police.uk/so/protection.htm> Last viewed on 7 June 2011

direct or imminent threat to national security. It is sufficient in the Commissioner's opinion that the disclosure is capable of indirectly creating a real possibility of harm to national security.³

16. The Commissioner considers that the term 'national security' includes;
- The security of the United Kingdom and its people, and
 - The protection of the United Kingdom's legal and constitutional systems.
17. The Commissioner finds that the Royal Family is at the heart of the United Kingdom's (UK) legal and constitutional system. Therefore, the role of the SO14 Royalty Protection unit which also extends to the protection of UK citizens directly relates to safeguarding national security.

Effect of disclosure

18. In broad terms, the public authority argued whilst the total amount spent by the SO14 unit in the 2009/2010 financial year may in itself seem insignificant, when it connected with other open source material it could allow quite effective profiling of potential targets and comparison of their respective vulnerabilities, whether by a terrorist, criminal or fixated person.
19. In support of the above argument, the public authority pointed out that gathering publicly available information and analysing it to produce intelligence to compile profiles and identify targets is one of a number of recognised strategies employed by those planning criminal activities, including terrorism.⁴
20. The public authority further pointed out that an 'Al-Qaeda Terrorist Manual'⁵ written as far back as the 1990s and found in possession of an individual convicted in connection with the African US Embassy

³ This is broadly similar to the views expressed by the House of Lords in Secretary of State for the Home Department v Rehman [2001] UKHL47 at paragraph 16

⁴ In support, it directed the Commissioner to a speech by Baroness Pauline Neville-Jones, the former Minister of State for Security and Counter Terrorism at a Wilton Park conference on 31 January 2011. The full text of the speech is available at: <http://www.homeoffice.gov.uk/media-centre/speeches/online-jihad>. It also referred to the United Nations 'Report of the Working Group on Countering the Use of the Internet for Terrorist Purposes': http://www.un.org/terrorism/pdfs/wg6-internet_rev1.pdf

⁵ Available at: <http://www.fas.org/irp/world/para/aqmanual.pdf>

bombings in 1998 identified the internet as a valuable source of information gathering for intelligence purposes.

21. The public authority provided a number of additional examples to further illustrate the importance of publicly available information to the individuals or groups gathering intelligence to commit criminal acts including terrorism.
22. Although the Commissioner has chosen not to reproduce all of the examples in this Notice, they are of no less importance to the argument and he therefore agrees with the public authority that publicly available information both on the internet and elsewhere remains a powerful source of intelligence for those intending to target the security of the UK.
23. In terms of the total expenditure of the SO14 unit, the public authority further argued that official disclosure would allow for comparison with other similar disclosures to draw inferences about the level of protection provided by the SO14 unit as well as the security arrangements for other high profile public figures and buildings. For instance, the official confirmation of the total cost of security for the House of Commons referred to by the complainant illustrates how official confirmation of the total cost of the SO14 unit could be used to compare security expenditure for targets of a similar profile and consequently provide intelligence regarding the vulnerability or otherwise of those targets to attacks. Disclosing the 2009/2010 figure would also allow for comparisons with any future amounts which may be disclosed. Already, an indication of the current number of officers in the SO14 unit could possibly be made from previously disclosed figures.⁶ The public authority therefore submitted that without official confirmation of the cost of security for the SO14 unit, any evaluation would remain speculative and potentially inaccurate.
24. The public authority further argued that any perception of potential vulnerability not only benefits those who may wish to exploit it, it also has a correspondingly negative impact on the confidence of those who are in receipt of protection.
25. The Commissioner has carefully considered the public authority's arguments including the examples it helpfully provided to illustrate how publicly available information is powerful source of intelligence for those wishing to target the security of the UK. In view of the

⁶ The public authority confirmed that as at 1998, the total number of SO14 officers stood at 357 and 450 in 2005. <http://www.nationalarchives.gov.uk/ERORecords/HO/421/2/hmic/mpsso.pdf>; http://www.met.police.uk/job/job950/live_files/4.htm

compelling arguments as to how the disputed information could be used by those who wish to target the security of the UK, the Commissioner accepts that, under those circumstances, the exemption is reasonably necessary in this case to safeguard national security.

26. The Commissioner can understand why the complainant considers the disputed information is itself insignificant in the context of national security. However, it is the potential value of the disputed information in the hands of those who constitute a threat to national security that must be considered. There is no requirement for the public authority to demonstrate that there is a specific and imminent threat from disclosure, it is sufficient that the public authority has been able to demonstrate that, the disputed information in the wrong hands could indirectly create a real possibility of harm to national security.

Public Interest Test

27. The exemption at section 24(1) is qualified. In effect, the Commissioner must also decide whether in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure.

Public interest arguments in favour of disclosing the requested information

28. The public authority acknowledged that disclosure would enhance accountability in relation to the expenditure of the SO14 unit.
29. The public authority further acknowledged that disclosure would enhance the ability of the public to participate more meaningfully in debates about national security issues.

Public interest arguments in favour of maintaining the exemption

30. The public authority however pointed out that there is a strong public interest in not disclosing information that may be used by those who pose a threat to the well-being of individuals and the nation.
31. It argued that disclosure of the disputed information would increase rather than decrease the likelihood of the threats to national security being realised.

Balance of the public interest arguments

32. The Commissioner considers there is always a public interest in ensuring accountability for public expenditure. There is also a significant public interest in ensuring national security is not used inappropriately as a shield to prevent the transparency and

accountability of expenditure in this area. The Commissioner agrees with the public authority that disclosure would enhance the quality of public debate about national security, especially in relation to value for money.

33. Nevertheless, there is also a significant public interest in ensuring that the security of the UK is not put at risk by the disclosure of the disputed information. There is a significant public interest in preventing the disclosure of information which could potentially assist individuals or groups intent on damaging national security.
34. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure. Whilst the disclosure of the headline figure requested would provide relatively limited insight into national security matters, the Commissioner accepts that the effect of disclosure could be to undermine aspects of the public authority's Protection Command and those, including the public, who are served by it.
35. Having reached this conclusion, the Commissioner did not consider the applicability of the exemptions at sections 31(1) (a) and (b), and 38(1)(b).

Procedural Requirements

36. By virtue of section 17(1)(b) of the Act, a public authority is required to issue a refusal notice within 20 working days which specifies the exemptions relied on.
37. The Commissioner finds the public authority in breach of section 17(1)(b) for specifying the sub sections of the exemptions relied on outside the statutory 20 working days on 27 October 2010.

The Decision

38. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - It correctly withheld the disputed information on the basis of the exemption at section 24(1).
39. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - It breached section 17(1)(b).

Steps Required

40. The Commissioner requires no steps to be taken.

Other matters

41. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

42. Part VI of the section 45 Code of Practice (the "section 45 code") makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 20 working days for an internal review to be completed for no justifiable reason.

Right of Appeal

43. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 27th day of July 2011

Signed

**Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides 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."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

National Security

Section 24(1) provides that –

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security."

Section 24(2) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security."

Section 24(3) provides that –

"A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact."

Section 24(4) provides that –

"A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect."