

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2018

Public Authority: Commissioner of the Metropolitan Police Service

Address: New Scotland Yard
Broadway
London
SW1H 0BG

Complainant: Rosie Brighthouse obo Privacy International

Address: rosieb@libertyhumanrights.org.uk

Decision (including any steps ordered)

1. The complainant has requested information about the purchase and use of Covert Communications Data Capture ("CCDC") from the Metropolitan Police Service (the "MPS"). The MPS would neither confirm nor deny ("NCND") whether it holds the requested information, citing the exemptions at sections 23(5) (information supplied by, or relating to, bodies dealing with security matters), 24(2) (national security) and 31(3) (law enforcement) of the FOIA for the request in its entirety.
2. In respect of parts (1) and (3) of the request the Commissioner's decision is that sections 23(5) and 24(2) were cited correctly so the MPS was not obliged to confirm or deny whether the requested information is held; this is also her position in respect of some of part (4) of the request.
3. For part (2) of the request and the 'legislation' and 'codes of practice' elements of part (4) of the request, the Commissioner's decision is that the exemptions were applied incorrectly. The MPS is required to confirm or deny whether this information is held and either disclose it or issue a fresh response compliant with section 17 of the FOIA.
4. The MPS must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

5. The Commissioner is considering 9 related cases from this complainant in respect of similar information requests being made to different public authorities. They are dealt with under reference numbers FS50728051 to FS50728059 inclusive.
6. As the different authorities dealt with their requests within different time frames the Commissioner agreed to deal with the substantive complaint about all the requests outside of her usual 3 month deadline for accepting complaints. This agreement was made in advance, in May 2017, when some refusal notices / internal reviews were outstanding for some of the public authorities concerned.

Request and response

7. On 1 November 2016 the complainant wrote to the MPS and requested information in the following terms:

"I am writing on behalf of [name removed] to seek records ... relating to the purchase and use of mobile phone surveillance equipment by the Metropolitan Police.

I refer, in particular, to the recent article written by the journalist collective The Bristol Cable "Revealed: Bristol's police and mass mobile phone surveillance". The article makes reference to the purchase of equipment from the company CellXion by the Metropolitan Police under the item "CCDC" for the cost of £1,037,223.00. The article links to the original document disclosing the purchase, which can be found on the Metropolitan Police website [no link found]. The article also explains that the acronym "CCDC equipment" appears to refer to "covert communications data capture" as spelled out in the minutes of an Alliance Governance Group meeting in May 2016 between Warwickshire and West Mercia Police.

I also refer to the 10 October 2016 article published by the Guardian "Controversial snooping technology 'used by at least seven police forces'". That article reported that "surveillance technology that indiscriminately harvests information from mobile phones", also "known as an IMSI catcher" is being "used by at least seven police forces across the country...according to police

documents." One of the forces understood to be using this technology is the Metropolitan Police.

[Name removed] requests the following records:

1. Purchase orders, invoices, contracts, loan agreements, solicitation letters, correspondence with companies and other similar records regarding the Metropolitan Police's acquisition of CCDC equipment. Please include records of all purchase orders, invoices, contracts, agreements, and communications with CellXion.

2. Marketing or promotional materials received by the Metropolitan Police relating to CCDC equipment.

3. All requests by CellXion or any other corporation, or any government agency, to the Metropolitan Police to keep confidential any aspect of Metropolitan Police's possession and use of CCDC equipment, including any non-disclosure agreements between Metropolitan Police and CellXion or any other corporation, or government agency, regarding the Metropolitan Police's possession and use of CCDC equipment.

4. Legislation, codes of practice, policy statements, guides, manuals, memoranda, presentations, training materials or other records governing the possession and use of CCDC equipment by the Metropolitan Police, including restrictions on when, where, how, and against whom it may be used, limitations on retention and use of collected data, guidance on when a warrant or other legal process must be obtained, and rules governing when the existence and use of CCDC equipment may be revealed to the public, criminal defendants, or judges.

[Name removed] seeks records regardless of how CCDC equipment is identified. In this respect, [name removed] notes that CCDC equipment can be referred to using a range of other terms, including "IMSI Catchers", "IMSI Grabbers", "Cell site simulators" and "Stingrays".

Please include copies of material that you hold either in the form of paper or electronic records, including emails. If possible, please provide all requested records in electronic format.

Upon locating the requested records, please contact us and advise us of any costs of providing copies, so that we may decide whether it is necessary to narrow our request".

8. On 29 November 2016, the MPS responded. It would NCND holding the requested information, citing the exemptions at sections 23(5), 24(2), 30(3) and 31(3) of the FOIA.
9. On 24 January 2017 the complainant requested an internal review. This was provided by the MPS on 13 June 2017. It maintained its position.
10. During the Commissioner's investigation, the MPS removed reliance on section 30(3).

Scope of the case

11. The complainant initially contacted the Commissioner on 17 May 2017. She advised of her intention to file a number of related complaints against different public authorities and requested a pause in the time limit for bringing such complaints.
12. Having received the necessary responses from all of the various public authorities, with the exception of two internal reviews, the complainant wrote to the Commissioner again on 12 February 2018 with her grounds of complaint in this case. She asked the Commissioner to consider the application of the exemptions cited.
13. The request in this case is similar to the requests for information which the Commissioner has considered under references FS50728052 to FS50728056 and FS50728059. The decision notice in this case is being issued at the same time as those cases, with this case taking the 'lead'.

Reasons for decision

14. The MPS has provided most of its reasoning and evidence 'in confidence' to the Commissioner and she is unable to cite or comment directly about it in this decision notice. It has been taken into account in her deliberations.
15. She also notes that although the request itself is based on information that seems to have been in the public domain, that source information is no longer available. Whilst such information may possibly have been available at the time of the request, it is not there now and cannot be verified. Therefore, were it ever available, it has since been removed.
16. The Commissioner has been advised that no formal statements have been made by the MPS on this subject matter.
17. In its refusal notice the MPS explained its NCND position as follows:

"By confirming or denying that the MPS hold any information regarding these techniques would in itself disclose exempt information. Stating information is held would confirm usage and the opposite if there is no such information.

Although the techniques are in the public domain, it is how and when they might be used, that are the sensitive issues for the police service. These techniques could be deployed for more high profile sensitive operations, albeit not necessarily in the MPS force area, therefore the NCND is required to protect other forces that may use them.

Any disclosure under FOIA is a disclosure to the world at large, and confirming or denying the use of specialist techniques which may or may not exist, and which (should they exist) the MPS may or may not deploy in specific circumstances would prejudice law enforcement. If the requested information was held by the MPS, confirmation of this fact would reveal that the MPS have access to sophisticated communications analysis techniques. This would be damaging as it would (i) limit operational capabilities as criminals/terrorists would gain a greater understanding of the MPS's methods and techniques, enabling them to take steps to counter them; and (ii) provide an indication to any individual who may be undertaking criminal/terrorist activities that the MPS may be aware of their presence and taking counter terrorist measures.

Conversely, if information was not held by the MPS, and a denial was issued, this would reveal to those same individuals that their activities are unlikely to have been detected by the MPS. It may also suggest (whether correctly or not) the limitations of the MPS'S capabilities in this area, which may further encourage criminal/terrorist activity by exposing a potential vulnerability. Disclosure of the information could confirm to those involved in criminality or terrorism that they are or have been the subject of such activity, allowing them to gauge the frequency of its use and to take measures to circumvent its use. Any compromise of, or reduction in technical capability by the MPS would substantially prejudice the ability of the MPS to police their area which would lead to a greater risk to the public.

This detrimental effect is increased if the request is made to several different law enforcement bodies. In addition to the local criminal fraternity now being better informed, those intent on organised crime throughout the UK will be able to 'map' where the use of certain tactics are or are not deployed. This can be useful information to those committing crimes of drugs and terrorist activities.

For example, to state that no information is held in one area and then exempt information held in another, would itself provide acknowledgement that the technique has been used at that second location. This could have the likelihood of identifying location-specific operations, enabling individuals to become aware of whether their activities have been detected. This in turn could lead to them moving their operations, destroying evidence, or avoiding those areas, ultimately compromising police tactics, operations and future prosecutions.

Any information identifying the focus of policing activity could be used to the advantage of terrorists or criminal organisations. Information that undermines the operational integrity of these activities will adversely affect public safety and have a negative impact on both national security and law enforcement”.

18. Whilst the Commissioner understands the rationale behind these arguments, and the others provided to her 'in confidence', she notes that the exemptions cited have all been done so in respect of all parts of the request in its entirety. The approach has therefore been to apply them in a 'blanket fashion' without, it would appear, any consideration of a more detailed breakdown of the different elements of the request.
19. Depending on the wording of a request, such an approach may be appropriate under some circumstances. However, the Commissioner considers that the request here is wide ranging and the exemptions appear to have been cited without full consideration as to where each applies.
20. Part (2) of the request seeks details regarding any marketing or promotional materials relating to CCDC equipment which the MPS may have received. The Commissioner does not accept that any of the exemptions cited could properly apply to such material. It is likely that the MPS receives many approaches from suppliers trying to promote their products if they feel they may be of benefit to the police service. Confirmation or denial as to the receipt of such material does not reveal whether or not the MPS actually purchased any equipment.
21. Some of part (4) of the request refers to legislation and codes of practice which would cover the use of CCDC. During her investigation the Commissioner invited the MPS to revise its NCND position regarding these elements of the request, however, it declined to do so saying it wished to maintain its position. It is clear to the Commissioner that

legislation either does or doesn't exist and, if it does, it clearly cannot be exempt under FOIA as it would be statute which should be publically available; this would be the same for codes of practice. Furthermore, in her decision notice FS50660527¹ the Commissioner has already referred to a response on Hansard² which indicates the legislation that would support the use of IMSI equipment as follows:

"Investigative activity involving interference with property or wireless telegraphy, such as International Mobile Subscriber Identity (IMSI) grabbers, is regulated by the Police Act 1997 and the Intelligence Services Act 1994 which sets out the high level of authorisation required before the police or Security and intelligence agencies can undertake such activity. Use of these powers is overseen by the Intelligence Services Commissioner and the Office of Surveillance Commissioners. In any case involving the interception of the content of a communication, a warrant authorised by the Secretary of State under the Regulation of Investigatory Powers Act 2000 is required".

22. IMSI equipment would fall under the categorisation of CCDC and there is therefore clearly information in the public domain which evidences that its use is permitted by relevant legislation.
23. For these two elements of the request the Commissioner finds that none of the exemptions cited are appropriate and the MPS must confirm or deny whether any information is held. If information is held, it should either be disclosed or the MPS should issue a fresh response compliant with section 17 of the FOIA.
24. The Commissioner will next consider the application of sections 23 and 24 to the remaining parts of the request.

Section 23 – information supplied by, or relating to, bodies dealing with security matters

Section 24 – national security

25. The MPS explained that it was relying on sections 23(5) and 24(2) of FOIA as a basis to refuse to confirm or deny whether it holds any information falling within the scope of the request.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014349/fs50660527.pdf>

² <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2014-11-03/HL2602>

26. Sections 23(5) and 24(2) exclude the duty of a public authority to confirm or deny whether it holds information which, if held, would be exempt under section 23(1) or 24(1) respectively.
27. Information relating to security bodies specified in section 23(3) is exempt information by virtue of section 23(1). Information which does not fall under section 23(1) is exempt from disclosure under section 24(1), if it is required for the purpose of safeguarding national security.
28. By virtue of section 23(5) the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3). It is an absolute exemption requiring no public interest considerations. Put simply, if this exemption is engaged then this is sufficient then the MPS does not have to confirm or deny whether it holds the requested information.
29. By virtue of section 24(2) the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.
30. The Commissioner does not consider the exemptions at sections 23(5) and 24(2) to be mutually exclusive and she accepts that they can be relied on independently or jointly in order to conceal whether or not one or more of the security bodies has been involved in an issue which might impact on national security. However, each exemption must be applied independently on its own merits. In addition, the section 24 exemption is qualified and is therefore subject to the public interest test.
31. The test as to whether a disclosure would relate to a security body is decided on the normal standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
32. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. This is consistent with the scheme of FOIA because the security bodies themselves are not subject to its provisions. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
33. In disputing the citing of this exemption the complainant has argued as follows. Firstly, she notes that the request includes legislation, policy guidance and other information governing the use of CCDC by the MPS

which she does not consider to be information falling within the area of work of the bodies specified in section 23(3) FOIA. She says:

"As a threshold matter, these records, which relate to the legal basis for a public authority's powers and activities and the rules governing those powers and activities, cannot be subject to NCND under any exemption. The principle of legality and the presumption of disclosure in FOIA must be properly considered and weighed against the position taken by the MPS".

34. The Commissioner has already accepted above that the MPS cannot rely on an exemption in respect of legislation or codes of practice.
35. Secondly, the complainant argues that the request seeks the use of CCDC by 'police forces' only and she therefore does not accept, just because it may be used by the bodies specified in section 23(3), that this gives sufficient grounds for section 23(5) to be engaged. She adds:

"There are many techniques – ranging from the simple to the sophisticated – that both the police forces and the section 23(3) bodies may deploy. For that reason, the reliance on the argument that both the Police Act 1997 and the Intelligence Services Act 1994 cover a technique is meaningless.

For example, both pieces of legislation authorise the power to interfere with property, which may include entry onto a property. A logical extension of this argument would engage section 23(5) for any technique covered by both statutes.

Similarly, reliance on the argument that there is a close relationship between the police forces and security bodies is dangerously vague. Indeed, a logical extension of that argument would engage section 23(5) for any technique deployed by the police forces. The MPS have made no attempt to indicate the circumstances in which police forces use IMSI Catchers, which could include ordinary law enforcement activities such as tracking a suspect for a variety of offences, and how those circumstances in any way relate to the section 23 bodies".

36. The Commissioner has already determined above that the MPS cannot rely on any exemption currently cited in respect of legislation and codes of practice. However, regarding the holding of policy and guidance, the Commissioner notes that any confirmation or denial as to the existence of this by the MPS would clearly indicate whether or not CCDC equipment was being used. This is essentially the case because it would not exist unless there was a business requirement for it to have been created.

37. The Commissioner agrees with the complainant in that there will be many policing techniques that are available for both the police service and the security bodies to use, however, she does not agree that relying on the Police Act 1997 and the Intelligence Services Act 1994 to cover a technique is meaningless. As mentioned in paragraph 21 above, the Commissioner has previously issued a decision notice about the purchase or rental of IMSI catchers in respect of a different public authority, this being the type of equipment which would fall under the description of CCDC. In that case, she noted that any use of IMSI technology would be regulated by the Police Act 1997 and the Intelligence Services Act 1994. Also in that case, she accepted that it is likely that, if the information described in that request did exist, this would be a field of work which is likely to have been done in conjunction with, and with the knowledge of, other parties within the policing field, and also that this type of work is likely to include security bodies.
38. The equipment being considered here is **covert** surveillance equipment and, put simply, the Commissioner is trying to establish the likelihood as to whether or not the use of such equipment could 'relate to' any of the security bodies; this is all she is required to do. As it is covert equipment, the Commissioner considers it is considerably more likely to 'relate' to security bodies and, if it is used, it could realistically be deployed in joint operations between the police service and security bodies. Furthermore, the conditions for any actual deployment of such equipment may therefore relate to practices developed by security bodies, eg terrorism operations.
39. Although not accepted by the complainant, in the Commissioner's view the close relationship between the police service and the security bodies is not "*dangerously vague*" and there will clearly be an overlap in some of the work that is undertaken by these bodies. Although the complainant may believe that this means the police will always be able to cite section 23 and forego disclosure the Commissioner has no evidence to support this rationale. Where normal policing activity is under consideration a force will generally cite either section 30 (criminal investigations) or section 31 (law enforcement) to 'protect' any information it does not wish to disclose; there is no evidence to support the complainant's belief that it will default to citing section 23. The request here concerns a covert surveillance technique which the Commissioner considers to be a subject matter which could readily touch on the type of work she would expect to relate to the security bodies rather than the police service in isolation.
40. In the Tribunal case *The Commissioner of Police of the Metropolis vs Information Commissioner* (EA/2010/0008) the argument was advanced that it was *highly likely* that any information held by the public authority that fell within the scope of the request would have been supplied to it by a section 23(3) body and, therefore, section 23(5) was engaged. The

counterargument was made that only certainty as to the source of the information would be sufficient. The Tribunal rejected this counterargument and stated:

"[The evidence provided] *clearly establishes the **probability** that the requested information, if held, came through a section 23 body.*" (paragraph 20)

41. The approach of the Commissioner on this point is that she accepts the Tribunal view that the balance of probabilities is the correct test to apply. This means that for section 23(5) to be engaged, the evidence must suggest to a sufficient degree of likelihood (rather than certainty) that any information falling within the scope of the request would relate to, or have been supplied by, a body specified in section 23(3).
42. The test as to whether a disclosure would relate to a security body is decided on the normal standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
43. The Commissioner finds that on the balance of probabilities, information about this subject matter, ie the use of covert equipment, if held, could be related to one or more bodies identified in section 23(3). She therefore concludes that the exemption is engaged. As this is an absolute exemption no consideration of any public interest is necessary.
44. With regard to section 24(2), the Commissioner again considers that this exemption should be interpreted so that it is only necessary for a public authority to show either a confirmation or a denial of whether requested information is held would be likely to harm national security.
45. In relation to the application of section 24(2) the Commissioner notes that the First Tier Tribunal (Information Rights) has indicated that only a consistent use of a NCND response on matters of national security can secure its proper purpose. Therefore, in considering whether the exemption is engaged, and the balance of the public interest, regard has to be given to the need to adopt a consistent NCND position and not simply to the consequences of confirming whether the specific requested information in this case is held or not.
46. In the context of section 24, Commissioner accepts that withholding information in order to ensure the protection of national security can extend to ensuring that matters which are of interest to the security bodies are not revealed. Moreover, it is not simply the consequences of revealing whether such information is held in respect of a particular request that is relevant to the assessment as to whether the application of the exemption is required for the purposes of safeguarding national

security, but the need to maintain a consistent approach to the application of section 24(2).

47. The complainant has argued that:

"... police forces could use IMSI Catchers in a wide range of operations, including for ordinary law enforcement activities, that bear no relation to the bodies specified in section 23(3). The MPS have made no attempt to indicate the circumstances in which police forces use IMSI Catchers and how those circumstances relate in any way to the section 23 bodies. It has therefore failed to demonstrate the engagement of either the section 23(5) or 24(2) exemption".

48. As explained above, and in the wording of the request itself, IMSI equipment would fall under the category of 'covert' equipment. The Commissioner has also already determined above that section 23 is engaged so the potential involvement of a security body has already been satisfied. Furthermore, the MPS has not confirmed whether or not this equipment is being used so the circumstances for any such use is not at this stage relevant. The case being considered here is whether or not the MPS is entitled to maintain an NCND stance rather than to disclose any information which may, or may not, be held

49. The complainant has further argued that:

"The MPS also base arguments around national security on skeletal assertions that national security would be impacted by (1) at a general level, confirming or denying the use of "specialist techniques" and (2) at a specific level, indicating that a technique is used one area but not in another area. Both arguments are baseless. As to the first argument, the MPS do not define a "specialist technique" and why IMSI Catchers constitute a specialist technique. Furthermore, it does not follow that merely confirming or denying that a police force uses IMSI Catchers reveals operationally sensitive information that would negatively impact national security. In fact, the government has willingly admitted and subjected to either public regulation or FOIA requests the use of a variety of what might also be considered "specialist techniques" – from hacking to the use of equipment to physically extract mobile phone data. There is therefore no reason that information governing the use of IMSI Catchers by police forces should be afforded special protection. As to the second argument, it does not follow that determining which police forces use this equipment could permit individuals to map or be aware of how operationally sensitive information is obtained, thereby negatively impacting national security. Different police forces will obtain information in many different ways".

50. The government may have previously released details regarding the legislation of some specific 'specialist techniques' and this position may be less clear in respect of CCDC equipment. Such clarification may indeed be helpful but it is the role of government to legislate not the MPS. If the MPS does have its own guidance then revealing this would indicate that it does use CCDC equipment, which would go against the NCND stance it has adopted here. Also, if the use of such equipment were not fully legislated for, then this will be determined by the courts at some future date if evidence is gathered using this methodology.
51. Furthermore, the Commissioner does not accept that the provision of a confirmation or denial regarding the use of CCDC equipment would have no impact on the police service. For example, if it were the case that only a small number of forces had access to this type of equipment then it follows that those who do not are obviously more vulnerable to the types of crimes that could be subject to this type of surveillance if it were in use; this may in turn present a potential 'green light' to some criminals or terrorists to undertake certain types of crimes in particular force areas. Were it the case that no forces had access to this equipment then confirming this would again show vulnerability and criminals would be more knowledgeable as to what means of communication were the least likely to be intercepted. Were it the case that all forces had access to the same CCDC equipment then any vulnerability argument may be weakened, but the Commissioner does not know if this is the case and it is not a point which is under consideration in this investigation.
52. On this occasion the Commissioner is satisfied that complying with the requirements of section 1(1)(a) would be likely to reveal whether or not the security bodies were in any way involved in the subject matter which is the focus of this requests. The need for a public authority to adopt a position on a consistent basis is of vital importance in considering the application of an NCND exemption.
53. The Commissioner is satisfied that the public authority was entitled to rely on sections 23(5) and 24(2) in the circumstances of this case. She accepts that revealing whether or not information is held about CCDC would be likely to reveal whether information is held relating to the role of the security bodies. It would also undermine national security and for that reason section 24(2) also applies because neither confirming nor denying if additional information is held is required for the purpose of safeguarding national security.
54. As noted above section 24 is a qualified exemption. The complainant has argued that the public interest falls in favour of disclosure based on the following :

"(a) No meaningful reasons have been provided as to why there is a public interest in neither confirming nor denying the information sought in this request;

(b) There is currently no evidence at all to suggest that the public interest will be harmed to any material extent by disclosure of the information sought;

(c) The public interest in disclosure is real, it is important that the public are reassured that the measures used to safeguard national security are necessary and proportionate as well as effective. Access to the information would allow for a fact-based public debate on surveillance measures. This has been hindered by the decision of the MPS to NCND the information in question.

(d) The applicant plays an important watchdog role and has requested the information as part of this function. Given the public interest nature of the issue on which [name removed] seeks to obtain information, its activities as a public watchdog warrant a high level of protection, and its role as a watchdog should be taken into account when evaluating the public interest in this matter.

(e) The fact that IMSI Catchers have been purchased by UK police forces is already in the public domain. The MPS have specifically been named in this regard".

55. The Commissioner would initially note that this decision concerns the upholding, or otherwise, of the duty to confirm or deny whether any information is held and not the actual disclosure of any information which may be held. Therefore, the argument presented at part (c) is not relevant – albeit it is noted that on one hand the complainant argues that the information should be disclosed as it is in the public interest for the public to be reassured regarding *"measures used to safeguard national security"* whereas, on the other hand, she argues that the exemption regarding national security is not engaged.
56. In respect of parts (a) and (b) of the complainant's rationale, the Commissioner has addressed these points in her arguments above. She would also again like to stress that the confidential submissions provided by the MPS cannot be cited because of their nature, but they have still been taken into account.
57. The FOIA is applicant blind so the role of the requester is not relevant, thereby removing any reliance on the argument at (d).
58. In respect of the argument at (e), the Commissioner notes that the complainant has drawn attention to information in the public domain regarding the apparent purchase of IMSI equipment. However, as stated above, the Commissioner is advised that no such formal statements have been made by the MPS on this subject matter.

59. The Commissioner further notes that that the current national security level of risk, which is set by the government, sits at 'severe'³.
60. The Commissioner considers it to be clearly the case that the public interest in confirming or denying whether information is held does not match the weight of the public interest in safeguarding national security by maintaining a consistent NCND stance. This means that her conclusion is that the public interest in the maintenance of the exemption provided by section 24(2) outweighs the public interest in complying with the duty imposed by section 1(1)(a).
61. In view of this finding the Commissioner has not therefore considered the other exemption cited.

Other matters

62. Although it does not form part of this notice the Commissioner wishes to highlight the following matters of concern.

Internal review

63. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
64. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
65. Although she notes that there are sensitivities around this case because of the subject matter and the exemptions relied on, she is nevertheless

³ <https://www.gov.uk/terrorism-national-emergency>

concerned that it took almost five months for an internal review to be completed.

66. The Commissioner would like to remind MPS that she routinely monitors the performance of public authorities and their compliance with the legislation. Records of procedural breaches are retained to assist the Commissioner with this process and further remedial work may be required in the future should any patterns of non-compliance emerge.

Right of appeal

67. 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

68. 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.
69. 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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