

Ms Stefani Maurizi
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Mr Brian Wilson
Information Rights Unit
Metropolitan Police Service
PO Box 57192
London
SW6 1TR
ICO ref: FS50717400
MPS ref: 2018010001107
30th January 2019

Dear Ms Maurizi,

Following a recent First-Tier Tribunal notice, reference EA/2018/0071 dated 20th November 2018, the Tribunal required the Metropolitan Police Service (MPS) to take the following steps:-

‘To confirm or deny whether it holds any such information within the scope of the request and then, if it holds any such information, either to disclose it or to issue a refusal notice in accordance with section 17 FOIA.’

I note you seek access to the following information:-

“A copy of the correspondence between the US DoJ and the Met Police on Mr Joseph Farrell, Ms Sarah Harrison, Mr Kristinn Hrafnsson from June 2013 to June 2017”.

Information within the scope of your request is held by the MPS. However, this information is fully exempt from disclosure due to the following provisions of the Freedom of Information Act 2000:

- Section 17(1) – Refusal of request
- Section 23(1) – Information supplied by, or relating to, bodies dealing with security matters.
- Section 24(1) – National security
- Section 27(1)(a) – International relations
- Section 31(1)(a) and (b) - Law Enforcement

Please note that although section 23(1) and section 24(1) are mutually exclusive they have been cited ‘in the alternative’. The ICO guidance titled ‘How section 23 and 24 interact’¹ states:

‘Citing the exemptions ‘in the alternative’ means that although only one exemption is actually engaged the other is also cited so as to disguise which exemption in fact applies. This may be necessary in instances where citing one of the exemptions would in itself be harmful.’

¹ https://ico.org.uk/media/1196/how_sections_23_and_24_interact_foi.pdf

This letter serves as a Refusal Notice under Section 17 of the Freedom of Information Act 2000 (the Act).

Citing Section 23(1) and Section 24(1) 'in the alternative' in respect of held information

In the circumstances of this case it is not appropriate to provide any information that would undermine national security or reveal the extent of any possible involvement (or non-involvement) of any security body in connection with the held information.

The MPS is therefore applying Section 23(1) and Section 24(1) '*in the alternative*', which means only one of the two exemptions is actually engaged but it is not appropriate to say which one.

Section 23(1) FOIA states:

'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

Section 24(1) FOIA states:

'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.'

The Information Commissioner's specialist guidance titled 'How sections 23 and 24 interact' state that '*Section 23(1) and 24(1) are mutually exclusive*'. However, the guidance indicates that this:

*'...can present a problem, if a public authority does not want to reveal whether a section 23 body is involved in an issue. If it could only cite section 24(1) in its refusal notice, this would disclose that no section 23 body was involved. Conversely, if only section 23(1) was cited, this would clearly reveal the involvement of a security body. To overcome this problem the Commissioner will allow public authorities to cite both exemptions '**in the alternative**' when necessary. This means that although only one of the two exemptions can actually be engaged, the public authority may refer to both exemptions in its refusal notice.'*

Section 23(1) Information that may concern security bodies

This is an absolute and class based exemption. The MPS is therefore not required to provide a Prejudice Test or Public Interest Test in relation to the use of this exemption.

The use of this exemption '*in the alternative*' does not indicate whether or not any held information relates to any of the security bodies listed within section 23(3) of the Act.

Section 24(1) National Security

Section 24(1) of the Act is a prejudice based and qualified exemption. I am therefore required to provide you with a Prejudice Test and Public Interest Test on the engagement of this exemption.

Harm Test

The Information Commissioner's guidance on the national security exemption² emphasises there is no definition of national security and refers to an Information Tribunal Decision (EA/2006/0045) that noted the following:

- "National security" means the security of the United Kingdom and its people;
- The interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- The protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- Action against a foreign state may be capable indirectly of affecting the security of the UK ; and
- Reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.

The national security exemption is based on the effect that disclosure would have, not on the content or source of the information.

The ICO guidance titled 'Safeguarding national security - (Section 24)' states:

'...In a time of global terrorism our national security can depend on cooperating with others. This can involve protecting allies, cooperating with other countries in the fight against terrorism, as well as building relations with other prospective allies. This means that the exemption can be engaged to prevent a disclosure that would have adverse consequences for one of these partners even if disclosure would not result in a direct or immediate risk of attack on the UK or its citizens.'

Disclosure may undermine reciprocal co-operation between the UK and other states in the future which would not be in the public interest to the extent that this would prejudice the interests of national security.

Public interest factors disclosure

Disclosure would demonstrate transparency and accountability which would enhance public confidence in the police.

Public interest factors non-disclosure

Disclosure of the information requested would be likely to have the potential to provide intelligence and insight on whether individuals are of interest to the police. This in turn would compromise the security of policing information. It should also be recognised that even with the passage of time does not reduce this prejudice. Any disclosure that would prejudice national security would be contrary to the public interest.

² https://ico.org.uk/media/for-organisations/documents/1174/safeguarding_national_security_section_24_foi.pdf

Balance Test

On weighing up the competing interests, I find that the public interest favours withholding the information you have requested. The MPS have a duty to maintain and safeguard national security. This decision is based on the understanding that the public interest is not what would interest the public but what would be of greater good to the community as a whole if the information was disclosed.

Decision Notice FS50526415 The Commissioner was satisfied that if section 23(1) does not apply to some or all of the withheld information, section 24(1) is engaged in the alternative.

https://ico.org.uk/media/action-weve-taken/decision-notices/2014/990652/fs_50526415.pdf

Section 27(1)(a) – International relations – Evidence of harm

The British Government develops and maintains a robust relationship with other nation states which can promote mutual interest in trade, defence, environmental issues, human rights and the fight against terrorism and international crime.

Disclosure in response to your request is likely to be detrimental to the UK's international relations and may result in other countries or international organisations reconsidering their affinity with the UK.

This would adversely affect the UK's international abilities relating to its overseas citizens, consular and commercial interests. It could also influence the sharing of information provided during the course of political and diplomatic exchanges.

The fact that the MPS co-operates with law enforcement organisations overseas is in the public domain. Section 26 of the Police Act 1996³ enables police authorities to provide advice and assistance to an international organisation or institution and/or to law enforcement organisations outside the UK and the UK has a number of treaties with other countries covering mutual or reciprocal assistance.

To the extent that disclosure would risk impairing international relations and/or future cooperation between the UK and foreign countries this would not be in the public interest.

Section 27(1)(a) – International relations – Public Interest Test

Public Interest factors favouring disclosure - Section 27(1)(a)

- **Transparency and accountability** - A statement confirming or denying whether or not information is held (e.g. whether individuals or groups are of interest to the police, or that any investigations have taken place) would enhance the transparency and accountability of the MPS and its operations. Particularly in relation to the:
 - Spending of public money
 - Decisions taken by MPS employeesThis may also enhance public confidence in the police.
- **Public awareness and debate** - A statement confirming or denying whether the requested information is held could:

³ <http://www.legislation.gov.uk/ukpga/1996/16/section/26>
<http://policeauthority.org/metropolitan/downloads/committees/cgc/060922-16-appendix01.pdf>

- Provide an insight into the police service and enable the public to have a better understanding of effectiveness of the police and the use of public resources.
- Assist in raising public awareness around partnership working between overseas police forces or foreign agencies and the MPS.
- Inform and/or enhance the quality and accuracy of public debate (e.g. in relation to international cooperation), which may otherwise be steeped in rumour and speculation.

Public Interest factors favouring non-disclosure - Section 27(1)(a)

- **Prevention and detection of crime** – Disclosure could indicate whether:
 - specific individuals and/or groups are of interest to the police
 - any particular investigation has taken place

This may impair the prevention or detection of crime and harm national security by:

- Compromising the security of policing information e.g. by rendering security measures less effective
- Compromising confidential sources
- Placing individuals (e.g. victims, informants and witnesses) at risk.
- Deterring individuals and/or partner organisations from assisting the police.

Balancing Test - Section 27(1)(a)

Having considered the competing interests, I have determined that the balance of the public interest favours non-disclosure. This is because disclosure may in the circumstances infer information about MPS cooperation with another law enforcement organisation and undermine future cooperation between law enforcement organisations.

This would be likely to prejudice the UK's international relations which would not serve the public interest

Section 31(1)(a) and (b) Law Enforcement

Section 31(1)(a) and (b) of the Act states:

'(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-
(a) the prevention or detection of crime,
(b) the apprehension or prosecution of offenders,'

Section 31 is a qualified and class-based exemption. I am therefore not required to provide a prejudice test or public interest test on the application of this exemption.

Harm Test

A disclosure under the Freedom of Information Act is considered to be a release to the world. Once information has been published, the public authority (e.g. the MPS) has no control over what use is made of that information.

Disclosure may undermine reciprocal co-operation between the UK and other states in the future which would not be in the public interest to the extent that this would

prejudice the current and/or future interests of law enforcement (i.e. the prevention and detection of crime and/or the apprehension and prosecution of offenders).

Public interest factors favouring disclosure

Disclosure would enhance:

- The transparency and openness of the MPS
- Public awareness and debate

Public interest factors favouring non-disclosure

Disclosure may infer whether specific individuals are or have been of interest to police and the nature of that interest. This in turn would compromise the security of policing information which would have an adverse effect upon current and future law enforcement.

Balance Test

Having considered the competing interests, I have determined that the balance of the public interest favours non-disclosure. I base this decision on the understanding that the public interest is not what interests the public, but is what would be of greater good to the community as a whole. It is not in the public interest to disclose details that may compromise the MPS's ability to fulfil its core function of law enforcement.

Should you have any further inquiries concerning this matter, please do not hesitate to contact me at brian.wilson@met.police.uk quoting the reference number above.

Yours sincerely

Mr Brian Wilson
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