

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 March 2018

**Public Authority:** Commissioner of the Metropolitan Police Service

**Address:** New Scotland Yard  
Broadway  
London  
SW1H 0BG

### Decision (including any steps ordered)

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1. The complainant has requested information about taxi and private hire driver arrests from the Metropolitan Police Service (the "MPS"). In a late response, the MPS advised the complainant that to comply with his request would exceed the appropriate limit at section 12(1) of the FOIA. The Commissioner finds that the MPS was entitled to rely on section 12(1), however, it breached section 10(1) of the FOIA by failing to confirm that it holds the requested information within the statutory time limit. No steps are required.

### Background

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2. The complainant refers to notifiable occupations. Details of the Notifiable Occupations Scheme can be found on the Home Office website<sup>1</sup>.
3. The 3 year time span covered by this request includes dates where there have been changes for recording this type of information. The Notifiable

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<sup>1</sup> <https://www.gov.uk/government/publications/the-notifiable-occupations-scheme-revised-guidance-for-police-forces/for-information-only-0062006-notifiable-occupations-scheme-revised-guidance-for-police-forces>

Occupation Scheme (NOS) was superseded by the Common Law Police Disclosure (CLPD) on 1 April 2015.

## **Request and response**

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4. On 5 September 2017 the complainant wrote to the MPS and requested information in the following terms:

*"Under the notifiable offences could you confirm the total yearly figures that the Police have informed TFL about a private Hire Driver or Taxi Driver being just (1) arrested and (2) arrested and charged in the last three years. If possible could you separate the figures in two i.e Taxi driver and then Private Hire Driver".*

5. On 7 September 2017 this was clarified as follows:

*"I would like the information to be in calendar years and part year for 2017 no need for monthly break down of figures".*

6. Having received no substantive response, the complainant requested an internal review into the handling of his request on 1 November 2017.
7. Following this internal review the MPS wrote to the complainant on 9 November 2017. It apologised for the delay and advised that enquiries had been made with the relevant information manager who had been asked to update him on the progress of his case.
8. The complainant contacted the Commissioner on 21 November 2017 to complain about the lack of response to his information request.
9. The Commissioner wrote to the MPS on 5 December 2017 and asked it to respond to the request within 10 working days.
10. On 2 January 2018, exceeding the further 10 day limit cited, the MPS responded to the complainant. It advised that to comply with his request would exceed the appropriate limit at section 12(1) of the FOIA.

## **Scope of the case**

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11. Having been made aware that a response had been sent, on 3 January 2018 the Commissioner wrote to the complainant and asked for his views regarding the MPS's response. The complainant replied, on the same day, and advised the Commissioner as follows:

*"I am totally confused by the response from the MPS in which they claim to have '3341 custody records created where the detainee*

*had declared their occupation to be either chauffeur, mini cab driver, private hire operator or taxi driver' as the same FOI request was placed to the City of London Police force which was replied to in a timely manor [sic]. Please read the attachment.*

*Also in a recent question to the Mayor of London nearly the same question was posed by an AM which can be found here [questions to Mayor<sup>2</sup>] as you can see if the Mayor can come out with the figures then why can't the Met Police".*

12. The Commissioner responded to the complainant and explained that she was unable to answer his queries without raising further questions with the MPS. She did, however, note that police forces all have different systems in place for recording information and that the Mayor's figures had come from Transport for London ("TfL") rather than the MPS. She suggested that he may wish to raise his queries directly with the MPS and ask for an internal review. Alternatively, in light of the delays he had already experienced, she also offered to proceed straight to decision notice in the absence of a review, although this is not usual practice.
13. The complainant declined to further correspond with the MPS, therefore, the Commissioner raised further queries on 15 January 2018. The MPS provided a full response on 9 February 2018.
14. The Commissioner will consider timeliness and the citing of section 12 below.

## **Reasons for decision**

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### **Section 12 – cost of compliance**

15. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
16. When considering whether section 12(1) applies, the authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are:

*(a) determining whether it holds the information,*

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<sup>2</sup>[http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question\\_297280](http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question_297280)

- (b) locating the information, or a document which may contain the information,*
  - (c) retrieving the information, or a document which may contain the information, and*
  - (d) extracting the information from a document containing it."*
- 17. The Regulations state that the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The cost limit in this case is £450, which is equivalent to 18 hours' work.
- 18. Section 12 of the FOIA makes it clear that a public authority only has to estimate whether the cost of complying would exceed the appropriate limit. It is not required to provide a precise calculation. The task for the Commissioner here is to reach a conclusion as to whether the cost estimate made by the MPS was reasonable; whether it estimated reasonably that the cost of compliance with the request would exceed the limit of £450, that section 12(1) therefore applied and that it was not obliged to comply with the request.
- 19. The MPS initially advised the complainant that there were 3341 custody records where the detainee had stated that their occupation is either chauffeur, mini cab driver, private hire operator or taxi driver.
- 20. In explaining its custody processes the MPS advised:

*"Once someone is arrested, they are taken to a custody suite at a local police station. Before the individual is booked in, the custody officer will ask the person for their occupation which will be recorded on NSPIS [National Police Strategy for Police Information Systems] electronic custody record. The user will record the individuals occupation..."*
- 21. NSPIS is then used to create an electronic custody record which:

*"... should provide an accurate and as far as practicable, contemporaneous record of a person's detention. The custody record is purpose built for recording what happens to a detainee from detention and not built for searching data".*
- 22. The custody record has set criteria which cannot be amended. In this particular instance, information relating to private hire drivers and taxi drivers (as per the wording of the request) will fall under a 'transport' occupation category. Within this category are occupations such as mini cab driver, private hire operator, taxi driver, driver and chauffeur, all of which may be relevant to the request.
- 23. The MPS advised that it had reviewed the request afresh and provided the Commissioner with a table to evidence that, from 1 December 2014

to 30 November 2017, where a detainee had been brought into MPS custody and disclosed their occupation to be mini cab driver, private hire operator, taxi driver, driver or chauffeur, the total figure is 3,372 (this is higher than previously disclosed to the complainant because of the inclusion of 'driver' as a potential category falling within the scope of the request).

24. The Commissioner notes that these occupations do not fit 'neatly' into the two categories of 'taxi driver' and 'private hire driver' as requested by the complainant. She therefore enquired as to whether the MPS had any definitions of what each category means as there was some potential overlap, for example, what would be the difference between 'mini cab driver' and 'taxi driver'? She was advised that a licensing authority such as TfL would see a taxi driver as a Hackney Carriage driver (black cab driver) and a mini cab driver as a private hire vehicle driver, however, there were no additional definitions within the MPS as to what each of these categories means. It advised that, during the booking-in to custody process, some staff may enquire whether a person who states they are a taxi driver is actually a Hackney Carriage driver or a mini cab driver but that this could not be guaranteed.
25. The MPS advised said that to locate the requested information, ie 'taxi driver' and 'private hire driver' only, it would be necessary to manually search and check each record to ascertain whether it fell into either category. It explained:

*"If the detainee informs the [custody] officer of their occupation, for example, as cab driver (when they are actually a mini cab driver) the custody officer would not find a match on the sub-category list therefore one custody officer could interpret a cab driver as a 'driver' another custody officer may show the occupation as 'mini cab driver', 'private hire operator' or 'taxi driver' as the categories overlap and we have no definition to the meaning of each category therefore it would be dependent on the information provided by the detainee and the custody officers interpretation".*

26. The MPS next explained to the Commissioner that any disclosure of a detainee's details to TfL needs to be authorised by an Inspector. The Custody Officer would notify the Inspector if they believed a third party such as TfL may potentially need to be advised about the detainee. The Officer in the Case (OIC) would speak to the Inspector concerning the case and the Inspector would then conduct a 'relevance test' in conjunction with the OIC and make an assessment. This test may be done using an online form or a paper form depending on the Inspector's preferences. Once conducted, if the Inspector thinks that TfL should be notified the OIC will usually take this forward on his / her behalf. The 'relevance test' form will then be passed from the Inspector to the OIC for their records. There is no central recording of 'relevance tests', the

OIC will retain a copy with the relevant case file - this may be paper or electronic.

27. The next step is for the Inspector to update the NSPIS record with their disclosure authorisation. This may be done in a predesignated field on the system which would allow for it to be searchable, but it may also be done in a free text field which is not searchable. The MPS also explained:

*"The Inspector should ensure an 'Actions Log' (named the 'Actions Log' under CLPD and last version of NOS, and named the 'Contact Log' under the earlier version of NOS) is opened & updated with any notification made to a relevant third party, and attempts made to notify. This would be handed over to another Inspector if notification outstanding at end of the tour of duty. As with all forms, this should be retained with the case papers or filed on division as applicable by the OIC. This form may be paper or electronic.*

*... This form is primarily intended to assist with ensuring that the verbal notification is made and that attempts at making contact are recorded".*

28. The OIC then has a list of third party contacts he can access and he / she will either post or email the necessary information to the appropriate contact at TfL. There is no designated mailbox or central point that is used at the MPS for sending notifications through to TfL. The written disclosure should also be supported by a verbal disclosure.
29. Under CLPD, the NSPIS record should be updated (by the OIC, through the Custody Officer) to state a verbal notification has been made. This may be done in a predesignated field on the system which would allow for it to be searchable, but it may also be done in a free text field which is not searchable. However, if the individual has left the custody suite prior to the actual verbal notification having been made, it is unlikely that the custody record would be re-opened just to record these details.
30. In order to satisfy the request, the MPS would need to undertake searches to fully identify what has been recorded in respect of an Inspector's disclosure authorisation. It advised:

*"In order for the check to be made from the record we would have to locate the NSPIS number, locate, open and read the NSPIS record to see if the disclosure has/has not been authorised by an Inspector and then whether there is reference to a disclosure having been made. These should be entered under pre-defined NSPIS entries but unfortunately could also be entered as free text or indeed recorded elsewhere. If nothing were recorded, we would have to take the identity details from NSPIS and search for the record on CRIS (Crime Reporting Information System), identify the*

*relevant record and then read the report. If nothing is recorded on [CRIS], there we would then have to do the same checks on CRIMINT (Criminal Intelligence System). If we still find nothing, the officer in charge of the case would have to be emailed to confirm what action they took. Potentially we would also have to physically trawl through archived hard document material, which would be difficult and time consuming”.*

31. The request also refers to separating figures between ‘arrested’ and /or ‘arrested and charged’ which further complicates the retrieval of the information. The MPS advised that, due to the need to act without undue delay, notification of arrest to a third party such as TfL may occur before a charging decision is known, ie on arrest only. It further explained:

*“Under NOS only, in those cases where the Inspector authorised that a disclosure of the arrest was to be made, notification of the charge should additionally have been made at any stage of the investigation when the charge was made”.*

32. And, under CLPD, it explained:

*“There is no requirement under CLPD for the police to proactively notify follow up information about charge or other case disposal. If the case disposal decision is known at the time of making the verbal notification, it would likely be passed on too”.*

33. The MPS confirmed that a sampling exercise had been undertaken. It advised the Commissioner as follows:

*“A sampling exercise confirmed it would require an absolute minimum of 15 minutes for each custody record to be read and examined and then each CRIS report to be opened, examined and checked whether a note had been made in the details page regarding notification to TFL (the details on CRIS are free-text and can run from one page to in excess of 100 pages. We are unable to word search this system so the record would have to be read). If no updates were on the CRIS report then we would potentially need to check CRIMINT records.*

*For the MPS to review 3,372 records at 15 minutes per record would take a member of staff 843 hours.*

*Even with an extremely generous and unrealistic time of 5 minutes [this] would still equate to 281 hours.  
3,372 x 5 minutes / 60 minutes = 281 hours”.*

### **Commissioner's view**

34. Having considered how the complainant has worded his request and the way that the MPS holds the information requested, the Commissioner finds that the estimates provided are realistic and reasonable. She therefore accepts that to provide the information would exceed the appropriate limit at section 12(1) of the FOIA and the MPS was not therefore required to comply with the request.

### **Section 16 – advice and assistance**

35. Section 16(1) of the FOIA places a duty on a public authority to offer an applicant advice and assistance, so far as it would be reasonable to expect the authority to do so.
36. In its refusal notice the MPS suggested to the complainant that it could provide a monthly breakdown were he to amend the occupation categories to align with its systems. It also suggested that it may be able to obtain the data for a much reduced time period. However, as the complainant chose not to have an internal review because of the delays, he therefore did not take on any of these suggestions
37. The Commissioner further notes that, following the commencement of her investigation, the MPS tried to discuss the case with the complainant in an attempt to find a way forward. It advised her that it had tried to briefly explain the limitations of its systems and suggested he contact TfL as they would be in a better position to provide the information being requested. Unfortunately the complainant did not wish to discuss the matter any further.
38. Having considered the advice and assistance offered, the Commissioner concludes that the MPS complied with its duties under section 16 of the FOIA.

### **Section 10 - time for compliance**

39. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
40. Section 10(1) of the FOIA states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
41. From the information provided to the Commissioner in this case it is evident that the MPS did not deal with the request for information in accordance with the FOIA. In this case the MPS has breached section 10(1) by failing to respond to the request within 20 working days.



## **Other matters**

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42. As well as finding above that the MPS is in breach of the FOIA, the Commissioner has also made a record of the delay in this case. This may form evidence in future enforcement action against the MPS should evidence from other cases suggest that there are systemic issues which are causing delays.

## Right of appeal

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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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

44. 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.
45. 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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