

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 March 2011

Public Authority: Commissioner of the Metropolitan Police Service
Address: Public Access Office
20th Floor
Empress State Building
Lillie Road
London
SW6 1TR

Summary

The complainant asked the Metropolitan Police Service (the “public authority”) to provide information relating to a criminal inquiry. The public authority originally refused to disclose this relying on the exemption in section 30 (investigations and proceedings) of the Freedom of Information Act 2000 (the “Act”), and subsequently applied section 12 (cost of compliance exceeds appropriate limit).

The complainant subsequently made a ‘narrowed’ request which is considered in a different Decision Notice (reference FS50322854). However, he wished the Commissioner to consider what he believed to be a lack of advice and assistance provided with his original request.

The Commissioner’s decision is that the public authority did not provide adequate advice and assistance, thereby breaching section 16 of the Act. However, as it subsequently dealt with a narrowed request, on which the Commissioner has made a further decision, he has not ordered any steps to be taken. The public authority’s handling of the request also resulted in breaches of certain procedural requirements of the Act as identified in this Notice. The complaint is upheld.

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 14 April 2010 the complainant made the following information request:

"Pursuant to the Freedom of Information Act, we are writing to request a number of documents and information related to the Glenn Mulcaire / Clive Goodman criminal inquiry that was closed by the Met shortly after both men were sentenced on January 26, 2007:

1. *All reports and/or summaries filed in this matter by the Metropolitan Police to the attorney general, the Crown Prosecution Service and/or the House of Commons Culture, Media and Sport Committee, including but not limited to reports/summaries dated May 30, June 30 and July 14 of 2006 and February 18 2010;*
2. *The minutes of any and all internal meetings, including but not limited to the Management Board sessions, attended by (but not limited to) [names removed] in which the Mulcaire/Goodman matter was discussed, at any time during the criminal investigation or following its closure;*
3. *The number of individuals identified during the Metropolitan Police's technical portion of its inquiry into the alleged phone-hacking of the Royal Household (specifically the number of people identified during the police's inquiry that occurred from January 2006 through August 2006; to be clear, we are not asking for individuals' names but rather the number of full names identified and the number of partial names identified);*
4. *The number of mobile phone numbers identified during the Metropolitan Police's technical portion of its inquiry into the alleged phone-hacking of the Royal Household (specifically all numbers identified during the police's inquiry that occurred from January 2006 through August 2006; to be clear, we are asking for a delineation between the number of full mobile numbers and the number of partial numbers identified);*
5. *The number of individuals whose PIN codes needed for access to mobile phone voicemail, was accessed, as identified during the Metropolitan Police's technical portion of the inquiry into the alleged phone-hacking of the Royal Household (specifically all PIN codes identified during the police's inquiry that occurred from January 2006 through August 2006);*
6. *Any email, memo or phone messages from any current or former members of News Corp., News International, News of the World, The Sun, The Times or The Sunday Times, including any of its*

- reporters, editors or executives, about the Mulcaire/Goodman inquiry or the phone-hacking investigation in general to any current or former member of the Metropolitan Police. In addition, any emails, memos or phone messages referencing any such inquiry from the above listed individuals and entities;*
- 7. Any emails, phone messages or other documents, electronic or otherwise, from current or former employees of the Metropolitan Police to any current or former employee or current or former lawyer representing News Corp., News International, News of the World, The Sun, The Times or The Sunday Times, including any of its reporters, editors or executives (either current or former), about the Mulcaire/Goodman inquiry or the phone-hacking investigation in general. In addition, any emails, memos or phone messages referencing any such inquiry from the above listed individuals and entities;*
 - 8. A copy of the document listing names and mobile phone numbers collected from the raids of Mr. Mulcaire's home and business and Mr. Goodman's office that was given to Mr. Hayman sometime between August 2006 and January 2007. (If you regard the names themselves as exempt, please redact the names but still provide the document itself.);*
 - 9. Any and all documents, electronic or otherwise, that in any way relate to then [name removed]'s reported assertion that "they had found there were something like 6,000 people who were involved" and "You are not having everything, but we will give you enough on Taylor to hang them." (This assertion was part of the evidence given by [name removed] to the House of Commons Culture, Media and Sport Committee.);*
 - 10. Any and all documents, electronic or otherwise, from or to [names removed];*
 - 11. Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between [name removed], currently the chief executive at News International, and [names removed], in the time frame of 2002 to 2004, related to a news editor at the News of the World named [name removed]".*
3. On 12 May 2010 the public authority acknowledged the request and advised the complainant that it needed more time to reply as it was considering the public interest in relation to section 30. It provided an estimated response time of 11 June 2010.
 4. Following a conversation with the complainant, on 16 June 2010 the public authority emailed its response; this email was not received so it was sent again on 18 June 2010. The response provided information in respect of parts 3, 4 and 5 of the request, but it withheld the remaining

information stating that compliance would exceed the appropriate limit. It also referred to its duty to provide advice and assistance, stating:

"... under Section 16 (duty to assist) we are required to provide advice and assistance in order to help you submit a new request so that it might fall within the cost limit. Given the substantial amount of work involved determining whether the information requested is held or not, it is difficult to provide you with ways in which to submit a request on this topic which might be responded to within the cost limit. But should you wish the MPS to conduct searches in specific areas of interest please do get back to us".

5. On 22 June 2010 the complainant responded. He complained that the public authority had, first, failed to explain the factors which had led to the costs limit being exceeded; and, secondly, to provide advice and assistance as to how the request might be reformulated to fall within the costs limit.
6. The complainant also submitted what was referred to as a 'narrowed request', which was almost identical to parts 1, 2, 6, 7 and 11 of his original request, and covered all of the same information. (The Commissioner has dealt with the subsequent complaint about this separately under case reference FS50322854).
7. On 13 July 2010 the public authority sent its response. It included the following:

"I appreciate that the original response letter did not fully explain why or which particular questions would invoke the need to fully refuse the request on cost grounds. I therefore now hope to provide a more detailed explanation as to why the MPS cannot easily retrieve the information you have requested. I will also include ways in which you may assist us to locate information within the 18 hour threshold.

The difficulty of locating/retrieving and extracting information held for particular questions posed within 18 hours, is due to the broad nature of your requests. The MPS remain within their rights to refuse to answer all the questions posed if information for only one of them would take over 18 hours to locate/retrieve or extract. However, I hope this opportunity will assure you that the MPS is working to assist you as much as possible on this request".

8. The public authority went on to explain why it believed the cost limit would be exceeded in respect of parts 1, 2, 6, 7 and 11 of the request.
9. On 15 July 2010 the complainant responded stating:

"We are frankly surprised by the matters on which you seek clarification. Our request was made to you on 14 April 2010 and we did not receive a response until 18 June 2010. We have had subsequent correspondence with you since 25 June 2010 on narrowing the request. The MPS has had ample time to consider the nature of our request and we are surprised that, in accordance with section 16 and your obligation to assist us in refining the request, the concerns raised in your email of 13 July were not raised with us at any one of these earlier opportunities. Further, the nature of our requests are self-evident and we consider your request for clarification as another delaying device".
10. The complainant did go on to clarify the information required in the 'narrowed' request and the subsequent response by the public authority is dealt with in case reference FSFS50322854.

The investigation

Scope of the case

11. On 30 June 2010 the complainant first contacted the Commissioner to complain about the way this request for information had been handled. Following receipt of the internal review the complainant wrote to the Commissioner again on 2 September 2010. He raised issues about this complaint, which are considered here, as well as issues about a 'narrowed' request which are dealt with in a further decision under case reference FS50322854.
12. In respect of this particular complainant, the Commissioner confirmed with the complainant that he would consider the public authority's alleged lack of advice and assistance in respect of the first request made.

Chronology

13. On 17 November 2010 the Commissioner wrote to the complainant to clarify the extent of his complaint. He offered to make a decision on whether the public authority had provided adequate advice and assistance in respect of the first request.

14. On 18 November 2010 the complainant confirmed that he wished the Commissioner to do so.
15. On 22 November 2010 the Commissioner commenced his enquiries with the public authority.
16. On 9 December 2010 the public authority replied. It accepted that its advice and assistance had fallen short of expected levels, since it had failed to indicate how the request could be narrowed, discuss the matter with the applicant, or fully explain which parts of the request raised cost issues.

Analysis

Substantive procedural matters

Section 16 – advice and assistance

17. In its original reliance on section 12 the public authority had a duty to provide advice and assistance to the complainant in its attempt to comply with the request. Under this obligation the public authority should have assisted the complainant to refine the broad scope of his request which could, for example, have resulted in either a shorter time frame or restricted locations for the searches to be undertaken.
18. The Commissioner acknowledges that the public authority has already accepted, as can be seen above, that its failure to provide advice and assistance may have disadvantaged the complainant when he made his original request. Accordingly, the Commissioner will not further consider this issue. He agrees that the public authority breached section 16.

Procedural requirements

Section 17 – refusal of request

19. Section 17(5)(a) of the Act provides that –
“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact”.

20. In exceeding the statutory time limit to inform the complainant of its application of section 12, the Commissioner finds that the public authority breached section 17(5) of the Act.

The Decision

21. The Commissioner finds that the public authority failed to comply with section 16(1) in not providing advice and assistance as to how requests (4) and (5) could be refined in order to bring the cost of these within the appropriate limit, and section 17(5) in its handling of the requests.

Steps required

22. The Commissioner notes that the complainant has already made a second 'narrowed' request. As the other request is being considered by way of a separate investigation, under Decision Notice reference FS50322854, the Commissioner does not require any steps to be taken in this case.

Other matters

23. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern.
24. The complainant made reference to the public authority's lack of offer to charge a fee for the provision of the requested information, as provided for in section 13 of the Act. The Commissioner here notes that although a public authority may offer to charge a fee where it estimates that the cost of compliance will exceed the appropriate limit, it is under no obligation to do so.
25. The Commissioner further notes that, had it charged a fee to undertake the work required in gathering the requested information, this would not necessarily result in an automatic disclosure. Following the collation of the information the public authority would then be able to apply exemptions where it believed they were appropriate. This may therefore have resulted in the requested information being withheld despite the payment of any fee.

Right of Appeal

26. 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 16th day of March 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal annex

Section 1

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 10

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Section 13

Section 13(1) provides that –

"A public authority may charge for the communication of any information whose communication –

- (a) is not required by section 1(1) because the cost of complying with the request for information exceeds the amount which is the appropriate limit for the purposes of section 12(1) and 12(2), and
- (b) is not otherwise required by law,
- (c) such fee as may be determined by the public authority in accordance with regulations made by Secretary of State."

Section 16

Section 16(1) provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

Section 17

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."