

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 August 2016

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Decision (including any steps ordered)

1. The complainant has requested 10 years details of budgetary costs for providing "Specialist Protection" from the Metropolitan Police Service (the "MPS"). The MPS refused to provide the information citing the exemptions at sections 24(1) (national security), 31(1)(a)(b) (law enforcement) and 38(1)(b) (health and safety) of the FOIA. The Commissioner's decision is that it was entitled to do so. No steps are required.

Background

2. The request can be followed on the "What do they know?" website¹.
3. The MPS details the responsibilities of its Royalty and Specialist Protection ("RaSP") Command on its website². It explains that this command unit was formed in April 2015 and is made up of what were previously known as Royalty Protection Command (SO14) and the Specialist Protection Command (SO1).

¹ https://www.whatdotheyknow.com/request/costs_of_specialist_protection_o

² <http://content.met.police.uk/Site/protectioncommand>

4. RaSP is responsible for:

- Personal protection for the Royal Family, both nationally and internationally.
- Personal protection for the Prime Minister, certain government ministers, certain ambassadors and high profile persons and for visiting Royalty/dignitaries.
- Protection of others where it is in the national interest to do so, where intelligence suggests it is necessary, and for persons who have been identified by the Executive Committee for the Protection of Royalty and Public Figures.
- Protecting Royal residences in London, Windsor and Scotland.
- Protecting members of the public who visit Royal residences.
- Special Escort Group mobile protection for protected persons, high risk prisoners and high value property.
- Fixated Threat Assessment Centre (FTAC) is responsible for assessment and intervention in relation to people fixated on protected persons and sites.

5. The MPS has made reference to a previous decision notice which concerned a similar request; this can be found on the Commissioner's website³. The Commissioner found in favour of the MPS, a position which was maintained on appeal to the First-tier Tribunal⁴.

Request and response

6. On 20 March 2016, the complainant wrote to the MPS and requested information in the following terms

"Can you give me the costs of "Specialist Protection over years 2005 - 2015 per year".

7. The MPS responded on 11 April 2016. It confirmed holding the information but refused to disclose it citing the exemptions at sections 24(1), 31(1)(a) and (b) and 38(1)(b) of the FOIA.

8. Following an internal review the MPS wrote to the complainant on 29 April 2016. It maintained its position.

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2011/632816/fs_50368290.pdf

⁴ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i685/20120224%20Decision%20corrected%2013032012%20EA20110186.pdf>

Scope of the case

9. The complainant contacted the Commissioner on 26 May 2016. As he did not include any grounds of complaint the Commissioner asked for these. On 2 June 2016 he responded saying:

*“the freedom of information request was for costs over ten years of MP's special security
NO TIME TABLES , NO NAMES , NO ADDRESSES JUST COSTS
I was dismissed with no good reason
COMPARING COSTS FROM YEAR TO YEAR
Ive not saved the emails because I thought complaining was a waste of my time and probably still is
WHY SHOULD THE POLICE BUDGET FOR PUBLIC POLICING GO DOWN, WHEN THE BUDGET FOR SPECIAL SECURITY GOES UP!!!!!!!!!!!!!!!!!!!!!!”*

10. 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 FOIA. The FOIA is to do with transparency of information held by public authorities. It gives an individual the right to access recorded information (other than their own personal data) held by public authorities. The FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
11. The Commissioner will consider the application of exemptions below.

Reasons for decision

Section 24 – national security

12. Section 24(1) of the FOIA states that:

“Information which does not fall within section 23(1) [information supplied by, or relating to, bodies dealing with security matters] is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

13. In broad terms, section 24(1) allows a public authority not to disclose information if it considers that the release of the information would make the United Kingdom or its citizens vulnerable to a national security threat.

14. The term "national security" is not specifically defined by UK or European law. However, in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as:
- "national security" means the security of the United Kingdom and its people;
 - the interests of national security are not limited to actions by the 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 cooperation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
15. The exemption provided by section 24 applies in circumstances where withholding the requested information is "*required for the purpose of safeguarding national security*".
16. "*Required*" is defined by the Oxford English Dictionary as "*to need something for a purpose*". This could suggest that the exemption can only be applied if it is absolutely necessary to do so to protect national security. However, the Commissioner's interpretation is informed by the approach taken in the European Court of Human Rights, where the interference of human rights can be justified where it is 'necessary' in a democratic society for safeguarding national security. 'Necessary' in this context is taken to mean something less than absolutely essential but more than simply being useful or desirable. The Commissioner therefore interprets 'required' as meaning 'reasonably necessary'.
17. It is not necessary to show that disclosing the withheld information would lead to a direct threat to the United Kingdom. The Commissioner's approach is set out by the House of Lords in *Secretary of State for the Home Department v Rehman* (as referred to above). Lord Slynn found that:
- "To require the matters in question to be capable or resulting 'directly' in a threat to national security limits too tightly the discretion of the executive in deciding how the interests of the state, including not merely military defence but democracy, the*

legal and constitutional systems of the state need to be protected. I accept that there must be a real possibility of an adverse effect on the United Kingdom for what is done by the individual under inquiry but I do not accept that it has to be direct or immediate."

18. The Commissioner therefore considers that safeguarding national security also includes protecting potential targets even if there is no evidence that an attack is imminent. Such matters would include the revealing of monies spent within the special protection unit on safeguarding individuals who are identified as being at risk as individuals as well as the associated threats to the general public in their vicinity. Disclosing the amount of money spent in undertaking such duties, either in isolation or as a pattern of spending over a specific timeframe, could indicate any possible vulnerabilities.

19. In engaging this exemption the MPS explained:

"In this current environment, where there is a possibility of increased threat of terrorist or extremist activity, providing any details that could assist any terrorist or extremist faction would undermine the safeguarding of national security".

20. In her enquiries the Commissioner asked the MPS whether it had to provide this level of financial information to any other party, e.g the Home Office, and, if so, whether it was published anywhere. In response she was advised:

"The MPS do provide financial information to the Home Office however the Home Office do not publish the information. We have an agreement not to publish this level of detail for national security reasons ..."

21. When asking for an internal review the complainant commented:

"... the reason for me asking is the increase in MPs protection budget verses decrease in public police budget. I can have my local police station closed and yet others get protection increased."

22. On the basis that the complainant believes that protection costs will be increasing despite expenditure cuts, the Commissioner therefore asked the MPS whether it had considered disclosing the percentage increase for each year (if this is the case) rather than the figures themselves. In response the MPS advised:

"Any published increase or decrease in any area of Protection would give an indication of the level of resources, threats and risks for that area and over time individuals could potentially identify less

protected areas, for example a percentage reduction could indicate we no longer protect something or someone leaving it vulnerable”.

23. Along with its submission to the Commissioner the MPS also explained that it would be extremely difficult to provide any sort of comparative percentages because the structure of the command covering Specialist Protection has changed considerably during the last 10 years.
24. The Commissioner notes the similarity between this request and the previous decision referred to in paragraph 5, above. The earlier case concerned a request for the total amount spent by SO14 for the financial year April 2009 – March 2010; this request covers that information.
25. The Commissioner has viewed the information which is held by the MPS. Taking into account her previous findings on this subject matter, as upheld by the First-tier Tribunal, she is satisfied that this exemption is appropriately engaged on the basis that it is reasonably necessary for the purposes of national security.
26. Section 24(1) is a qualified exemption. In order for the MPS to rely on this exemption the public interest favouring maintenance of the exemption must outweigh the public interest in disclosure of the requested information.

Public interest arguments in favour of disclosure

27. The MPS recognised that disclosing the requested information could encourage more informed debate about national security issues.
28. It also recognised the public interest regarding openness, transparency and accountability in relation to expenditure of public funds within Specialist Protection.

Public interest arguments in favour of maintaining the exemption

29. The MPS advised that disclosure would facilitate further comparisons and calculations that may enable a group or individuals to ascertain or infer the relative strength and resources allocated to Specialist Protection dealing with issues of national security.
30. It explained that individuals and groups with criminal intent are known to conduct reconnaissance, study past patterns and collect any available information using open sources. It drew attention to the fact that individuals with criminal intent are known to data mine open sources of information meaning that disclosure of the information requested would present a risk of harm to the law enforcement and national security functions of Specialist Operations.

31. It also added that:

“Any published increase or decrease in any area of Protection would give an indication of the level of resources, threats and risks for that area and over time groups or individuals could potentially identify less protected areas for example a reduction could mean we no longer protect someone or something which would provide intelligence regarding the vulnerability of those targets which could open them to attack.

At first glance the disclosure of the figures may not appear of much relevance or concern however the potential value of the information in the hands of those who constitute a threat to national security is what needs to be considered as the information could indirectly create a real possibility of harm to national security.

The MPS would wish to point out that at the time of the complainant's request March 2016 the terrorist threat level to the United Kingdom, as set by the security services (MI5), was 'Severe' meaning that the Home Office consider that an “attack is highly likely” and remains as 'Severe', thereby potentially magnifying the extent of any prejudice following disclosure of information in respect of security, real or perceived.

Specialist Protection extends to the protection of UK citizens. The command includes the Counter Terrorism Command, Security Commands and Protections Commands which directly relate to safeguarding national security”.

Balance of the public interest

32. In cases where the Commissioner considers that section 24(1) is engaged, there will always be a compelling argument in maintaining the exemption as the preservation of national security is clearly in the public interest. For the public interest to favour disclosure there must be specific and clearly decisive factors in favour of that disclosure. Without such evidence the Commissioner is compelled to recognise the public interest inherent in the exemption and afford this appropriate weight.

33. The MPS has summed up its public interest arguments as follows:

“The strongest interest favouring disclosure is the consideration of transparency and accountability in respect of expenditure in Specialist Protection. The strongest reason favouring non-disclosure is the need to ensure disclosure of costs relating to Specialist Protection are not disclosed under the Act which could open areas

to vulnerability and be used as intelligence to undermine the ability of the MPS to protect national security, particularly if mosaic requests are made over a period of time.

The MPS believes that it is not in the public interest to disclose information that may compromise our ability to fulfil our core function of law enforcement especially when providing information in relation to costs since they may reveal the relative vulnerability of what we are trying to protect.

Any disclosure that would prejudice or undermine national security would be contrary to public interest”.

34. The Commissioner has taken into account the public interest in the accountability and transparency of the practices of the MPS and also recognises the public interest in learning more about the costs of providing Specialist Protection. This would ensure that the general public could see how much funding was being apportioned to this type of work and allow the MPS to justify its level of expenditure. The Commissioner is always sympathetic to such arguments which genuinely promote the accountability and transparency of public authorities in respect of their work and the decisions they make. In this case however these arguments cannot be reconciled with the necessary weight which must be given to maintaining the national security of the United Kingdom.
35. It is the Commissioner's view that the information held by the MPS could clearly be open to misuse and be potentially damaging to the UK's national security. The figures themselves could indicate the amount of personnel involved in undertaking these specialist duties and, because they fluctuate, the figures may further correlate to certain calendar events. Disclosure could therefore allow those with ill intentions to second-guess the amount of money and therefore level of security associated with protecting key figures and also any additional funding required for specific key events, for example, the period covering the Olympics or the royal wedding.
36. When the public interest in transparency is weighed against that in the preservation of national security, the view of the Commissioner is that it is clearly the case that the balance of the public interest favours maintaining the section 24(1) exemption.
37. Given that the Commissioner is satisfied that the MPS can rely on section 24(1) as a basis for withholding the information sought she has not gone on to consider the other exemptions relied on.

Right of appeal

38. 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

39. 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.
40. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF