

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2015

Public Authority: Commissioner of the City of London Police
Address: Police Headquarters
Guildhall Yard East
London
EC2V 5AE

Decision (including any steps ordered)

1. The complainant has requested information connected to what he has called 'Operation Foreigner'. City of London Police ('COLP') would initially neither confirm nor deny holding information, citing the exemptions at sections 23(5)(information relating to security bodies), 24(2)(national security), 30(3) (investigations and proceedings) and 31(3)(law enforcement). When asking for an internal review the complainant provided further details and COLP thereafter changed its position to neither confirm nor deny holding any information citing section 40(5)(personal data). The Commissioner's decision is that section 40(5) is engaged and no steps are required.

Request and response

2. On 6 July 2015, the complainant wrote to COLP and requested information in the following terms:

"... may I ask you to send me the following information under FOIA 2000:

1. I am aware that over 5 years CIP conducts operation under code name "Foreigner". What is the executive CLP order number, formal

reference, purpose and objectives of this operation, whom does it target and what is the legal base for such operation?

2. Who personally authorized this operation? Full name, rank and position of commanding officer, please.

3. Who personally is in charge of day to day conduct of this operation? Full name, rank, position and ID number, please.

4. How many police officers involved in this operation? Full names, ranks, position and ID numbers, please.

5. Was this operation agreed and authorized by CoL and Common Council? If yes, who personally did authorize it? Full name of the authority, name and position, please.

5. (sic) What other organisations and agencies are involved by police and on what basis? How many housing officers are involved by police into this operation and on what basis?

6. What sort of budget is involved and how this is accounted for?

7. How much money so far was spent on this operation and how it was accounted and by whom?

8. How much time and other resources have been spent so far on this 24 hours operation?

9. Please send me full names, ranks, positions and ID numbers of Barbican, Bishopsgate and Snow Hill police officers, involved into this operation?

10. Please send me copies of any formal reports by CLP officers to their superiors about conduct of this particular operation.

I look forward to earliest acknowledgement, reference number and full information on above 10 points of my inquiry”.

3. COLP responded on 4 August 2015. It advised that it needed more time to consider the public interest.
4. On 24 September 2015 COLP responded. It would neither confirm nor deny holding any information relevant to the request. It cited the exemptions at sections 23(5), 24(2), 30(3) and 31(3).
5. The complainant provided further information when requesting an internal review.

6. Following an internal review COLP wrote to the complainant on 28 October 2015. It revised its position stating that it would neither confirm nor deny holding information by virtue of section 40(5)(a) as such confirmation or denial would disclose the complainant's own personal data.

Scope of the case

7. The complainant initially contacted the Commissioner on 24 October 2015, prior to receiving his internal review. Having received this he wrote to the Commissioner again on 29 October 2015 to complain about the way his request for information had been handled.
8. The complainant has also raised several issues which the Commissioner is unable to address as they fall outside his jurisdiction. These issues are included in 'Other matters' at the end of this notice.

Reasons for decision

9. Under section 1(1)(a) of the FOIA, a public authority is obliged to advise an applicant whether or not it holds the requested information. This is known as the "duty to confirm or deny". However, the duty to confirm or deny does not always apply and authorities may refuse to confirm or deny through reliance on certain exemptions under the FOIA.

Section 40(5) – personal information

10. The exemption at section 40(5) of the FOIA provides that a public authority does not have to confirm or deny whether requested information is held if to do so would constitute a disclosure of personal data.
11. Section 40(5)(a) provides that the duty to confirm or deny does not arise in relation to information that falls, or would fall if it were held, within the scope of section 40(1) of the FOIA. Section 40(1) provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because individuals may request their personal data under a separate legislative access regime, namely the right of subject access under section 7 of the Data Protection Act 1998 (DPA).
12. Section 40(1) is an absolute exemption, meaning that if it applies there is no requirement to go on to consider whether disclosure would nevertheless be in the public interest.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

13. Section 1(1) of the DPA defines personal information as:

*"...data which relate to a living individual who can be identified-
a) from those data, or
b) from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual".*

14. In his guidance on section 40¹ of the FOIA, the Commissioner expanded on what constitutes personal data:

"For data to constitute personal data, it must relate to a living individual, and that individual must be identifiable. In considering whether information requested under FOIA is personal data, the public authority must decide whether the information satisfies both parts of the definition".

15. At first reading the complainant's request appears to be requesting general information about a police operation. As such, COLP decided to initially neither confirm nor deny the existence of this operation, citing various relevant sections of the FOIA. However, when asking for an internal review the complainant gave detailed grounds for disagreeing with COLP's initial response. The Commissioner has not found it necessary to repeat all of these grounds here, however, the following extract is sufficient for his purposes in determining whether or not the request relates to the complainant personally:

"... Operation under code name "Foreigner" has nothing to do with terrorism, threat of terrorism or security of the country, as it falsely claimed, for the simple reason: it is established and authorized by CLP highest authority for simple and criminal reasons to harass and intimidate me as a vendetta for my complaints, namely:

¹ [https://ico.org.uk/media/for-organisations/documents/1206/neither confirm nor deny in relation to personal data and regulation foi eir.pdf](https://ico.org.uk/media/for-organisations/documents/1206/neither_confirm_nor_deny_in_relation_to_personal_data_and_regulation_foi_eir.pdf)

a. To organize and justify continuing harassment and intimidation of me personally with use of toxic and nerve gases against law abiding senior citizen as a vendetta for my rightful complaints, as well as those elderly people who dare to complain, as criminal actions against me do affect my neighbors as well;

b. To provide rationale, basis, operational, organisational, logistical and financial support for continuing over 8 years harassment and intimidation of me as a vendetta for my rightful complaints;

c. To assemble, organize and direct actions of many officers and other people involved, including housing officers, cleaners, gas contractors, social services, medical staff, solicitors, some staff of sports center, etc for this 24 hours illegal operation which intend and effectively execute continuing harassment and and intimidation of me, turn my life into hell and force me to leave my flat and estate under growing pressure of continuing harassment and intimidation”.

16. On the basis of this, and further details provided by the complainant, the Commissioner considers that this is an approach for information which can be linked to a named, living individual, ie the complainant himself. If held, it would therefore be his personal data, and fall within the scope of section 40(1).
17. It follows from this that to comply with section 1(1)(a) of FOIA (that is, to either confirm or deny holding the requested information) would put into the public domain information about the existence or otherwise of a police operation linked to the complainant; this would constitute a disclosure of personal data that would directly relate to the complainant.
18. In considering whether COLP should have applied section 40(5)(a), the Commissioner has taken into account that the FOIA is applicant blind and that any disclosure would be to the world at large. If the information were to be disclosed, it would be available to any member of the public, not just the complainant. Confirmation or denial in the circumstances of this case would reveal to the general public information about the complainant which is not already in the public domain and which is not reasonably accessible to it. The Commissioner therefore considers that the exemption was correctly relied upon by COLP in this case.
19. The Commissioner would remind applicants that any individual wishing to access their own personal data should pursue this right under the DPA; COLP has previously advised the complainant of this right.

Other matters

20. The complainant has also asked the Commissioner to require COLP to undertake the following, saying that if it did so he would withdraw all complaints:

"1. CLP will conduct honest and full investigation of the criminal actions against me by police officers involved and send me full report about investigation and measures undertaken by CLP to exclude such wrong and criminal conduct in future.

2. CLP will stop any further harassment and intimidation of me, including ingress of toxic and nerve gases into my flat by police, fire and housing officers involved with immediate effect.

3. CLP will formally apologize to me for over 8 years of harassment, intimidation, threats, unlawful arrests, detentions, searches of my flat and other illegal actions against me.

4. CLP will pay me damages compensation of £ 285,000 for over 8 years of harassment and intimidation, including ingress of toxic and nerve gases into my flat, unlawful arrests and detentions, damage to my health, especially mental health and, generally speaking, turning my life into hell over 8 years".

21. The Commissioner has no jurisdiction to require COLP to undertake any of these matters. He is only able to consider whether or not COLP has complied with the requirements of the FOIA in this notice.

Right of appeal

22. 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@hmcts.gsi.gov.uk

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

23. 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.
24. 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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