

Witness: Sara Cheesley  
Statement No: 2  
Exhibits Referred to: SC/1 SC/2  
Date Statement Made: 19 March 2012

**The Leveson Inquiry into the Culture Practices and Ethics of the Press**

**Witness:** Sara Cheesley  
**Occupation:** Senior Information Officer  
**Address:** c/o New Scotland Yard

1. I write this supplemental witness statement further to my statement dated 14 February 2012 and to my appearance before the Leveson Inquiry on 13 March 2012.
2. Whilst giving evidence to the Inquiry on 13th March 2012, I was asked by Lord Leveson and Counsel to the Inquiry, Mr Jay, about whether entertaining was a necessary part of my job. It wasn't clear to me at the time, and it isn't clear to me now on reading the transcript, whether the questions related to the "necessity" for the purposes of my job of my being entertained, or the relevant Assistant Commissioner Specialist Operations (ACSO) being entertained. I answered the questions to the best of my ability at the time, but now wish to clarify my answer in order to assist the Inquiry.

3. In my view, the entertaining of neither me nor the ACSO post holder is necessary to enable me to fulfill my role as Senior Information Officer on the Specialist Operations Press Desk at the Metropolitan Police.
  
4. In August 2010 the New York Times submitted a set of questions to the MPS as part of a press inquiry and the newspaper was subsequently given a statement. Additional press lines were also prepared. I attach to this witness statement a copy of the press statement that was given to the New York Times, together with copies of the additional press lines relating to the New York Times article, as exhibit SC/1.
  
5. The press statement and additional press lines were available to all media as is normal policy.
  
6. I am also aware that a number of months earlier the New York Times made FOIA requests to the MPS relating to phone hacking. I attach the FOIA requests and the MPS responses, as exhibit SC/2.

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**I believe the facts stated in this witness statement are true**

Signed.  .....

Dated. 19 MARCH 2012 .....

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**The Leveson Inquiry into the Culture Practices and Ethics of the Press**

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This is the exhibit marked 'SC/1' referred to in the statement of Sara Cheesley, dated this 19th March 2012.

**Questions submitted to the MPS by the New York Times on Monday, 22 August 2010.**

Based on our examination of police records, court documents and interviews with a half-dozen current and former Scotland Yard officials, we will be reporting that the Met Police failed to follow-up on clear leads suggesting phone-hacking activities by journalists and private investigators working at News of the World was more widespread than revealed by the criminal inquiry and the prosecution of Mr. Mulcaire and Mr. Goodman.

Among the computerized and written files seized from Mr. Mulcaire's home by police in August 2006 were several thousand mobile phone numbers and/or names of potential hacking victims, 91 mobile phone PIN Codes and 31 audiotapes made by Mr. Mulcaire. However, Scotland Yard decided to pursue evidence related only to the criminal activities of Mr. Mulcaire and Mr. Goodman, which led to their convictions and imprisonment, and declined to pursue other evidence of criminality by others.

We will be reporting that current and former investigators told us in interviews that their superiors at Scotland Yard were reluctant to conduct a wider inquiry of the phone-hacking operation at News of the World in part because of Scotland Yard's close relationship with that newspaper and its parent company, News International. We will also be reporting that two former senior officials at the Crown Prosecution Service said that when police officials presented evidence to prosecutors, key incriminating details were left out. Among them were clues that other reporters at News of the World were hacking the voicemails of story targets, such as a "For Neville" email that included transcripts of illegally accessed mobile phone messages. At News of the World, there is only one Neville – Neville Thurlbeck, the newspaper's chief correspondent – but he was not interviewed by police officials. In fact, no News of the World editors or reporters were interviewed by Scotland Yard investigators. We will also be reporting that Scotland Yard had seized an audio recording of Mr. Mulcaire teaching one man, nicknamed "Riles," how to hack mobile telephones. But there is no evidence that your investigators had identified the reporter nicknamed "Riles" or had interviewed him.

1. Why?

John Whittingdale, the chairman of the parliamentary select committee that twice investigated the phone-hacking and took testimony from several police officials, told us, "There was simply no enthusiasm among Scotland Yard to go beyond the cases involving Mulcaire and Goodman. To start exposing widespread tawdry practices in that newsroom was a heavy stone that they didn't want to try to lift."

2. Is this a fair assessment?

We will also report that Scotland Yard, in 2006, chose to notify only a handful of the hundreds, or perhaps thousands, of people whose messages may have been illegally accessed by Mr. Mulcaire, Mr. Goodman or other journalists at News of the World.

3. Why was this decision made?

The result of these police decisions, we will tell our readers, is that the criminal inquiry's narrow focus allowed News of the World and its parent company, News International, to continue to assert that the hacking of people was limited to one lone "rogue reporter," Mr. Goodman, and its private investigator on contract, Mr. Mulcaire.

4. What is your response to these findings?

5. Do you agree with the assertions of current and former police officials that the inquiry was limited in part because of the Met Police's close working relationship with News of the World and News International?

6. And what is your reaction to the view of two former Crown Prosecution Service officials that key incriminating evidence was not shared with them when the CPS signed off on Scotland Yard's decision to keep the inquiry limited to Mr. Mulcaire and Mr. Goodman?

We will also be reporting new details about the Met Police's handling of the inquiry from the moment it was first reported by senior aides at Clarence House to the decision of your colleagues, on Aug. 8, 2006, to execute search warrants at News International headquarters in Wapping and the homes of Mr. Goodman and Mr. Mulcaire. When police arrived at News International headquarters, we will report that your detectives received a push-back from executives and lawyers for the paper over how much of the newsroom they could search, former police officials told us. Detectives limited their search to Mr. Goodman's desk, though News International officials would later describe your search warrant as a "raid" of its headquarters. A current senior Metropolitan Police official told us, "We only had authority to do that desk. We were nervous about doing any extra search."

That same day, detectives found "a massive amount of evidence" at Mr. Mulcaire's modest home in Cheam, a southwestern London suburb. This evidence included dozens of notebooks and two computers containing the thousands of names and mobile phone numbers and the 91 PIN codes.

When Scotland Yard detectives began combing through the evidence collected from Mr. Mulcaire's home, they discovered at least three other names of News of the World journalists who might have violated the law by accessing mobile phone messages.

7. Why were none of those journalists, or their editors, investigated or questioned?

Several of the former officials explained that one factor in the limiting of the inquiry was the extraordinarily busy workload facing investigators in the Met's counterterrorism branch, which conducted the inquiry. "We were distracted, obviously," a former senior Scotland Yard investigator told us.

8. Why was the inquiry not assigned to the Major Crimes unit, which we were told might have had the time and resources to investigate the allegations more fully?

We will also report the view of some of your former colleagues that the decision to keep the inquiry limited was linked, in part, to the Met's close relationship with editors at News of the World and their superiors at News International.

9. Is that true?

We will report that within days of the searches, several senior detectives said they began feeling pressure to limit the scope of the inquiry. One senior investigator told us he was approached by Chris Webb, who works in the Met's press office, who was "waving his arms up in the air, saying, 'Wait a minute – let's talk about this.'" The investigator, who has since left Scotland Yard, told us that Mr. Webb had stressed the Met's "long-term relationship with News International." But the former senior investigator recalled becoming furious at the suggestion, responding, "There's illegality here, and we'll pursue it like we do any other case."

10. Can you please comment on the appropriateness of a press person attempting to interfere in a criminal inquiry and also put the question to Mr. Webb?

We will report that in the autumn of 2006, Andy Hayman, who was at the time in charge of the counterterrorism branch and the phone-hacking criminal inquiry, had been shown an 8 to 10 page, single-spaced "target list" of names and mobile phone numbers seized from Mr. Mulcaire's home. The list included members of Parliament, soccer stars, celebrities and then-Police Commissioner Ian Blair. When your colleagues consulted with the Crown Prosecution Service to discuss how broadly to investigate, they omitted certain evidence, including notes implicating other reporters in possible criminal activity, two prosecutors with first-hand knowledge have told us. One of them said he was stunned to discover later that the police had not shared every piece of evidence in their possession.

"I would have said we need to see how far this goes," the official told us, and "whether we have a serious problem of criminality on this news desk." But we will tell our readers that was little or no appetite at Scotland Yard for that kind of wide-ranging inquiry of the News of the World. "We were not going to set off on a cleanup of the British media," a former investigator told us.

11. Do you accept this assertion that not all the evidence was shared with the CPS at the time it was decided to limit the inquiry to the illegal activities of Mr. Mulcaire and Mr. Goodman?

12. Why did Scotland Yard choose not to pursue the possible illegal hacking of all journalists implicated by the Mulcaire/Goodman evidence?

13. And who made this decision? Mr. Hayman, or someone else?

We will also report that another police decision has assisted News International, which is facing at least a dozen new lawsuits filed by potential victims. This is the decision in 2006 to inform only a number of select individuals that their phones might have been illegally accessed – a number that we were told is far less than the hundreds and perhaps thousands of names among the Mulcaire/Goodman cache evidence. In the weeks after the searches, detectives chose to notify members of the government, police and military that they might have been targeted, but not others, including members of the general public not working in one of those fields. Even then, however, only a limited amount of information was given to potential victims, our reporting shows. For example, George Galloway, a member of Parliament, was alerted by a detective that his messages might have been hacked. The detective suggested that Mr. Galloway change his mobile phone PIN Code. But when Mr. Galloway asked who had accessed his phone, the man from Scotland Yard “refused to tell me anything,” Mr. Galloway told us.

In fact, it wasn't until earlier this year that Mr. Galloway received confirmation that his mobile phone number and name were among the Mulcaire/Goodman cache of evidence.

14. Why did Scotland Yard decide to limit the number of potential victims who were alerted in 2006 that their names and/or mobile numbers were among the evidence?

15. Do you agree or disagree that the Met's decision to inform only some potential victims had, in effect, helped News International escape potential civil liability?

We will be quoting a woman who only discovered in recent months that her mobile phone was possibly accessed by Mr. Mulcaire in 2003. The woman, who had been at the center of a high-profile rape investigation, said it took Scotland Yard three months to reply to her inquiry. The letter from Scotland Yard informed her that just because her number had been found among Mr. Mulcaire's records doesn't necessarily mean her messages had been accessed, records show. The Scotland Yard letter suggested she contact her “phone service provider(s) who may be able to assist further.” But the woman told us that she and other potential hacking victims said that by sitting on the evidence for so long, the police had made it impossible to receive information from mobile phone companies, which do not keep records for more than a year. “It was disingenuous, to say the least, for Scotland Yard to say that,” the woman told us. “Who can you trust if you can't trust the police?”

We would also like to ask about the testimony of Manchester solicitor Mark Lewis before the select committee, who told him Detective Maberly of the Met police had told him there were 6000 victims listed in the Goodman/Mulcaire evidence.

16. A question for Detective Maberly: How did you know that 6000 names and/or mobile phone numbers were listed in the cache of evidence and how many of those people had been notified they might be victims at that point?

Finally, we will also be reporting that the Met's disclosed evidence in the civil litigation filed against News International and Mr. Mulcaire by PR man Max Clifford, your colleagues chose to redact the names of News of the World reporters written on notes by Mr. Mulcaire.

17. Why was this done?

**MPS statement given to the New York Times**  
**Wednesday, 25 August 2010**

A spokesman for the Metropolitan Police Service said:

"The MPS rejects the suggestion by the New York Times that police "failed to follow-up on clear leads" and "declined to pursue other evidence of criminality by others" in relation to the News of the World phone hacking investigation.

It is the role of the police to investigate within the boundaries of the law and, where possible, produce evidence which can be presented at a criminal court.

This was a complex inquiry and led to one of the first prosecutions of its kind under this legislation. It pushed the boundaries in terms of using technical evidence to secure a criminal conviction, and brought clarity to this area of law.

In this case, as with other investigations, there was early and regular consultation with the CPS, so that the lines of inquiry followed were likely to produce the best evidence. The CPS had full access to all the evidence gathered and the final indictment appropriately represented the criminality uncovered.

The MPS has a duty to ensure that any inquiries, searches, arrests etc are lawful, proportionate and involve an appropriate use of police resources, which is what happened in this case.

In this case the Met has had to balance a number of competing interests, but has been as open as possible, whilst maintaining and protecting individuals' personal information and respecting privacy.

The case was the subject of the most careful investigation by very experienced detectives and has been subject to extensive independent scrutiny by the CPS, Director of Public Prosecutions, and the House of Commons, Culture, Media and Sport Committee.

The Met has considered whether matters raised by the media or elsewhere constituted new evidence that merited further investigation.

We considered then, and we remain of the view, that no new evidence has emerged to justify re-opening this inquiry. Independently, the CPS, Leading Counsel, and the Director of Public Prosecutions reached the same conclusion.

The Met does not consider that the issues raised by the New York Times accurately reflect how the investigation was conducted, constitute new evidence, or lead us to change our position."

**In response to a specific question from the New York Times about DPA Deputy Director Chris Webb the MPS gave the New York Times the following if asked line:**

IF ASKED: Mr Chris Webb said: "I cannot recall these events. Police officers make operational decisions, not press officers. That is the policy of the Metropolitan Police Service and the policy that I and all police press officers follow."

**On Thursday, 2 September 2010 following publication of the New York Times article the MPS logged the following if asked lines.**

**IF ASKED: Are the Met following up claims made by the New York Times?**

Following the publication of the article by the New York Times the MPS are seeking to clarify some aspects of its contents with the newspaper. Not prepared to discuss further.

**IF ASKED: Have the MPS spoken to / going to speak journalists named by the New York Times?**

We would not discuss who we have or have not spoken to in relation to any inquiry.

**IF ASKED SPECIFICALLY: Why has the position changed since the initial statement?**

The MPS were not provided with a copy of the New York Times article prior to publication.

**On Friday, 3 September 2010 the MPS logged the following if asked lines.**

**IF ASKED: MPS response following publication of the New York Times article.**

The MPS rejects the suggestion by the New York Times that police "failed to follow-up on clear leads" and "declined to pursue other evidence of criminality by others" in relation to the News of the World phone hacking investigation.

It is the role of the police to investigate within the boundaries of the law and, where possible, produce evidence which can be presented at a criminal court.

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Date Statement Made: 19 March 2012

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**The Leveson Inquiry into the Culture Practices and Ethics of the Press**

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This is the exhibit marked 'SC/2' referred to in the statement of Sara Cheesley, dated this 19th March 2012.

Copy request received from  Investigative Correspondent 14 April 2010  
London Bureau, The New York Times  
66 Buckingham Gate  
SW1E 6AU LONDON  
United Kingdom

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;

The minutes of any and all internal meetings, including but not limited to the Management Board sessions, attended by (but not limited to) Dick Fedorcio, Andy Hayman, Peter Clarke, Philip Williams and John Yates in which the Mulcaire/Goodman matter was discussed, at any time during the criminal investigation or following its closure;

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);

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);

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);

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;

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;

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.);

Any and all documents, electronic or otherwise, that in any way relate to then Detective Sergeant Mark Maberly'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 Mark Lewis to the House of Commons Culture, Media and Sport Committee.);

Any and all documents, electronic or otherwise, from or to general counsel Emma Harroway relating to the Maberly matter, Mark Lewis or Baroness Buscomb;

Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between Rebekah Wade, currently the chief executive at News International, and Dick Fedorcio, Andy Baker and/or John Stevens, in the time frame of 2002 to 2004, related to a news editor at the News of the World named Alex Marunchak.



**METROPOLITAN  
POLICE**

Working together for a safer London

SPECIALIST OPERATIONS

**SO15 - Counter Terrorism Command**

Room 1903  
New Scotland Yard  
10 Broadway  
London  
SW1H 0BG

Telephone: [redacted]

Facsimile: [redacted]

Email: [redacted]

[www.met.police.uk](http://www.met.police.uk)

Your ref:

Our ref: 2010040002851

[redacted]  
Investigative Correspondent  
London Bureau  
The New York Times  
66 Buckingham Gate  
London  
SW1E 6AU

16 June 2010

Dear [redacted]

**Freedom of Information Request Reference No: 2010040002851**

I write in connection with your request for information which was received by the Metropolitan Police Service (MPS) on 14/04/2010. Sincere apologies for the delay in getting this reply to you, however, I note that you seek access to the following information:

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) Dick Fedorcio, Andy Hayman, Peter Clarke, Philip Williams and John Yates 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);

**MOD200020074**

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 Detective Sergeant Mark Maberly'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 Mark Lewis to the House of Commons Culture, Media and Sport Committee.);
10. Any and all documents, electronic or otherwise, from or to general counsel Emma Harroway relating to the Maberly matter, Mark Lewis or Baroness Buscomb;
11. Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between Rebekah Wade, currently the chief executive at News International, and Dick Fedorcio, Andy Baker and/or John Stevens, in the time frame of 2002 to 2004, related to a news editor at the News of the World named Alex Marunchak.

## **1. DECISION**

This letter is to inform you that it will not be possible to respond to your request within the cost threshold.

## **2. COSTS estimation**

2.1 I hope the following explanation will clarify why it will not be possible to respond to your request within the cost threshold.

Initial research has been carried out to determine if the MPS hold the information you have requested. This has included trying to identify all possible locations / systems which may hold information pertinent to your requests, which includes both electronic and manual unstructured files.

**2.2** The information Commissioner has issued recent guidelines on using the Fees regulations dated 26 June 2009, stating ' *Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required ... what amounts to a reasonable estimate can only be considered on a case by case basis.*' The Information Commissioner also advises ' *where a reasonable estimate has been made that the appropriate limit would be exceeded, there is no requirement for a public authority to undertake work up to the limit.*'

**2.3** We estimate that the cost of complying with this request would far exceed the appropriate limit. The appropriate limit has been specified in regulations and for agencies outside central Government; this is currently set at £450.00. This represents the estimated cost of one person spending 18 hours [at a rate of £25 per hour] in determining whether the MPS holds the information, and locating, retrieving and extracting the information.

### **3. FEES REGULATIONS**

**3.1** The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, prescribe the 'appropriate limit' as being £450 for public authorities which are not part of central government, with staff costs calculated at a rate of £25 per hour. In order to avoid exceeding the fees limit the MPS would need to be able to determine whether it holds the information and if necessary complete the location, retrieval and extraction of the requested information within 18 hours of staff time.

**3.2** The **Information Commissioner's Office** has published guidance notes (22 August 2008) ' *In the context of FOIA, extraction is the process by which information included in the request is separated from other information contained in the same document. What can be included when estimating the costs of compliance?*'

*A public authority may take account only of the costs it reasonably expects to incur in relation to the request in:*

- *determining whether it holds the information;*
- *locating the information, or a document which may contain the information;*
- *retrieving the information, or a document which may contain the information; and*
- *extracting the information from a document containing it.*

*If the task can clearly be identified as extracting information falling within the scope of the request the time that is likely to be taken can be included in the estimate of costs.'*

**3.3** Regrettably, this letter is therefore to inform you that it will not be possible to respond to your request within the cost threshold.

In accordance with the Freedom of Information Act 2000, this letter acts as a Refusal Notice.

Section 17(5) of the Act provides:

(5) 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.

Section 12 of the Act provides:

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

#### **4. ADDITIONAL ADVICE AND ASSISTANCE**

However, 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. However, I can provide you with the answers to questions 3,4 & 5 which are reproduced below. I hope this will be of use to you.

#### **5. IN CONCLUSION**

Whilst I appreciate this may not be the response you would have liked, I hope the explanation I have provided has explained why the MPS is unable to comply with your request within the 18 hours fees limit as set out by the Fees Regulations mentioned above.

Response to Question 3, 4 and 5

This is already a matter of public record, but to help you the following is what the MPS has already made publicly available: -

Q.3. In arriving at a figure for the total number of names or partial names no attempt has been made to analyse those different names in order to try to establish how many individuals are represented by those names, nor has any attempt been made to distinguish between those named who are friends, family, acquaintances or contacts of Mulcaire or Goodman, targets of their work or potential victims of their illegal activity. Based on these provisos the total number is 4332. This figure is simply the total number of entries recorded on the MPS system as a consequence of all the material seized during our searches. It must be emphasized that this number is a wholly inaccurate number in terms of any attempt to establish the number of individuals who may have been of interest to Mulcaire and Goodman in any context as it includes every full name, partial name, initial(s) and multiple combinations thereof together with possible misspellings and duplications. Hence, multiple entries on the MPS system could and probably do relate to a single individual. The names could have been held for any purposes legitimate or otherwise.

Q.4. The total number of mobile phone numbers (or partial mobile phone numbers) which are recorded on the database the number is 2978. This figure is simply the total number of entries recorded on the MPS system as a consequence of all the material seized during our searches, which we believe may be a mobile number. It includes partial and whole numbers, which may or may not be accurate and no attempt has been made to distinguish between those numbers of friends, family, acquaintances or contacts of Mulcaire or Goodman, targets of their work or potential victims of their illegal activity. It must be emphasized that this figure therefore provides a wholly inaccurate picture as to the numbers that may have been subject to interception.

Q.5. The number of individuals in relation to whom PIN codes, needed for access to mobile phone voicemail, are recorded the answer is that from the material seized there appear to be 91 individuals. It cannot be stated with any certainty how many of these were the correct mobile phone and/or pin code number.

**COMPLAINT RIGHTS**

If you are dissatisfied with this response please read the attached paper entitled Complaint Rights which explains how to make a complaint.

Should you have any further enquiries concerning this matter, please contact me on [redacted] or at the address at the top of this letter, quoting the reference number above.

Yours sincerely

[redacted]

**Information Manager**

## **COMPLAINT RIGHTS**

**Are you unhappy with how your request has been handled or do you think the decision is incorrect?**

You have the right to require the Metropolitan Police Service (MPS) to review their decision.

Prior to lodging a formal complaint you are welcome and encouraged to discuss the decision with the case officer that dealt with your request.

**Ask to have the decision looked at again –**

The quickest and easiest way to have the decision looked at again is to telephone the case officer that is nominated at the end of your decision letter.

That person will be able to discuss the decision, explain any issues and assist with any problems.

### **Complaint**

If you are dissatisfied with the handling procedures or the decision of the MPS made under the Freedom of Information Act 2000 (the Act) regarding access to information you can lodge a complaint with the MPS to have the decision reviewed.

Complaints should be made in writing and addressed to:

FOI Complaint  
Public Access Office  
PO Box 57192  
London  
SW6 1SF

In all possible circumstances the MPS will aim to respond to your complaint within 20 working days.

### **The Information Commissioner**

After lodging a complaint with the MPS if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk). Alternatively, phone or write to:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF  
Phone: 01625 545 700

22 June 2010



Our ref:   
Your ref:

Information Manager  
Metropolitan Police  
SO15 - Counter Terrorism Command  
Room 1903  
New Scotland Yard  
10 Broadway  
London SW1H 0BG

And by email:

Dear Madam

**Freedom of Information Request Reference No: 2010040002851**

We write on behalf of the New York Times, who made a Freedom of Information Request with the above reference number on 14 April 2010, which was received by you on the same day. We are in receipt of your letter dated 16 June 2010, in which you state that "it will not be possible to respond to your request within the cost threshold". For the record, I note that this was a response after a further period (now expired) was requested to deal with "public policy implications" of the request.

Somewhat surprisingly, you appear to have ignored the obligation under s. 16 of the Freedom of Information Act to provide advice and assistance to the applicant. There are two limbs to this obligation: first, you should provide information as to how the costs estimate has been arrived at; second, you should provide advice as to how the request could be refined or limited so as to come within the costs limit (see further the Information Commissioner's Guidance).

It appears to us that you have failed to comply with its duty in respect of both of these limbs. First, you have not identified the specific matters upon which you have relied in concluding that the costs limit has been met. Second, you have not provided any advice or assistance as to how the request might be reformulated, save for its assertion that: 'Given the substantial amount of work involved in 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 costs limit'. Consequently, the New York Times has been left in a position where it has not been given information as to the particular practical and logistical difficulties which you would face in responding to the request in its current form, and therefore cannot itself know how best to reformulate its response.

Without prejudice to any other of our client's rights, please would you begin work immediately to provide the documents/information set out in the following numbered points. Please would you commence with the first point, and once this is completed send us the information straight away. Please would you do the same with each of the points, in the order that they appear below.

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;

22 June 2010

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2. The minutes of any and all internal meetings, including but not limited to the Management Board sessions, attended by (but not limited to) Dick Fedorcio, Andy Hayman, Peter Clarke, Philip Williams and John Yates in which the Mulcaire/Goodman matter was discussed, at any time during the criminal investigation or following its closure;
3. 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;
4. 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.
5. Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between Rebekah Wade, currently the chief executive at News International, and Dick Fedorcio, Andy Baker and/or John Stevens, in the time frame of 2002 to 2004, related to a news editor at the News of the World named Alex Muranchak.

It is clear that these elements will not exceed the indicated limit.

We invite your proposals, by return or by telephone, as to how the other parts of the initial request may best be dealt with, and await your urgent response in relation to this by return.

Yours faithfully

**Finers Stephens Innocent LLP**

T: +44 (0) [redacted]

Mark.Stephens [redacted]

Dear [REDACTED]

Freedom of Information Request Reference No: 2010060004920

Further to our letter of 20 July 2010, I am now able to provide a response to your complaint dated 22 June 2010 concerning:

Original FOI case number 2010040002851

Original FOI questions (dated 14 April 2010) subject to this review:

Question One

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.

Question Two

The minutes of any and all internal meetings, including but not limited to the Management Board sessions, attended by (but not limited to) Dick Fedorcio, Andy Hayman, Peter Clarke, Philip Williams and John Yates in which the Mulcaire/Goodman matter was discussed, at any time during the criminal investigation or following its closure;

Question Six and Seven

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;

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;

Question Eleven

Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between Rebekah Wade, currently the chief executive at News International, and Dick Fedorcio, Andy Baker and/or John Stevens, in the time frame of 2002 to 2004, related to a news editor at the News of the World named Alex Marunchak.

DECISION

The Metropolitan Police Service (MPS) has completed its review and has decided to:

Set aside the original decision

REASON FOR DECISION

As stated within my letter dated 13 July 2010, I do appreciate that FSI has agreed to narrow the original Freedom of Information request for the purpose of this review.

Out of the eleven questions originally posed, Ms Mandel confirmed that FSI are satisfied with us handling five particular questions of interest (questions one, two, six, seven and eleven). This was agreed as it was

understood the original questions were too wide in scope to enable us to conduct a search for held information within the 18 hour cost threshold. Whilst an internal review is generally a review of the original questions posed, I will base my final response on the five questions you have asked the MPS to specifically focus on.

On 13 July 2010 I wrote to you and requested further detail in regards to the five questions subject to this review. Within my letter, I confirmed that the original response letter provided to you, had not fully explained why or which particular questions would invoke the need to fully refuse the full request on cost grounds (Section 12(1) of the Act). My letter therefore provided a more detailed explanation as to why the MPS cannot easily retrieve the information you have requested (even by narrowing the questions down to five). My letter included ways in which you may assist us to phrase your questions so that we could locate relevant information within the 18 hour threshold.

I take this opportunity to apologise that you were not originally provided with detail as to how you could narrow your request, to ensure it could be satisfied within the 18 hour statutory time period. Staff within the relevant unit are now aware of the need to consult with applicants as best as possible to enable us to try and satisfy their requests.

As explained within my letter, the difficulty of locating, retrieving and extracting information held for particular questions posed within 18 hours is due to the broad nature of your original requests. The MPS continues to remain within its right to exempt under the Freedom of Information Act, all connected questions posed if information for only one of them would take over 18 hours to locate, retrieve or extract.

On providing my written explanation as to why the requests were too broad to be satisfied within the 18 hour time frame, I was happy to discuss in further detail with Ms Robinson for approximately 45 minutes why further clarification was needed to enable us to satisfy his request. I would like to assure you that my provision of a detailed explanation as to why the MPS could not answer the full request within 18 hours was in no way a 'delaying device', as stated within your letter dated 15 July 2010.

Whilst I appreciate Ms Robinson believed that all the information requested could be easily extracted via a 'computerised data recovery system, for which a key word search ought to recover relevant information', I did explain on the telephone that this indeed is not the case. To recover information in relation to investigations and particular individuals requires me to contact all relevant staff involved to ensure a full and thorough search for information is conducted.

I am grateful for your email received on 15 July 2010, in which you have tried to narrow your request to enable us to locate, extract or retrieve information within the 18 hour cost threshold. Based on this letter, I will now try and answer each of the five questions as fully as possible, or provide exemptions where appropriate.

#### Question One

***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.***

In my letter dated 13 July 2010, I confirmed that you had not clearly specified which kind of reports or 'summaries' you are seeking. Whilst I understood that you are requesting reports relating to the Mulcaire/Goodman investigation, the term 'summary' did not assist us with locating information you believe may be held by the MPS. We requested you clarify this point with us.

I confirmed that the MPS do hold an 'advice file document, filed to the CPS dated the 30th June 2006. However, based on the vague nature of your request, and as you had not confirmed what type of

information you required other than 'reports/summaries', I required clarification that this is part of the information you wished us to consider disclosing.

I explained that you had however, been very specific in mentioning a number of dates relating to reports and 'summaries' dated May 30, June 30 and July 14 of 2006 and February 18 2010. I explained that the provision of these dates indicated you are aware of particular reports or 'summaries' dated as such, which may be held by the MPS.

To enable me to locate the information you require (which you believe may have these date marks), I asked if you were able to provide further detail as to what these documents may be. For example, if you could confirm who the reports were from, would enable me to readily locate any held information pertinent to these dates. This would enable me to ensure a full and proper search could be conducted within the relevant department.

From the dates you had provided, I located that the MPS hold an 'advice file' to the CPS dated 30 June 2006, which is likely to be captured by your request. However, I stated that in light of the specific dates you have indicated, you may have further information which will assist me in locating any other relevant documents more readily. It would also ensure that the information I am able to locate is the information you actually seek. I requested you clarify this point with us.

To assist, I confirmed that if you narrowed your request for reports which may be held, specifically only for the dates you have mentioned, it would be much easier for me to try and locate the type of information you require. I asked you to clarify this point with us.

In your response letter dated 15 July 2010, you confirmed that you are seeking 'any document, report or correspondence' which relates to Mulcaire/Goodman investigation. You agreed that the advice file to the CPS on 30 June 2006 and anything related would be captured by your request.

You confirmed that you do not wish the inquiry to be limited to the specific dates you provided. You now stated that you wish to have access to all documents relating to the Mulcaire/Goodman investigation. If this is too broad, you suggested I might narrow our search to between January 2006 and February 2010.

This new refined request is actually now wider than your original request, as you originally only requested reports/ 'summaries' filed by the MPS to only the attorney general, the Crown Prosecution Service and/or the House of Commons Culture, Media and Sport Committee.

However, as you have now confirmed your request relates to all information which relates to the investigation, I can confirm that in response to this question, the MPS holds advice file papers (which the CPS would have had sight of) and case papers relating to this investigation.

On careful consideration, I confirm the advice file papers and the held case papers relating to the investigation are exempt from disclosure by virtue of Section 30(1)(a)(b)(c), Section 40(2)(3) (Personal Information) and Section 42(1) (Legal professional privilege). Section 42 only relates to information contained within the advice file papers and not to the general case files.

Section 40(2)&(3) is a class based and absolute exemption. I am therefore not required to provide you with a prejudice test or public interest test in regards to the use of this exemption.

The information you have requested is data relating to individuals other than yourself. Its disclosure would require compliance with the data protection principles contained in the Data Protection Act 1998 (DPA), the first of which is relevant. This states:

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-  
(a) at least one of the conditions in schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

Disclosure must, therefore, be fair and lawful and meet one the relevant DPA conditions.

The information contains data relating to the alleged commission of an offence and is, therefore, sensitive personal data.

None of the conditions set out in Schedule 3 applies and, therefore, this information cannot be disclosed. It cannot be disclosed when taking into account that there is no explicit consent for the disclosure (condition 1). The MPS is not required to seek the consent of the individuals concerned. Furthermore it is quite reasonable to infer that the individuals would have no 'reasonable expectation' that sensitive personal data, held by the MPS for the purposes of a criminal investigation, and relating to the alleged commission of offences, would be disclosed by the MPS for any other purpose than as part of the criminal justice process, and that consent would not be given.

In regards to additional personal information held within the case files which is not sensitive personal data, I have considered if a Schedule 2 condition is met. As explained previously, we do not have the consent of the data subjects to disclose held information (condition 1). The relevant condition in Schedule 2 we must consider is condition 6. This provides:

6 (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

I have taken the opportunity to consider whether there is a legitimate public interest in disclosure and if that disclosure is necessary to meet that public interest. I do so by balancing the legitimate interests in disclosure against the interests of the individual whose personal data is held. I have taken into consideration that there is no assumption of disclosure of this held information.

As required by the ICO, I have approached condition 6 as a three part test. Whilst I appreciate there is media interest in disclosure of personal information contained within the held information, this does not amount to a strong legitimate public interest. Secondly, I find disclosure is not necessary to meet that public interest. Thirdly I find that disclose would cause unwarranted distress to the interests of the individuals concerned.

Even if there was a stronger legitimate public interest in disclosure and it was necessary to disclose the information to meet that interest, I consider that disclosure would be likely to cause unwarranted harm to the interests of the data subject. This is because it would be an unwarranted interference with individuals privacy for a number of reasons.

Some of the information held is about the data subject's private life. Under Article 8 of the Human Rights Act 1998, data subjects have the right to respect for their private and family life, and so information held should not be disclosed. I have also considered the potential distress that would be caused by the disclosure, and the fact that the data subjects have not consented to disclosure of the held information captured by this request. Lastly I have taken into account there is no reasonable expectations of the data subject to expect that the personal information contained within the case files would be disclosed into the public domain.

In conclusion, I do not believe the disclosure of the personal information captured by this exemption would meet the requirements of the Data Protection Act 1998. The information is therefore exempt from disclosure under Section 40(2)&(3).

Section 30(1)(a)(b)(c) is a class based and qualified exemption. I am therefore not required to provide you with a prejudice test, but I am required to provide you with a public interest test in regards to the use of this exemption.

Public Interest Test for Section 30(1)(a)(b)(c)

Considerations favouring disclosure

As this is now a closed investigation and proceedings are now complete, there is a decreased risk to any proceedings with disclosure in regards to this particular investigation.

Disclosure of the requested information would satisfy the public that the investigation was conducted properly and professionally.

Disclosure would provide a further understanding of the public funds invested into this investigation which provides greater accountability in the service.

Due to the high profile nature of this request and media interest, it could be considered there is an increased public interest in disclosure. The MPS is aware however, that media interest does not automatically or necessarily equate to a public interest.

Considerations favouring non-disclosure

This exemption covers information held at any time for the purpose of an investigation, whether the case is ongoing, closed or abandoned.

This investigation was unique and disclosure of techniques applied for this case could detrimentally affect the Service's ability to re-use similar techniques and investigative methods in the future, if they are disclosed to the general public. It will never be in the public interest to compromise any investigation whether closed or open, particularly in such a high profile case where details and policing techniques are likely to be published to the world.

As the information you have requested (which includes witness statements) would include personal information, we would not wish to disclose held information which could affect our ability to fulfill our core function of law enforcement. Should we disclose the information you have requested on this case, those involved in the case (or even those who may assist with non-related cases) may be more likely to avoid assisting us further in the future, should they feel information surrounding this case or others be continuously released. Our ability to gather information to perform our public service functions is paramount. Releasing information on this case would therefore have a negative impact on the relationships we work hard to build, to enable us to conduct our roles fully. Like any other high profile case, the MPS are rightly expected to act with integrity and sensitivity, particularly in regards to the victims' concerned. To disclose the information held in relation to this case, would negate the work we have conducted to ensure that all affected individuals are treated with respect and with the right to the privacy they deserve as victims, witnesses and even suspects.

Although this request has been treated on a case by case basis, it is rare that full details of investigations will be disclosed, as to do so would disclose personal information which relates to the personal affairs of individuals, including those with profiles in the public domain. As this includes reputations, the MPS have considered data protection principles and wish to uphold them in terms of the information you have requested.

Disclosure of the requested information would hinder the prevention or detection of crime in the future, should the public gain an in-depth understanding of the progression and methods of the investigation. Disclosure is thus likely to affect any future cases, should a similar type of investigation ever arise in the

future. It would not be in the public interest to damage the forces future law enforcement capabilities in such a way.

#### Balance Test

On balance, I find the strongest reason favouring disclosure is considering it would reinforce public confidence that the MPS handled this investigation thoroughly and professionally. I find the strongest reason favouring non-disclosure is the consideration that disclosure could negatively impact on future investigations, which may use similar techniques. Disclosure would therefore negatively impact on our core function of law enforcement, if we are unable to obtain the critical and valuable information we need from members of the public.

On weighing up the competing interests, I find the considerations favouring non-disclosure out-weigh the public interest favouring disclosure. I appreciate this is not the outcome you would have liked, however I base this decision on the understanding that the public interest is not what interests the public, but is what would be of greater benefit if released, to the community as a whole. I take this opportunity to add that media speculation in regards to investigations does not automatically equate to a public interest in disclosure.

Section 42(1) is a class based and qualified exemption. I am therefore not required to provide you with a prejudice test but I am required to provide you with a public interest test in regards to the use of this exemption.

#### Public Interest Test on the use of Section 42(1)

##### Considerations favouring disclosure

Due to the high profile nature of this investigation, it could be considered there is an increased public interest in disclosure of any legal advice/opinion received by the MPS.

The provision of information held, which is captured by legal professional privilege would show the MPS to be fully accountable for their actions, and that all officers concerned within this investigation acted within the remit of the law.

##### Considerations favouring non-disclosure

The MPS remains reliant upon the provision of impartial legal advice to inform and guide its decision making. The advice between the legal advisors in this case and the MPS attracts a claim of legal professional privilege to protect the duty of confidence that exists in this relationship.

The MPS remains reliant on being able to maintain the confidence relating to all communications, where the predominant purpose of those communications relates to litigation.

Disclosure of the legal advice held and other privileged material contained within the requested documents, would impede the free and frank channels of communication that exists between the MPS and legal advisors. It would not be in the public interest to negatively impede on the ability of the MPS to communicate in an open and candid manner in regard to litigation.

Although each request is treated on a case-by-case basis, disclosure is likely to prejudice the ability of the MPS to obtain unbiased advice in connection with any future proceeding. This would be the case should the MPS continually publish advice sought in connection with high profile and sensitive investigations.

#### Balance Test

The strongest reason favouring disclosure is the public interest in understanding legal advice behind any decisions made by the MPS. The strongest reason favouring non-disclosure of the requested information is considering the negative impact disclosure would have on the relationship between the MPS and legal advisors.

On weighing up the competing interests, I find the public interest in non-disclosure outweighs the public interest in disclosure. This decision is based on the understanding that the public interest is not what interests the public, but is what would be of greater good to the community, as whole, if disclosed.

I can confirm the information provided in written format to the House of Commons Culture, Media and Sport Committee, has now all been published and details can be found through the below link:

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcmums/532/53202.htm>

The below link refers to memoranda and written evidence submitted to the committee:

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcmums/memo/press/contents.htm>

The record of the Culture Media and Sport Committee sessions and the subsequent final report are published under the titles: -

House of Commons Culture, Media and Sport Committee  
Press Standards, privacy and libel  
Second Report of Session 2009 - 10 Volumes 1 & 2

They are available for purchase from either The Stationary Office (TSO) or The Parliamentary Bookshop. Both sources have online websites.

The information requested in regards to documents filed to the House of Commons Culture, Media and Sports Committee is therefore exempt from disclosure by virtue of Section 17(1)(a)(b)(c) and Section 21(1) (Information Accessible by other means) of the Act. This exemption is class based and absolute. I am therefore not required to provide a harm test or public interest test for this question.

I take this opportunity to confirm that the investigation and subsequent prosecution of Clive Goodman & Glen Mulcaire was carried out in liaison with the Crown Prosecution Service and Queen's Counsel. The final indictment was the subject of careful deliberation and represented the full range of criminality committed to attract the maximum penalty if proven. Decisions taken in 2006 regarding the scope of the investigation were based on available evidence, the likelihood of securing successful prosecutions and the policing resources available at the time. Since then, no new evidence has come to light to justify any further investigation, a view endorsed by both the MPS and the DPP. Consequently this case remains closed.

#### Question Two

***The minutes of any and all internal meetings, including but not limited to the Management Board sessions, attended by (but not limited to) Dick Fedorcio, Andy Hayman, Peter Clarke, Philip Williams and John Yates in which the Mulcaire/Goodman matter was discussed, at any time during the criminal investigation or following its closure;***

As stated in my letter dated 13 July 2010, this question is very broad as you are requesting minutes of any and all meetings, not limited to the Management Board sessions, and not limited to attendance by the individuals mentioned above, in which the Mulcaire/ Goodman matter was discussed.

I explained that the MPS is a vast organisation, where meetings take place across the 32 boroughs and central operational command units daily. Albeit unlikely, discussions within any of these meetings may

have included the Mulcaire/Goodman case. I confirmed therefore, that however remote the likelihood is, because of the wording of this question, any checks to enable the MPS to locate and retrieve pertinent information would take over the 18 hour threshold. I stated that to therefore be able to answer your request within the 18 hour threshold, we require you to narrow this question down.

I confirmed that if it would assist, it should be possible for me to locate and search Management Board minutes to identify relevant information, if indeed it exists (whether attended by the people you have quoted or not).

I also confirmed I am able to contact individuals you have particularly mentioned, who are still within the MPS, to see if they hold minutes on meetings they attended where the Mulcaire/Goodman matter was discussed. I asked if you are happy for us to narrow our search in this way, and for you to confirm this with us.

Your letter dated 15 July 2010 stated that if this request is still considered too broad to bring it within the terms of the FOiA, you would narrow your request to include; 'all internal meetings attended by Dick Fedorcio, Andy Hayman, Mark Maberly, Peter Clarke, Philip Williams and John Yates, as well as any member of the MPS directly responsible for the Mulcaire/Goodman matter.' You noted that this is not limited to, but should include, Management Board Sessions meeting minutes.

I can confirm that the information you have requested for this question is not held.

Questions Six and Seven

***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;***

***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.***

Within my letter dated 13 July 2010, I confirmed that these two similar questions are so broad in their scope, it would indeed exceed the 18 hour cost threshold to locate/retrieve and extract.

I explained that it would not be possible to contact every single current or former member of MPS staff who may have received or sent an email/memo to any current or former member of the news organisations you have listed (in regards to the Mulcaire/Goodman inquiry/phone hacking investigation/ or any other inquiry) within 18 hours.

I stated that if there are particular individuals you would like us to query in regards to emails they may have received or sent, this would help make your request more manageable. I confirmed that as it stands, we would not be able to respond to these requests, and therefore to any of the related questions you have posed, within the 18 hour cost threshold.

I thus asked for you to clarify which individuals you would like us to contact, and explained by telephone that you could limit this to only officers who have directly worked on this case. In case you could not

indicate who you wished us to specifically contact, I provided the opportunity for you to withdraw these two questions due to their broad scope.

Within your letter dated 15 July 2010, you confirmed that if this request is still considered too broad to bring us within the terms of the FOIA, you would narrow your request to searches for the above mentioned information in relation to the following specific individuals and classes of individuals: 'Dick Fedorcio and anyone in "Public Affairs and Internal Communications", Andy Hayman, Mark Maberly, Peter Clarke, Philip Williams and John Yates, as well as any member of the MPS directly responsible for the Mulcaire/Goodman matter and police officers named in the internal investigation of the Mulcaire/Goodman matter.'

To assist us with this request, you wished to have access to any communications had with, but not limited to, the following news organisation representatives: Rebekah Wade, Andy Coulson, Stuart Kuttner, James Murdoch, Tom Crone, Colin Myler, Ian Edmondson, Mazer Mahmood, Bill Akass. You reiterated that this is not an exhaustive list.

I can confirm the MPS holds information pertinent to your request.

The MPS holds correspondence between the MPS and solicitors representing News International.

To provide further detail in regards to this section of your request, I can confirm that the only communication the MPS had with the News of the World was conducted as part of the investigation, post-arrest. Communication was conducted formally between the MPS and the News of the World's nominated solicitors, as was indicated by DCS Williams at the CMS Committee hearing. Part of that formal process was an exchange of letters, the very general substance already being in the public domain via the Committee (see transcript links and information for question One). The actual material and full content of the correspondence held, is part of the investigation and subsequent prosecution.

Releasing details of the full content of the correspondence would disclose operational tactics and strategy, in the handling of this sensitive case. For this reason, all information held which is captured by this part of your request, is exempt from disclosure by virtue of Section 30(1)(a)(b)(c) and Section 40(2)(3) of the Act. The MPS find that the same public interest test stands for information captured by this part of your request, as it does for question one. I will therefore not repeat the same reasoning again. I can confirm that the information held has however, been considered on its own merits and that the MPS still find the public interest in non-disclosure fully outweighs that in favour of disclosure.

I can also confirm the only other information held which may be captured by your request is emails sent from the MPS press bureau to the media in general, containing statements pro-actively released by the MPS in connection with the inquiry. The newspapers you have mentioned would have received the emails. We do not hold the original emails, but do have a record of their content on the press bureau system. I am happy to provide these to you today, via an attached document.

#### Question Eleven

Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between Rebekah Wade, currently the chief executive at News International, and Dick Fedorcio, Andy Baker and/or John Stevens, in the time frame of 2002 to 2004, related to a news editor at the News of the World named Alex Marunchak.

In my letter dated 13 July 2010, I stated that considering the difficulty posed with answering the previous questions as they currently stand, the MPS would, by default, need to engage Section 12 in regards to this additional question. I stated that should you refine the previous questions so that we can locate/retrieve/ extract any relevant information within 18 hours, it is likely that this particular question would invoke a neither confirm nor deny response by virtue of Section 40(5) (Personal Information).

In your letter dated 15 July 2010, you indicated your concern of the MPS taking a possibly blanket approach to the use of Section 40 for this part of your request. I wish to assure you that I have taken a case by case approach to this part of your request.

On careful consideration of this part of your request, the MPS neither confirm nor denies whether the information you have requested is held by virtue of Section 40(5) of the Act.

To confirm or deny whether personal information exists in response to your request could publicly reveal information about an individual or individuals, thereby breaching the right to privacy afforded to persons under the Data Protection Act 1998. When confirming or denying information is held that may breach an individual's rights under the Data Protection Act 1998, Section 40(5) becomes an absolute exemption, and there is no requirement for me to provide evidence of the prejudice that would occur with confirmation or denial, or to conduct a public interest test. However, I hope the fictional explanation below will help explain why 40 (5) exemption has been applied in this case.

Person X makes an FOI request to receive all the information about person Y's arrest for Grievous Bodily Harm. This information would not simply be personal data, but would be classed as sensitive personal data.

Under the Freedom of Information Act, the authority can reply in four ways:

1. They do not hold any information, so they say 'no information held'.
2. They hold information, and they disclose it.
3. They hold information, but they recognise it is an individual's personal data, and they apply the Section 40 (2) exemption.
4. They neither confirm nor deny that they hold the information using Section 40(5).

If the authority responds by following either Option 1, 2 or 3, they have breached the privacy rights of Person Y afforded to them by the Data Protection Act. This is because they have openly revealed whether or not Person Y has an arrest history. Under FOI, any response or disclosure is classed as released to the world, and this would allow other people to identify Person Y. Responding as per either Option 1 or 2 reveals whether or not Person Y has been arrested. In Option 3, even though the actual details of the arrest are not disclosed (because section 40 (2) is used to withhold the information), by doing this, the authority has confirmed that the information requested does exist. By exempting the information, they have confirmed that Person Y was arrested, and in this way the authority has breached Person Y's rights under the Data Protection Act.

Therefore, when a request for details of an arrest is received by a public authority and the details have not already been made public, the appropriate response for the authority to give is one that protects an individual's rights under the Data Protection Act, in this case by neither confirming nor denying that the information exists. This principle would also be appropriate to requests seeking confirmation of whether individuals have been subject to an investigation or had involvement with the police, as to indicate whether they were or were not, would similarly breach their rights to privacy.

For your information, personal data is defined under the Data Protection Act (1998) as data that is biographical in nature, has the applicant as its focus and/or affects the data subject's privacy in his or her personal, professional or business life. Should the information be held, the MPS would define such information as personal data.

This response does not confirm or deny whether the information you have requested for this question is held by the MPS.

COMPLAINT RIGHTS

If you are dissatisfied with this response please read the attached paper entitled Complaint Rights which explains how to contact the Information Commissioner with your complaint.

Should you have any further inquiries concerning this matter, please contact me on [redacted] or at the address at the top of this letter, quoting the reference number above.

Yours sincerely

[redacted]  
FOIA Policy Research & Complaints Officer

**Legal Annex**

**Question One, Six and Seven (however, only Sections 17(1)(a)(b)(c), 30(1)(a)(b)(c), 40(2)&(3) relate to question Six and Seven)**

Section 17(1)(a)(b)(c) (Refusal of a request) of the Act provides:

A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which-

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

Section 21(1) (Information Accessible by other means) of the Act provides:

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

Section 30(1)(a)(b)(c) (Investigations) of the Act provides:

- (1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-
- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
    - (i) whether a person should be charged with an offence, or
    - (ii) whether a person charged with an offence is guilty of it,
  - (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
  - (c) any criminal proceedings which the authority has power to conduct.

Section 40(2)&(3) (Personal Information) of the Act provides:

(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

Section 42(1) (Legal professional privilege) of the Act provides:

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

**Question Eleven**

Section 40(5) (Personal Information) of the Act provides:

The duty to confirm or deny-

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either-

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

## **COMPLAINT RIGHTS**

**Are you unhappy with how your request has been handled or do you think the decision is incorrect?**

You have the right to require the Metropolitan Police Service (MPS) to review their decision.

Prior to lodging a formal complaint you are welcome and encouraged to discuss the decision with the case officer that dealt with your request.

**Ask to have the decision looked at again –**

The quickest and easiest way to have the decision looked at again is to telephone the case officer that is nominated at the end of your decision letter.

That person will be able to discuss the decision, explain any issues and assist with any problems.

### **Complaint**

If you are dissatisfied with the handling procedures or the decision of the MPS made under the Freedom of Information Act 2000 (the Act) regarding access to information you can lodge a complaint with the MPS to have the decision reviewed.

Complaints should be made in writing, within forty (40) working days from the date of the refusal notice, and addressed to:

FOI Complaint  
Public Access Office  
PO Box 57192  
London  
SW6 1SF  
PublicAccessOffice@met.police.uk

In all possible circumstances the MPS will aim to respond to your complaint within 20 working days.

**The Information Commissioner**

After lodging a complaint with the MPS if you are still dissatisfied with the decision you may make application to the Information Commissioner for a decision on whether the request for information has been dealt with in accordance with the requirements of the Act.

For information on how to make application to the Information Commissioner please visit their website at [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk). Alternatively, phone or write to:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

22nd November 2010

**Case Reference Number FS50322854**



Further to our conversation last week, I am writing to advise you that I have been allocated the above complaint to investigate. If you are not the appropriate person to deal please will you pass this email on?

This case relates to a 'narrowed' request for information related to the Glenn Mulcaire/Clive Goodman enquiry which was made by FSI on 22 June 2010. The request was as follows:

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) Dick Fedorcio, Andy Hayman, Peter Clarke, Philip Williams and John Yates in which the Mulcaire/Goodman matter was discussed, at any time during the criminal investigation or following its closure;
3. 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;
4. 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 or entities;
5. Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between Rebekah Wade, currently the chief executive at News International, and Dick Fedorcio, Andy Baker and/or John Stevens, in the time frame of 202 to 2004, related to a news editor at the News of the World named Alex Marunchak.

The request has been refused by you on the basis that to comply with it would exceed the "appropriate limit". This is therefore what I will consider within my Notice.

Please can you confirm whether or not you are aggregating the costs for all parts of the request and, if so, on what grounds?

Please can you advise whether any/ all information is centrally held in connection with the Mulcaire / Goodman enquiry? If so, is there a schedule of the information? Can you describe how much there is and how it is structured? Is there any form of electronic index? How many officers were involved in the enquiry and are they listed?

I need to know why it would exceed the appropriate limit to respond to the request and I would need a detailed breakdown of how you have calculated the costs.

If you have any general background information about the case which I can cite in my DN this would be helpful. Perhaps a press release?

The complainant has also complained about not receiving sufficient advice and assistance in respect of their first request. I will deal with this under a separate reference number – the case has not yet been set up but I will let you know the number as soon as it is available.

Please can you confirm receipt of this email. Please can I have your full response within 20 working days. I am happy to discuss this case with you.

Regards

Senior Case Officer

25th November 2010

**Case Reference Number FS50361392**

[Redacted]

I believe that you have already been allocated FS50322854 to deal with which concerns a separate complaint made by FSI. FS50322854 concerns your application of the appropriate limit to FSI's 'narrowed' request for information concerning the Glenn Mulcaire/Clive Goodman enquiry.

This new case is related to that one as FSI have also raised a section 16 complaint (advice and assistance) in respect of their first request.

Please can you provide me with any evidence you have to support whether or not you believe you complied with your duties under section 16 of the Act when dealing with the first request made by FSI on 14 April 2010 – your reference 2010040002851. If you have any logs of telephone assistance provided please can you let me have copies of these too.

Please confirm that you will deal with this case – or advise who will be if it isn't you. Please can I have your full response within 20 working days, i.e. 24 December 2010.

Regards

[Redacted]

Senior Case Officer

[Redacted]



Working together for a safer London

DIRECTORATE OF INFORMATION

Senior Complaints Officer  
Information Commissioners Office  
Wycliffe House  
Water lane  
Wilmslow  
Cheshire

3 December 2010

Mr Nigel Shankster  
Metropolitan Police Service  
Public Access Office  
PO Box 57192  
London  
SW6 1SF

Telephone:

Facsimile:

Email:

[www.met.police.uk](http://www.met.police.uk)

Your ref:

Our ref:

Dear

**Freedom of Information Appeal MPS Reference No: 2010110004863**

Thank you for your email dated 25 November 2010, in respect of the above matter. On the basis that the ICO are specifically looking at the manner in which the MPS interpreted their responsibilities under Section 16 of The Act, I have examined the initial response as sent out by the MPS on 16 June 2010, together with the case management log for our reference 2010040002851.

Having looked at the above, I conclude that the manner in which the MPS carried out its obligations under Regulation 9, Codes of Practice and Section 16 to advise and assist an applicant, did, in this instance, fall short of the expected level of assistance to be provided under the Codes.

The response letter, whilst it does mention narrowing the request it does not specifically state how the suggested narrowing could be achieved, neither could I find any clear evidence of any discussion with the applicant by telephone which could have, in the circumstances, assisted in bringing the request within the cost threshold.

The MPS is always looking to improve its handling of FOIA requests and has, over the past couple of years made huge advances in case management, however, like other public authorities there are still aspects of the act where improvement can be made and one such area is section 16.

The MPS notes that within the ICO guidance on Section 16 there exist the following statements "Public authorities should go beyond the requirements of the Codes when providing advice and assistance" and, "Make early contact with an applicant and maintain a dialogue with them throughout the process, keeping them informed at every stage". The MPS would concede that whilst there are occasions when such dialogue is difficult I do not believe that to be the case in this instance. However, it is believed that whilst a complex request the issues would perhaps have been better discussed via the telephone at an early stage in an attempt to resolve the cost issue.

I believe that it is pertinent to note that in a letter to Finers Stephens Innocent, on 13 July 2010 the MPS acknowledged the fact that the original response did not fully explain why

or which particular questions would invoke the need to fully refuse the request on cost grounds in accordance with our responsibilities under Section 16, and apologised for that fact.

Should you have any further inquiries concerning this matter, please do not hesitate to contact me on [redacted] or at the address at the top of this letter, quoting the reference number above.

Yours sincerely

[redacted]

**Higher Information Access Manager  
Public Access Office  
Metropolitan Police Service**



**METROPOLITAN  
POLICE**

Working together for a safer London

DIRECTORATE OF INFORMATION

[Redacted]  
Senior Case Officer  
Information Commissioners Office  
Wycliffe House  
Water lane  
Wilmslow  
Cheshire

[Redacted]  
Metropolitan Police Service  
Public Access Office  
PO Box 57192  
London  
SW6 1SF

Telephone: [Redacted]  
Facsimile: [Redacted]  
Email:  
www.met.police.uk  
Your ref: [Redacted]  
Our ref: [Redacted]

28 February 2011

Dear [Redacted]

**Freedom of Information Appeal MPS Reference No: 2010090000479**

Thank you for your email dated 12 January 2011 in respect of the above matter and sincere apologies for the delay in responding in full and for your understanding in that regard. It is appreciated that the internal review and the first response from this office centred on the understanding that following clarification with the complainant, Finers Stephens and Innocent, (FSI) the matter had been brought within cost and that exemptions applied. My findings however are that cost is indeed the main factor in respect of the five remaining questions and that Section 12 will be the focus of my response.

As part of my research into responding to your letter of 12 January I referred to a number of very useful DN's issued by the Information Commissioner, (ICO) in which guidance was obtained in the applicability of Section 12(1), 12(2) and 12(4).<sup>1</sup>

For reference, I have included the five questions considered during the MPS internal review and it is those and those alone that I have considered in this response:-

- 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.**

However, in the internal review there is a clear indication that following discussions with MPS staff, FSI, replied to the MPS on 15 July 2010 and stated that they were now seeking 'any document, report or correspondence' which relates to **Mulcaire/Goodman investigation**. A copy of this letter was included in my submission to the ICO on 16 December 2010.

In view of this latter, specific indication from FSI I have taken this to be the extent of the first question for the purposes of this response.

1. [http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs\\_50251014.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50251014.pdf)

[http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs\\_50266379.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50266379.ashx)

[http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs\\_50313603.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50313603.ashx)

2. **The minutes of any and all internal meetings, including but not limited to the Management Board sessions, attended by (but not limited to) Dick Fedorcio, Andy Hayman, Peter Clarke, Philip Williams and John Yates in which the Mulcaire/Goodman matter was discussed, at any time during the criminal investigation or following its closure;**

Again, following extensive dialogue between the MPS and FSI, the complainant asked for the following in respect of question 2:-

**'all internal meetings attended by Dick Fedorcio, Andy Hayman, Mark Maberly, Peter Clarke, Philip Williams and John Yates, as well as any member of the MPS directly responsible for the Mulcaire/Goodman matter.' You noted that this is not limited to, but should include, Management Board Sessions meeting minutes'**

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;**

Within their letter of 15 July 2010, FSI state that if the MPS still considered that this request is too broad they would narrow question 6 to read, **"searches for the above mentioned information in relation to the following specific individuals and classes of individuals. (see previous paragraph), Dick Fedorcio and anyone in 'Public Affairs and Internal Communications", Andy Hayman, Mark Maberly, Peter Clark, Philip Williams and John Yates as well as any member of the MPS directly responsible for the Mulcaire/Goodman matter and police officers named in the internal investigation of Mulcaire/Goodman matter"**

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;**

The same letter, 15 July 2010 from FSI also states with direct reference to the last paragraph, question 7, that they also wished to have access to **"any communications with, but not limited to Rebekah Wade, Andy Couison, Stuart Kuttner, James Murdoch, Tom Crone, Colin Myler, Ian Edmuondson, Mazer Mahmood, Bill Akass"**.

11. **Any and all documents (emails, phone messages, memos, etc.), electronic or otherwise, that in any way relate to communications between Rebekah Wade, currently the chief executive at News International, and Dick Fedorcio, Andy Baker and/or John Stevens, in the time frame of 2002 to 2004, related to a news editor at the News of the World named Alex Marunchak.**

In considering this matter, ICO guidance on the application of Section 12<sup>2</sup> was very useful, particularly in respect of considerations around the aggregation of requests and its states;

*The Fees Regulations state that two or more requests to one public authority can be aggregated for the purposes of calculating costs if they are:*

- *by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;*
- *for the same or similar information; and*
- *the subsequent request is received by the public authority within 60 working days of the previous request.*

In this instance the five questions are intrinsically linked in respect of content as they all refer to or are connected with the MPS investigation into allegations of phone hacking by Glen Mulcaire and Clive Goodman. For that reason the MPS considers it appropriate in the circumstances to aggregate them for the purpose of calculating costs in accordance with section 12(4).

Regulation 5 of the Fees Regulations<sup>3</sup> provides that multiple requests can be aggregated where two or more requests relate, to any extent, to the same or similar information.

Whilst it is the opinion of the MPS that regulation 5 and therefore Section 12(4) is applicable to the above questions it is noted that this consideration is confirmed within *Fitzsimmons V ICO & Department for Culture Media and Sport [EA/2007/0124]*<sup>4</sup> particularly at para. 43, and based on this, I contend that the five questions above in any of the suggested formats do contain more than one request within a single item of correspondence and can, as suggested, be aggregated for cost purposes.

Having decided that the requests can and should be aggregated would compliance exceed the appropriate limit?

The ICO's guidance states;

"In estimating whether complying with a request would exceed the appropriate limit, Regulation 4 (3) states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
- locating the information, or a document containing it;
- retrieving the information, or a document containing it; and
- extracting the information from a document containing it.

The four activities are sequential, covering the retrieval process of the information from the public authority's information store.

<sup>2</sup>[http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/FEES\\_REGULATIONS\\_GUIDANCE\\_V2.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/FEES_REGULATIONS_GUIDANCE_V2.ashx)

<sup>3</sup> <http://www.opsi.gov.uk/SI/si2004/20043244.htm>

<sup>4</sup> <http://www.informationtribunal.gov.uk/DBFiles/Decision/f242/Fitzsimmons.pdf>

An authority can take into account the costs attributable to the time that persons (both the authority's staff and external contractors) are expected to spend on these activities. Such costs are calculated at £25 per hour per person for all authorities regardless of the actual cost or rate of pay, which means that the limit will be exceeded if these activities exceed 24 hours for central government, legislative bodies and the armed forces, and 18 hours for all other authorities."

For the MPS this equates to 18 hours at £25 per hour equalling £450. In coming to my decision I have been mindful of the points made in the Information Tribunal case *Alasdair Roberts v the Information Commissioner [EA/2008/0050]*<sup>5</sup>, particularly at paragraphs 9 - 13 of that decision:

- Only an estimate is required (i.e. not a precise calculation)
- The cost estimate must be reasonable and only based on those activities described in regulation 4(3) (shown above)
- Time spent considering exemptions or redactions cannot be taken into account
- The determination of a reasonable estimate can only be considered on a case-by-case basis; and
- Any estimate should be "sensible, realistic and supported by cogent evidence"

I believe that before I explain why the MPS considers that to comply with this aggregated request would exceed the cost limit, it would benefit the reader if I outline the nature of the investigation undertaken by the MPS and this is done through an extract from evidence provided to the Culture Media and Sports Select Committee by the MPS.<sup>6</sup>

1. In December 2005, concerns were reported to the Metropolitan Police Service (MPS) by members of the Royal household at Clarence House, relating to the illegal tapping of mobile phones. As a result, the MPS launched a criminal investigation and this identified the involvement of two men, namely Clive Goodman (The Royal Editor of the News of the World newspaper) and Glen Mulcaire (A Security Consultant).

2. The two men were engaged in a sophisticated and wide ranging conspiracy to gather private and personal data, principally about high profile figures, for financial gain. This involved publishing material in the News of the World newspaper.

3. The MPS investigation found that these two men had the ability to illegally intercept mobile phone voice mails. They obtained private voicemail numbers and security codes and used that information to gain access to voicemail messages left on a number of mobile phones. It is important to note that this is a difficult offence to prove evidentially and for an illegal interception to take place, access must be gained to a person's telephone and their voicemails listened too, prior to the owner of the phone doing so. There will be other occasions where the two men accessed voicemails but due to the technology available at the time, it was not possible to prove via the telephone companies if they had accessed the voicemails prior to or after the owner of the mobile phone had done so. Hence, it was not possible to prove if an illegal interception had taken place.

4. Their potential targets may have run into hundreds of people, but the investigation showed from an evidential viewpoint, that they only used the tactic against a far smaller number of individuals.

5. The MPS first contacted the Crown Prosecution Service (CPS) on 20 April 2006 seeking guidance about this investigation, where an investigation strategy was agreed.

<sup>5</sup> [http://www.informationtribunal.gov.uk/DBFiles/Decision/1275/Roberts%20v%20IC%20\(EA-2008-0050\)%20Decision%2004-12-08.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/1275/Roberts%20v%20IC%20(EA-2008-0050)%20Decision%2004-12-08.pdf)

<sup>6</sup> <http://www.parliament.the-stationery-office.com/pa/cm200910/cmselect/cmcomeds/362/9090213.htm>

6. On 8 August 2006 both Clive Goodman and Glen Mulcaire were arrested and both made no comment interviews. On 9 August 2006 Goodman and Mulcaire were charged with conspiracy to intercept communications, contrary to section 1 (1) of the Criminal Law Act 1977, and eight substantive offences of unlawful interception of communications, contrary to section 1 (1) of the Regulation of Investigatory Powers Act 2000. The charges related to accessing voice messages left on the mobile phones of members of the Royal Household. The two were bailed to appear at the City of London Magistrates' Court on 16 August 2006 when they were sent to the Central Criminal Court for trial.
7. During searches, police seized vast amounts of material, some of which was used in evidence. It is reasonable to expect some of the material, although classed as personal data, was in their legitimate possession, due to their respective jobs. It is not necessarily correct to assume that their possession of all this material was for the purposes of interception alone and it is not known what their intentions was or how they intended to use it.
8. When Mulcaire's business premises were searched on 8 August, in addition to finding evidence that supported the conspiracy between him and Goodman regarding the Royal Household allegations, the MPS also uncovered further evidence of interception and found a number of invoices. At that stage, it appeared these invoices were for payments that Mulcaire had received from the News of the World newspaper related to research that he had conducted in respect of a number of individuals, none of whom had any connection with the Royal Household. They included politicians, sports personalities and other well known individuals.
9. The prosecution team (CPS and MPS) therefore had to decide how to address this aspect of the case against Mulcaire. At a case conference in August 2006, attended by the reviewing lawyer, the police and leading counsel, decisions were made in this respect and a prosecution approach devised.
10. From a prosecution point of view what was important was that any case brought to court properly reflected the overall criminal conduct of Goodman and Mulcaire. It was the collective view of the prosecution team that to select five or six potential victims would allow the prosecution properly to present the case to the court and in the event of convictions, ensure that the court had adequate sentencing powers.
11. To that end there was a focus on the potential victims where the evidence was strongest, where there was integrity in the data, corroboration was available and where any charges would be representative of the potential pool of victims. The willingness of the victims to give evidence was also taken into account. Any other approach would have made the case unmanageable and potentially much more difficult to prove. This is an approach that is adopted routinely in cases where there are a large number of potential offences.
12. Adopting this approach, five further counts were added to the indictment against Mulcaire alone based on his unlawful interception of voicemail messages left for Max Clifford, Andrew Skylet, Gordon Taylor, Simon Hughes and Elle MacPherson.
13. In addition to obtaining evidence from these persons, the MPS also asked the reviewing lawyer to take a charging decision against one other suspect. On analysis, there was insufficient evidence to prosecute that suspect and a decision was made in November 2006 not to charge.
14. This progress in the case meant that its preparation was completed by the time Goodman and Mulcaire appeared at the Central Criminal Court on 29 November 2006 before Mr Justice Gross. When they did appear at court, Goodman and Mulcaire both pleaded guilty to one count of conspiracy to intercept communications—the voicemail messages left for members of the Royal Household. Mulcaire alone pleaded guilty to the five further substantive counts in respect of Max Clifford, Andrew Skylet, Gordon Taylor, Simon Hughes and Elle MacPherson. Hence, in total 8 individuals were identified as having had their telephones illegally intercepted.
15. Anyone who had been approached as a potential witness for the criminal prosecution was advised and informed that they had been the subject of illegal interception. Thereafter during the course of the investigation police led on informing anyone who they believed fell into the category of Government, Military, Police or Royal Household, if we had reason to believe that the suspects had attempted to ring their voicemail. This was done on the basis of National Security. In addition, appropriate Government agencies were briefed as to the general security risk that police had identified and advised that if they had any further concerns they should contact their own service provider.

16. For anybody else that may have been affected, police provided the individual phone companies the details of the telephone numbers (various) of the suspects and it was agreed that they (the service provider) would individually research, assess and address whether or not, and to what degree their customers had been the subject of contact by the suspects. It was thereafter a matter for the telephone companies to take appropriate action to reassure their customers and introduce preventative measures to ensure this type of interception did not recur.

17. On 26 January 2007 sentencing took place. Goodman was sentenced to four months' imprisonment and Mulcaire to a total of six months' imprisonment, with a confiscation order made against him in the sum of £12,300. On sentencing the two men, Mr. Justice Gross at the Old Bailey said the case was "*not about press freedom, it was about a grave, inexcusable and illegal invasion of privacy*".

18. This case has been subject of the most careful investigation by very experienced detectives. It has also been scrutinised in detail by both the CPS and leading Counsel. They have carefully examined all the evidence and prepared the indictments that they considered appropriate. No additional evidence has come to light since this case has concluded.

19. There has been much speculation about potential criminal involvement of other journalists in this case. Whilst it is true to say that other journalists names appeared in the material seized by Police, there was insufficient evidence to support any criminal conspiracy on their part.

20. Due to renewed publicity in this case in the Guardian newspaper, the MPS Commissioner asked Assistant Commissioner John Yates to establish the facts around the original investigation into the unlawful tapping of mobile phones by Clive Goodman and Glen Mulcaire and any wider issues in the reporting by the Guardian. Assistant Commissioner Yates was not involved in the original case and clearly came at this with an independent mind. He released a press statement on 9 July 2009 and considered that no further investigation was required as from the publicity, no new evidence had come to light.

21. The MPS does recognise the very real concerns, expressed by a number of people, who believe that their privacy may have been intruded upon. In addition to those who had already been informed in line with the aforementioned strategy (ie those fitting into the category of Government, Military, Police or Royal Household and the remainder being informed by the telephone companies), Assistant Commissioner Yates committed to ensuring that the MPS has been diligent, reasonable and sensible, and taken all proper steps to ensure that where we have evidence that people have been the subject of any form of phone tapping, or that there is any suspicion that they might have been, that they were informed.

22. As a result, on 10 July 2009, the MPS released a further press statement stating "*The process of contacting people is currently underway and we expect this to take some time to complete*".

23. It is also important to note that if new evidence came to light then the MPS would consider it. Nothing to date has been produced.

It is pertinent to note, particularly in light of the comments within paragraph 23 above, that new evidence has indeed come to light and a new investigative team has been appointed within the Specialist Crime Directorate of the MPS, under the leadership of Deputy Assistant Commissioner Sue Akers. (press release copied below dated 9 February 2011)

### **Phone Hacking investigation - update on Operation Weeting**

The recently formed Specialist Crime Directorate 'Operation Weeting' team is conducting the new investigation into phone hacking whilst adopting a fresh approach towards informing victims and potential victims in this case.

The new evidence recently provided by News International is being considered alongside material already in the Metropolitan Police Service's (MPS) possession to determine which lines of enquiry should be pursued as priorities. At the same time, all actions and decisions taken by the previous investigation are being reviewed and all the evidence gathered to date is being checked to ensure it is catalogued correctly and accurately.

Having begun an analysis of the documents seized in 2006 alongside the new evidence, the team have been able to make some links not previously identified. As a result, the team have also identified

some individuals who were previously advised that there was little or no information held by the MPS relating to them within the case papers and exhibits and this is now being reviewed.

At this stage, there is no evidence to suggest that their voice mails were hacked but this will be an important and immediate new line of enquiry. As a result detectives are taking urgent steps to advise them of this development at the earliest opportunity. If any others are identified as possible victims in due course they will also be contacted.

Deputy Assistant Commissioner Sue Akers, leading the new investigation, said:  
"I am conscious there remains significant interest in this case and we are determined to ensure that we conduct a robust and thorough investigation which will follow the evidence trail to its conclusion.

"We will build on the previous commitment to all those victims whose phones we already have reasonable evidence to believe may have been hacked by establishing or renewing contact with them. With this new investigation we will be as open as we can be and will show them all the information we hold about them, while giving them the opportunity to tell us anything that may be of concern to them.

"In time, we will go beyond this group of individuals and make contact with everyone who had some of their personal contact details found in the documents seized in 2005. This will ensure all of those who have been affected in some way are made aware of the information we have found relating to them.

"Until I am satisfied that we have validated the data we are re-examining I am not prepared to discuss any of the numbers involved, but I intend to make this information public at the earliest opportunity.

"This is clearly a major task with a considerable amount of work to be done which will take a significant amount of time and resources. We will complete this new investigation as soon as we possibly can, but I am unable to predict at this early stage as to how long it will take to complete.

"It would be inappropriate for me to discuss any further details regarding this case at this time."

As the above indicates, this was and still is an investigation involving a vast amount of information, both seized as a consequence of the allegations and subsequent conviction of Mulcaire and Goodman, as well as that generated during the course of the investigation.

I will now show how the MPS considers Section 12(1) to be applicable in this instance.

I will commence with the first question:

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.**

Within the correspondence between the MPS and FSI as part of the internal review there is a clear indication that following discussions with MPS staff, FSI sought to redefine question 1 and in their letter to the MPS of 15 July 2010, they state that they were seeking '**any document, report or correspondence which relates to Muicaire / Goodman investigation**'. However, Question 1 is further clarified in the same letter to read '**between January 2006 and February 2010.**' For information a copy of this letter was included in my submission to the ICO on 16 December 2010.

Despite the fact that FSI have redefined the request, it is I believe considerably wider in its remit than the initial request, and a fact that is referred to in the MPS internal review, (MPS letter to FSI 17 Aug 2010). The MPS will indeed hold reports and correspondence relating to the investigation and this is not only indicated by the HOLMES (Home Office Large Major Enquiry System) index, which shows that there are in excess of 8,000 pages contained in some 250+ documents seized or created in respect of the Goodman and Mulcaire investigation, but also in 24+ large ring binders contained within offices at New Scotland Yard.

I am also aware that information relevant to the question may well be contained within 30+ tapes and CD's, which are also stored within offices at New Scotland Yard.

I am informed that a similar number of box files, with some duplication however, are retained in the MPS Directorate of Legal Services, also based at Scotland Yard. An examination of these files would need to be carried out to assess whether additional information pertinent to the request is indeed held.

Whilst labelled, all box files and lever files do not generally contain an internal index, although may for example have on the spine, "witness statements" etc. therefore, whilst the reader may be able to 'discard' the content of some files, it will be necessary to examine each of the other files in turn to discover exactly what information is contained therein in order to assess its relevance to the request.

In respect of any correspondence held that is relevant to the Mulcaire / Goodman investigation, I caused searches to be made within the MPS case management system MetRIC. The MetRIC system is used to log, monitor and respond to information access requests (FOIA, DPA and EIR), their subsequent reviews and general correspondence received or sent from the majority of MPS command units. However, it should be noted that not all MPS commands use this particular system as it does not allow for anything to be recorded therein above the 'Restricted' protective marking as recognised by the Government Protected Marking System.

Within the MetRIC system there are currently more than 540,000 cases comprising of more than 1,051,000 separate documents.

As a case management system all documents relating to a request or piece of correspondence are kept together under one unique reference number i.e. 2010090000479. The system is designed to enable easy retrieval of information relating to a particular case number. The system also has reporting functions which allow for the identification of cases depending on the responsible person, the relevant unit, the date of request or closure, even the outcome (full disclosure, partial disclosure etc). However the system is not advanced enough to provide a report on all requests relating to a particular topic.

In order to identify all requests relating to a specified topic a Google type search needs to be made using key words or phrases. Whilst this can be effective - especially when trying to identify a specific case for which the URN is unknown - it is also somewhat of a scattergun approach. To clarify, this facility will identify the information held on MetRIC which features the key words. This could be a case, a part of a case (known as a phase) a response document (such as an email) or an attached file.

This can cause problems and delay in the time taken to conduct a thorough search. For example, an accurate search would need to follow the stages set out below:

- 1) A search on a set of keywords
- 2) Time taken in order to open each "hit" and noting the URN
- 3) The case will need to be accessed to ensure that the contents are relevant to the search

This procedure would need to be actioned for each set of keywords for example, in relation to this particular case the search process was repeated for each of the following keywords/variations, with date parameters set for on or before 14 April 2010:

Phone hacking / Phone tapping / News of the World / NoTW / Glen Mulcaire / Clive Goodman. Those searches resulted in 587 hits being identified within the MetRIC system.

#### Estimated timings

Each hit would need to be opened in order to establish the URN, note it down and return to the previous screen. It is estimated that this task would take at least one minute per hit.

The initial searching (which in the above example was repeated six times) did not take more than 10 minutes and to check each hit in order to identify whether or not the information within the 'hit' was relevant to the request took approximately 2 minutes per hit.

Therefore, in respect of the 587 hits identified following the search as outlined above, based on a restrictive 2 minutes per hit to locate, retrieve and extract relevant information for this part of this request, it is estimated that it would take 19.5hrs. On that timing alone this request would exceed the time limit of 18 hours and therefore, on the basis of aggregation, Section 12(4), all five requests would be excess cost.

Accordingly, based on the estimate for the correspondence system alone, and without considering other 'correspondence' that may be held within emails for the identified individuals or the searching of the investigative material, the cost threshold is already exceeded.

I will however continue to assess the aggregated requests in terms of likeliest to exceed costs and for that reason I will now move to consider questions 6 and 7.

#### **Question 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;**

The paragraph above was considered at the time of internal review to be excess cost, clearly this would be the case as I hope to demonstrate. As of January 2011, MPS staffing levels are roughly, 32,300 police officers, 4,450 special constables, 14,100 police staff and 4,200 police community support officers, totalling 50,050 staff, and whilst down on April 2010 figures, such large numbers would ensure that to adhere to guidance within Regulation 4(3) this request will exceed the prescribed limit of 18hrs work. Based on the wording of the request each and every member of the MPS would have to be tasked to locate, retrieve and then extract from their emails any of those that were considered pertinent to the request.

The email system within the MPS has both received and sent email accounts with the capability of placing emails in folders dependent upon individual user requirements. (I for instance have in excess of fifty email folders attached to my email account with a varying number of emails in each folder) The system also has the capability of archiving certain emails and this can be done over a number of years.

The email system does not unfortunately, contrary to the assertion by FSI, have the capability to search on one criteria to find all relevant information within MPS wide email accounts. Therefore, on the extremely unlikely basis that only 100 emails were required to be searched for each member of staff, that would equate to over five and a half million emails and at a conservative 30 seconds per email the process as outlined within Regulation 4(3) would take over 45,000 hours.

However, I am mindful that as part of the negotiations under section 16, advice and guidance, FSI, within their letter of 15 July 2010 stated that if the MPS still considered that this request is too broad they would narrow question 6 to read as follows:-

**“searches for the above mentioned information in relation to the following specific individuals and classes of individuals. (see previous paragraph), Dick Fedorcio and anyone in ‘Public Affairs and Internal Communications”, Andy Hayman, Mark Maberly, Peter Clark, Philip Williams and John Yates as well as any member of the MPS directly responsible for the Mulcaire/Goodman matter and police officers named in the internal investigation of Mulcaire/Goodman matter”**

Having redefined question 6, it is considered appropriate to address this in accordance with the Act. I do however continue to base my assessment of this specific request on my assertion that all matters for consideration in this case are aggregated for cost purposes.

It is noted that apart from the six named individuals, FSI state that; **‘anyone in Public Affairs and Internal Communications’ or ‘any member of the MPS directly responsible for the Mulcaire / Goodman matter’**, are all within the remit of the request.

My enquiries found that there are 74 staff within the Directorate of Public Affairs and Internal Communications, (DPA) and those, coupled with the 6 [Note - Dick Fedorcio is part of the 74 DPA ] giving a total of 79 members of staff. Please note that staffing levels within the command would have been very similar in April 2010, at the time of the original request. Whilst I have detailed above a very loose estimate in terms of searching for pertinent information across all staff in the MPS, this particular aspect is narrowed and targets just those staff within the ‘communications’ area of business.

Therefore, I contacted a member of the DPA and asked them how many searchable emails they had on their system, both in ‘live’ sent, received and deleted folders, any email folders maintained by subject matter plus any emails contained in archived folders, dated on or before 14 April 2010. The staff member concerned confirmed that they had in excess of 2,500 emails in all the folders mentioned dated on or before 14 April 2010. The staff member concerned also confirmed that it took 30 minutes to locate and retrieve that figure. However, the 30 minutes does not account for the extraction of relevant information. This high figure is not surprising considering the remit within which staff of the DPA work and who they work with, i.e. the media and those connected to the media.

Therefore, for the purpose of calculating cost, if I were to reduce the average number of emails to 1,000 per member of staff with a locate and retrieve time of 15 minutes, this equates to;

To locate and retrieve pertinent information = 19hrs 45 Min

Based on the earlier work by reducing the estimated number of emails per staff to 1,000, and that it takes an estimated 30 seconds to work out whether the content of an email is pertinent to the request, this will equate to;

To extract relevant information = 658hrs 20 Min

Even with these relatively conservative estimates the cost of locating, retrieving and extracting relevant information is far in excess of the 18hrs accorded by Regulation 4(3).

Notwithstanding the above, it should be noted that the Directorate of Public Affairs run an internal database containing enquiries from and to the media, International, National and local.

For the period on or before 6 April 2010, in excess of 1300 entries were found with 'News of the World' in the title. Again, please note that this did not include searches for other common entry terms such as 'NotW' or 'NOW'.

To check whether or not there is pertinent information within the corporate database, not accounting for the time taken to locate and retrieve, to extract relevant information would, at 30 seconds per email, take an additional 10hrs to complete.

It is recognised that FSI's question 7, also considered as part of the internal review, is very similar in nature to question 6.

Question 7 reads;

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;**

It is also recorded that FSI stated in their letter of 15 July 2010 to the MPS that they also wished to have access to, **"any communications with, but not limited to Rebekah Wade, Andy Coulson, Stuart Kuttner, James Murdoch, Tom Crone, Colin Myler, Ian Edmuondson, Mazer Mahmood, Bill Akass"**, clarified to the extent that, **'We reiterate that this is not an exhaustive list and is designed only to be a starting point for your search'**

It is my contention, as in the previous question, that the initial part of the request at 7 would be excess cost for the same reason as before, in that ALL email accounts within the MPS would need to be searched to locate relevant information.

With the redefined question 7 as detailed in FSI's letter of 15 July, I am still of the opinion that excess costs applies, particularly when considering Section 12(4) aggregated costs. The lead in to the question above states, **'any communications with, but not limited to.....'** This request is open ended and potentially extends the search parameters to ALL staff, and even if the MPS were to limit this to those staff described within those of the revised Q6, the same costs would apply.

In view of the fact that the MPS is of the opinion that the five requests relevant to this Appeal are aggregated for cost purposes in accordance with Section 12(4), and that evidence has been put forward to show that the cost of complying with questions 1, 6 and 7 would exceed the cost threshold under Section 12(1) I have not therefore gone on to detail the costs entailed in complying with parts 2 and 11 of this case.

### Other Matters

Whilst the ICO have not specifically asked the MPS to comment on the provision of advice and assistance offered to FSI under Section 16 of the Act, I believe that it is appropriate to outline the steps taken to refine the original eleven questions during the internal review process.

Section 16(1) provides an obligation for a public authority, in this instance the MPS, to provide advice and assistance to a person making a request, so far as it would be reasonable to do so and Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in a particular case if it has conformed with the provisions in the Section 45 Code of practice in relation to the provision of advice and assistance in that case.

In regard to the advice from the ICO and Section 45 Code of Practice,<sup>7,8</sup> I am able to provide clear evidence that attempts were made by the MPS in the provision of advice and assistance to FSI in order to bring their requests within the cost threshold.

Over and above the formal letters and emails between the MPS and FSI, which are already in the possession of the ICO, I can confirm that a number of telephone discussions also took place between the MPS internal review officer and solicitors working at FSI with the express purpose of trying to refine the requests in order to bring within cost. In the correspondence I find the following evidence:

Letter 13 July 2010 MPS to FSI

*"As mentioned within our telephone conversation yesterday, I do appreciate that FSI has now agreed to narrow the FOI request. I note that out of the 11 questions originally posed, you are now satisfied with us handling 5 particular questions of interest (questions 1,2,6,7,11). Whilst an internal review is a review of the original questions posed, I will base my final response on the 5 questions you have asked the MPS to now focus on. My final response letter will also review the handling of your original FOIA case in terms of compliance with the Act. I also confirmed that on further research, I would inform you if it remains the case that the information relating to questions posed is unlikely to be able to be located/retrieved/extracting with the 18 hour cost threshold. "*

*"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."*

Letter 20 July 2010 MPS to FSI

*"As you will be aware, to assist you under the Section 16 of the Act, we have been in contact with you to try and clarify particular parts of your request, which led to the*

<sup>7</sup>[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/advice\\_and\\_assistance\\_v1.0\\_1712\\_08.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/advice_and_assistance_v1.0_1712_08.pdf)

<sup>8</sup> <http://webarchive.nationalarchives.gov.uk/http://www.justice.gov.uk/guidance/foi-code-of-practice.htm>

*need to exempt the request in full at the original stage. We have also tried to assist you in narrowing the scope of your request so that it may be possible to locate/retrieve and extract information which may be held within the statutory 18 hour threshold."*

In relation to the above, it is the opinion of the MPS that it has indeed complied with the guidance contained within Section 45 Codes of Practice, and therefore its duty under Section 16 to provide advice and guidance to the complainant. The MPS considers that it has done so with the clear intention to attempt to bring this matter within the cost threshold. In coming to this conclusion I am guided by the decision within the Information tribunal *Fitzsimmons V ICO & Department for Culture Media and Sport [EA/2007/0124]*<sup>9</sup> specifically at paragraph 47 that states:-

"A public authority that complies with the Code will be taken to have complied with its obligation to provide advice and assistance for the purposes of section 16 FOIA. However, failure to comply with the Code does not necessarily mean that there has been a breach of section 16 of FOIA"

Further considerations

Whilst the MPS considers this matter to be excess costs for the reasons outlined, it should be noted that at the time of the initial request by Mr Don Van Natta on 14 April 2010, the criminal investigation undertaken by the MPS into allegations of phone hacking by Glen Mulcaire and Clive Goodman was a recent, but closed investigation.

In the event that the requests referred to in this response had been or were to be narrowed to such an extent as to enable consideration of Section 1(1)(a) and 1(1)(b) of The Act, it is very likely that the following exemptions would have been considered by the MPS:-

Section 21(1) Information Reasonably Accessible by other means  
Section 30(1)(a)(b) Investigations and proceedings  
Section 31(1)(a)(b)(c) Law Enforcement  
Section 37(1) Communications with the Royal Family  
Section 40(2)(3) Personal Information  
Section 42(1) Legal Professional Privilege

Should you have any further inquiries concerning this matter, please do not hesitate to contact me on 0207 161 3649 or at the address at the top of this letter, quoting the reference number above.

Yours sincerely



**Higher Information Access Manager  
Public Access Office  
Metropolitan Police Service**

Reference: FS50322854



## **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**

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In a narrowed request, 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 section 12 (cost of compliance exceeds appropriate limit). It subsequently applied the exemptions at sections 30(1) (investigations and proceedings), 40(2) and (5) (personal information) and 42(1) (legal professional privilege). It also stated that, in respect of one part of the request, it held no information. During the Commissioner's investigation the public authority again stated that it wished to rely on section 12.

The Commissioner's decision is that compliance with the request would exceed the appropriate limit. He has not therefore considered the applicability of the other exemptions. The complaint is not upheld. 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 Commissioner's role**

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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.

Reference: FS50322854



## The request

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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*

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- 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. The Commissioner has already made a related decision about this request; it is considered in case reference FS50361392 which is issued at the same time as this Notice.
  4. Following a partial disclosure of information, on 22 June 2010 the complainant made the following 'narrowed' request:
    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,*

Reference: FS50322854



- 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. 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;*
  - 4. 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.*
  - 5. 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]".*
5. The Commissioner notes that the wording of this request is almost identical to parts 1, 2, 6, 7 and 11, respectively, of the original request, part 4 (previously 7) having the final sentence omitted in the latter request.
  6. On 13 July 2010 the public authority sought further clarification of these requests stating:

*"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".*

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7. Within this correspondence it made reference to each part of the request and made a number of suggestions as to how the complainant could refine the request.
8. On 15 July 2010, following a telephone conversation, the complainant again wrote to the public authority. He disagreed with the public authority's position, stating amongst other things that:  
  

*"We reiterate our point on the fact the MPS has a computerised data recovery system and that a keyword search ought to recover relevant information".*
9. On 17 August 2010 the public authority provided an internal review regarding the five points of the refined request, and stated that it was changing its earlier position. It advised the complainant that using a key word search would not necessarily recover all relevant information:  
  

*"To recover information in relation to investigations and particular individuals requires me to contact all relevant staff involved to ensure a full and thorough search for information is conducted".*
10. In respect of each part of the request it replied as follows.

Question 1 – it held advice file papers and case papers relating to this investigation which were exempt from disclosure by virtue of section 30(1)(a)(b)(c), section 40(2)(3) and section 42(1) (the latter in respect only of information contained within the advice file papers).

Question 2 – this information was not held.

Questions 3 and 4 – information was held but, aside from press releases, was exempt from disclosure by virtue of section 30(1)(a)(b)(c) and section 40(2)(3) of the Act.

Question 5 – it was neither confirmed nor denied, by virtue of section 40(5) of the Act, whether this information was held.

Reference: FS50322854



## The investigation

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### Scope of the case

11. On 30 June 2010 the complainant first contacted the Commissioner to complain about the way this request for information, and elements of his earlier request, had been handled. Following further correspondence with the public authority he wrote to the Commissioner again on 2 September 2010. He raised issues about this complaint, which are considered below, as well as issues about his original request which are dealt with in a further decision under case reference FS50361392.
12. In respect of this particular complaint, the Commissioner confirmed with the complainant that he would consider the public authority's citing of exemptions for parts 1, 3, 4 and 5 of the request and its position that no information is held in respect of part 2.

### Chronology

13. Following an earlier error regarding the scope of his investigation in this case, the Commissioner wrote to the complainant and public authority on 12 January 2011 to confirm what he was considering.
  - Question 1 – the citing of the exemptions at section 30(2), 40(2) and 42(1).
  - Question 2 – the assertion that no information is held.
  - Questions 3 and 4 – the citing of the exemptions at section 30(2) and 40(2).
  - Question 5 – the citing of the exemption at section 40(5).
14. Following further correspondence, on 28 February 2011 the public authority wrote to the Commissioner stating that it now wished to revert to its earlier position of relying on section 12. It provided a detailed response.
15. The Commissioner has chosen to exercise his discretion in this case to accept the late citing of section 12(1) and 12(4) by the public authority. However, section 17(5) of the Act requires that the complainant should be informed of a claim that section 12(1) applies within 20 working days of receipt of a request. The public authority failed to comply with this requirement in this case, as recorded below in *Procedural requirements*, and the public authority should seek to avoid similar breaches of the Act in future.

Reference: FS50322854



16. As to the reasoning for the decision to allow the late citing of section 12(1), when drafting the Act, Parliament intended that a public authority should not be obliged to comply with a request where the cost of doing so would exceed an appropriate cost limit (subsequently set at £600 for central government and £450 for all other public authorities). The estimate should be based on factors as they applied at the time of the request even if the public authority is applying section 12(1) late, as in this case.
17. The Commissioner has taken the general approach that to refuse to accept the late citing of section 12(1) would contradict the intention of Parliament that a public authority is not obliged to comply with a request if to do so would exceed the appropriate cost limit. The Commissioner has, therefore, decided to consider the application of section 12(1) in this Notice. The Commissioner has advised the complainant of this decision.

## Analysis

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### Substantive procedural matters

#### Section 12 – cost of compliance

18. Section 12(1) provides that -

*"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit".*

19. Section 12(4) provides that -

*"The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –*  
*(a) by one person, or*  
*(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*  
*the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."*

20. For clarity, there is no public interest element to consider when looking at section 12, which serves merely as a cost threshold. The Freedom of Information and Data Protection (Appropriate Limit and Fees)

Reference: FS50322854



Regulations 2004 (the "fees regulations") provide that the limit for central government public authorities is £600. The fees regulations also provide that the cost must be calculated at the rate of £25 per hour, providing an effective time limit of 24 hours, and that the tasks that can be taken into account as part of a cost estimate are as follows:

- determining whether the information requested is held;
  - locating the information;
  - retrieving the information;
  - extracting the information.
21. The task for the Commissioner in considering whether section 12(1) has been applied correctly is to reach a decision as to whether the cost estimate made by the public authority is reasonable. The analysis below is based upon the description provided by the public authority in support of its cost estimate.
22. Having analysed the correspondence, the Commissioner believes that there are two subsections of section 12 which are particularly relevant to this case.
- Section 12(1): removes the public authority's obligation to provide requested information where the cost of identifying, locating, retrieving and extracting the requested information would exceed the appropriate limit.
  - Section 12(4): allows a public authority to aggregate the cost of compliance with multiple requests in certain circumstances.
23. Analysis of the application of section 12 in relation to this case has therefore been as follows.
- Has the complainant made one request with multiple parts or multiple requests in one letter?
  - If the latter, can any of the requests be aggregated?
  - Would compliance with the request exceed the appropriate limit?

*Has the complainant made one request with multiple parts or multiple requests in one letter?*

24. The appropriate limit has been applied to all five parts of this request. Section 12(4) can be engaged where one person makes two or more requests. It allows for the aggregation of these requests for the purpose of calculating costs in circumstances which are set out in Regulation 5 of the Fees Regulations<sup>1</sup>. This Regulation provides that

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<sup>1</sup> <http://www.opsi.gov.uk/SI/si2004/20043244.htm>

Reference: FS50322854



multiple requests can be aggregated where two or more requests relate, to any extent, to the same or similar information.

25. Given the effect of section 12(4), the Commissioner first considered whether the complainant's letter of 17 November 2009 constituted a single request with multiple elements or multiple requests. The Information Tribunal considered a similar issue in *Fitzsimmons v ICO & Department for Culture Media and Sport* [EA/2007/0124]<sup>2</sup>.
26. Taking the Tribunal's decision in *Fitzsimmons* into consideration, the Commissioner would characterise the complainant's letter of 17 November 2009 as containing more than one request within a single item of correspondence.

*Can all parts of the request be aggregated?*

27. Having established that the complainant has made multiple requests in a single letter, the Commissioner went on to consider whether those requests could be aggregated for the purpose of calculating the cost of compliance. The public authority has advised the Commissioner that:

*"... the five questions are intrinsically linked in respect of content as they all refer to or are connected with the MPS investigation into allegations of phone hacking by Glen Mulcaire and Clive Goodman. For that reason the MPS considers it appropriate in the circumstances to aggregate them for the purpose of calculating costs in accordance with section 12(4)".*

28. The Commissioner notes that all parts of the request relate to the same investigation. The Commissioner has therefore concluded that it is reasonable for them to be aggregated for the purpose of calculating the cost of compliance because they follow an overarching theme.
29. Having reached this conclusion, the Commissioner will next consider the application of section 12(1). This removes the public authority's obligation to provide requested information where the cost of identifying, locating, retrieving and extracting the requested information exceeds the appropriate limit.

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<sup>2</sup><http://www.informationtribunal.gov.uk/DBFiles/Decision/i242/Fitzsimmons.pdf>

Reference: FS50322854



*Would compliance exceed the appropriate limit?*

30. The public authority provided the Commissioner with the following explanation in its letter of 28 February 2011, in respect of the first part of the request:

*"Within the correspondence between the MPS and FSI as part of the internal review there is a clear indication that following discussions with MPS staff, FSI sought to redefine question 1 and in their letter to the MPS of 15 July 2010, they state that they were seeking 'any document, report or correspondence which relates to Mulcaire / Goodman investigation'. However, Question 1 is further clarified in the same letter to read 'between January 2006 and February 2010.' For information a copy of this letter was included in my submission to the ICO on 16 December 2010.*

*Despite the fact that FSI have redefined the request, it is I believe considerably wider in its remit than the initial request, and a fact that is referred to in the MPS internal review, (MPS letter to FSI 17 Aug 2010). The MPS will indeed hold reports and correspondence relating to the investigation and this is not only indicated by the HOLMES (Home Office Large Major Enquiry System) index, which shows that there are in excess of 8,000 pages contained in some 250+ documents seized or created in respect of the Goodman and Mulcaire investigation, but also in 24+ large ring binders contained within offices at New Scotland Yard.*

*I am also aware that information relevant to the question may well be contained within 30+ tapes and CD's, which are also stored within offices at New Scotland Yard.*

*I am informed that a similar number of box files, with some duplication however, are retained in the MPS Directorate of Legal Services, also based at Scotland Yard. An examination of these files would need to be carried out to assess whether additional information pertinent to the request is indeed held.*

*Whilst labelled, all box files and lever files do not generally contain an internal index, although may for example have on the spine, "witness statements" etc. therefore, whilst the reader may be able to 'discard' the content of some files, it will be necessary to examine each of the other files in turn to discover exactly what information is contained therein in order to assess its relevance to the request.*

Reference: FS50322854



*In respect of any correspondence held that is relevant to the Mulcaire / Goodman investigation, I caused searches to be made within the MPS case management system MetRIC. The MetRIC system is used to log, monitor and respond to information access requests (FOIA, DPA and EIR), their subsequent reviews and general correspondence received or sent from the majority of MPS command units. However, it should be noted that not all MPS commands use this particular system as it does not allow for anything to be recorded therein above the 'Restricted' protective marking as recognised by the Government Protected Marking System.*

*Within the MetRIC system there are currently more than 540,000 cases comprising of more than 1,051,000 separate documents.*

*As a case management system all documents relating to a request or piece of correspondence are kept together under one unique reference number i.e. 2010090000479. The system is designed to enable easy retrieval of information relating to a particular case number. The system also has reporting functions which allow for the identification of cases depending on the responsible person, the relevant unit, the date of request or closure, even the outcome (full disclosure, partial disclosure etc). However the system is not advanced enough to provide a report on all requests relating to a particular topic.*

*In order to identify all requests relating to a specified topic a Google type search needs to be made using key words or phrases. Whilst this can be effective - especially when trying to identify a specific case for which the URN is unknown - it is also somewhat of a scattergun approach. To clarify, this facility will identify the information held on MetRIC which features the key words. This could be a case, a part of a case (known as a phase) a response document (such as an email) or an attached file.*

*This can cause problems and delay in the time taken to conduct a thorough search. For example, an accurate search would need to follow the stages set out below:*

- 1) A search on a set of keywords*
- 2) Time taken in order to open each "hit" and noting the URN*
- 3) The case will need to be accessed to ensure that the contents are relevant to the search*

*This procedure would need to be actioned for each set of keywords for example, in relation to this particular case the search process was repeated for each of the following*

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*keywords/variations, with date parameters set for on or before 14 April 2010:*

*Phone hacking / Phone tapping / News of the World / NoTW / Glen Mulcaire / Clive Goodman. Those searches resulted in 587 hits being identified within the MetRIC system.*

*Estimated timings*

*Each hit would need to be opened in order to establish the URN, note it down and return to the previous screen. It is estimated that this task would take at least one minute per hit.*

*The initial searching (which in the above example was repeated six times) did not take more than 10 minutes and to check each hit in order to identify whether or not the information within the 'hit' was relevant to the request took approximately 2 minutes per hit.*

*Therefore, in respect of the 587 hits identified following the search as outlined above, based on a restrictive 2 minutes per hit to locate, retrieve and extract relevant information for this part of this request, it is estimated that it would take 19.5hrs. On that timing alone this request would exceed the time limit of 18 hours and therefore, on the basis of aggregation, Section 12(4), all five requests would be excess cost.*

*Accordingly, based on the estimate for the correspondence system alone, and without considering other 'correspondence' that may be held within emails for the identified individuals or the searching of the investigative material, the cost threshold is already exceeded".*

31. The public authority went on to provide further estimates in respect of the other parts of the request. However, the Commissioner has not included these at this stage because, if he accepts that the limit would be exceeded by compliance with the first part of the request, further costs would be superfluous.

#### *Conclusion*

32. It is the Commissioner's view that the public authority has provided adequate explanations – as quoted above – to demonstrate that it would exceed the appropriate limit to locate and retrieve the requested information for the first part of the request. As the Commissioner finds

Reference: FS50322854



that the costs can be aggregated, he therefore concludes that to comply with the request as a whole would exceed the appropriate limit.

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

33. Section 16(1) (full text in the legal annex attached to this Notice) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the section 45 Code of Practice in relation to the provision of advice and assistance in that case.
34. The Commissioner has already determined the issue of advice and assistance in relation to the complainant's first request in the other complaint referred to above.
35. In respect of this particular case the Commissioner notes that, on receiving the narrowed request, the public authority took steps to further clarify the request. This was done by telephone as well as in writing.
36. The public authority has shown in its responses that it tried to help the complainant to both clarify and narrow down the request. Although this may not have been to the complainant's satisfaction the Commissioner believes that the public authority did take reasonable steps to assist.
37. Accordingly, the Commissioner concludes that it did not breach section 16.

### **Procedural requirements**

#### **Section 17 – refusal of request**

38. 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".*

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

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## **The Decision**

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40. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- it correctly concluded that to comply with the request would exceed the appropriate limit.
41. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- in exceeding the statutory time limit to inform the complainant of its application of section 12 to the full request it breached section 17(5).

## **Steps required**

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42. The Commissioner requires no steps to be taken.

Reference: FS50322854



**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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 16<sup>th</sup> day of March 2011**

**Signed .....**

**Group Manager**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

Reference: FS50322854



## **Legal annex**

### **Section 1**

- (1) 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**

- (1) 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 16**

- (1) 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.
- (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

### **Section 17**

- (5) 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.

Reference: FS50361392



## **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**

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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**

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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.

Reference: FS50361392



## The request

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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*

Reference: FS50361392



- 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

Reference: FS50361392



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".*

Reference: FS50361392



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**

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### **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.

Reference: FS50361392



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**

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### **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".*

Reference: FS50361392



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**

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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**

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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**

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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.

Reference: FS50361392



**Right of Appeal**

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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](mailto:informationtribunal@tribunals.gsi.gov.uk)  
Website: [www.informationtribunal.gov.uk](http://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 16<sup>th</sup> day of March 2011**

**Signed .....**

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

Reference: FS50361392



## **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."



Information Commissioner's Office

Our Ref: EA/2011/0106 & 0107

Upholding information rights

Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

T: [redacted]  
F: [redacted] www.ico.gov.uk

Sir Paul Stephenson  
Metropolitan Police Service  
New Scotland Yard  
Broadway  
London  
SW1H 0BG

19 April 2011

Dear Sir Paul

Re: [redacted] The Information Commissioner – EA/2011/0106 & 0107

I write to advise you that this matter has now been passed to the Information Commissioner's Solicitors as the complainant has appealed to the First-tier Tribunal (Information Rights) against Decision Notices FS50322854 & FS50361392 dated 16 March 2011.

Should you require any further information please contact:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
Arnhem House  
31 Waterloo Way  
Leicester  
LE1 8DJ

T: 0845 6000 877  
F: 0116 249 4253  
E: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk)  
W: <http://www.informationtribunal.gov.uk/>

The First-tier Tribunal (Information Rights) website contains details of current appeals and information about stages of appeals, including hearing dates. As the Respondent the Commissioner will not be able to keep you informed about further developments on the appeal.

If you wish to be joined as a party to the appeal you should contact the First-tier Tribunal (Information Rights) using the details above, quoting the relevant information, including reference numbers. It will be a matter for the Tribunal whether to join a person to an appeal.

Yours sincerely

[redacted signature box]

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IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL

Appeals Nos: EA/2011/0106 & 0107

BETWEEN:

[Redacted Name]

Appellant

and

(1) THE INFORMATION COMMISSIONER

(2) COMMISSIONER OF THE METROPOLITAN POLICE SERVICE

Respondents

---

**DECISION ON COSTS FOLLOWING  
APPELLANT'S WITHDRAWAL OF APPEAL**

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Determined on the Papers by Andrew Bartlett QC, Tribunal Judge  
On 3 October 2011

Subject matter:

Costs

Legislation:

The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009  
(as amended), rule 10(1)

Cases:

*McPherson v BNP Paribas* [2004] EWCA Civ 569

*Royal Mail Group Ltd v Information Commissioner* 8 September 2010

Representation (by written submissions):

For the Appellant ([Redacted] New York Times): Finers Stephens Innocent LLP

For the Second Respondent: Metropolitan Police Solicitor

The Information Commissioner did not make submissions.

**DECISION**

The Appellant shall pay to the Second Respondent within 14 days from the date of this decision the sum of £500 in respect of costs.

**REASONS**

The application

1. The hearing of this appeal was due to take place on 10-11 October 2011. On 2 August 2011 the appellant withdrew his appeal to the Tribunal.
2. The second respondent applies for an order in respect of costs against the appellant under rule 10(1)(b) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("the Rules"); and, or in the alternative, against the appellant's legal representatives under rule 10(1)(a) of the Rules.
3. The material parts of rule 10(1) provide that the Tribunal may make an order in respect of costs "only-
  - (a) under section 29(4) of the 2007 Act (wasted costs);
  - (b) if the Tribunal considers that a party has acted unreasonably in bringing, defending or conducting the proceedings; ... "
4. The second respondent seeks to recover costs incurred from 1 July 2011, as that is the date by which, according to the second respondent, it would have been reasonable for the appellant to take steps to avoid wasted costs being incurred by the second respondent. Costs are claimed in the sum of £4,689.50. A schedule has been provided showing the make-up of this figure.

The grounds of the application

5. The second respondent contends-
  - a. The appellant decided to withdraw at the start of July 2011 but failed to communicate his decision promptly to the Tribunal and the respondents.
  - b. This should be inferred from the following: (i) the appellant stated that he had considered his position "several times"; (ii) the appellant did not comply with the Tribunal's direction to supply a draft hearing bundle index by 7 July. As the draft Index was required to be sent to the respondents by 7 July, and as it is reasonable to assume that one would allow at least a week to take Instructions and complete the work, the decision must have been made on or around 1 July.
  - c. Alternatively, by 7 July he must have been having serious doubts whether he would proceed. In that event, his solicitors should have notified the respondents, on a without prejudice basis if necessary, with a view to extending the deadlines under the directions, or to obtain a stay from the Tribunal.
  - d. Instead he failed or refused to reply to correspondence and telephone messages from the respondents, being emails of 8, 13, 22 and 25 July, and telephone calls of 18 and 20 July and 2 August. He also failed to make a timely response to the Tribunal's communication of 25 July ("unless you comply with direction 3 within the next 5 working days then the First Tier Tribunal will be seeking representations from you as to why

- e. This continued failure or refusal to respond became increasingly unreasonable the longer it continued. The result was that the second respondent spent significant time preparing for the appeal hearing under the misapprehension that the appellant still intended to pursue his appeal, as well as time chasing up the appellant's solicitors for a response. This not only wasted the second respondent's solicitors' time, but also the time of senior police officers involved in Operation Weeting and associated investigations, who would have given witness evidence had the appeal gone ahead.
  - f. These facts demonstrate that the appellant acted unreasonably in conducting proceedings, and, or in the alternative, that his legal representatives acted unreasonably.
6. The second respondent emphasizes that its complaint is not about the decision to withdraw, but about the unjustified and persistent failure to communicate with the Respondents and the Tribunal, which had the result that costs were incurred unnecessarily.

The appellant's response

7. The appellant provided a lengthy response:

*We oppose this application on the grounds that our conduct on behalf of the appellant was not unreasonable in the circumstances of the broader developments in the phone-hacking story, including the announcement of various public and judicial inquiries through which the information requested will be made public, and in light of the fact that we withdrew long before the hearing date (10-11 October). Awarding costs in this case would be contrary to the public interest and would discourage parties from discontinuing cases where there was a reasonable prospect that information would come out or has come out from alternative sources. Additionally, there is clearly a duty on applicants to monitor a case on an on-going basis to ascertain whether the information can be obtained reasonably and proportionately by other routes and methods. The obverse of this is, or ought to be, an on-going obligation on the data controller to consider whether or not circumstances have changed in such a manner that means that data at first refused is now likely to be disclosed in other proceedings/processes and therefore there can be no useful purpose in maintaining an objection to disclosure.*

*We submit that the Tribunal ought not exercise its discretion to impose costs in these circumstances.*

*Costs awards by the Tribunal: discretionary and exceptional*

*The wording and case law on cost applications under Rule 10(1)(b) is clear: cost awards by the Tribunal, particularly under the new Rules, are discretionary and exceptional.*

*Rule 10(1)(b) provides that the Tribunal 'may' award costs where the party or its legal representatives have acted 'unreasonably'. It is important to recall that this power is discretionary and one exercised in an otherwise cost-neutral environment, which is different from the Courts where costs generally follow the event. As emphasised by the Tribunal and cautioned in the recent case of Royal Mail Group Ltd v Information Commissioner, EA/2010/0005 (Withdrawn), 8 September 2010 the public should not be deterred from bringing proceedings in Tribunals for fear of costs and, further, that costs awards for withdrawing prior to a hearing might serve to discourage Appellants from withdrawing and may have the unintended consequence that unmeritorious appeals would be more likely to go to a full hearing and waste time and resources. This militates against cost orders for withdrawal.*

*In our particular case, an even further injustice would be perpetrated since we are not withdrawing because the case is unmeritorious. To the contrary, we are firmly of the view that our appeal would be successful and that there is immense public interest in pursuing this case to full hearing. The decision to withdraw the appeal was reached in the light of incredible subsequent developments in the phone-hacking scandal and out of concern for preserving the resources of the Tribunal, our client and the respective parties. The information we had requested and that was subject to this appeal (which should have properly been disclosed to our client last April) is now the subject of other public inquiries and legal proceedings which were announced subsequent to the filing of our appeal and just prior to our decision to withdraw, including a public inquiry chaired by Lord Justice Leveson, an ongoing judicial review claim by Lord Prescott and others against the MPS over its handling of the phone hacking scandal, and the filing of numerous privacy actions against News of the World (NoW) and News International in which police evidence is being disclosed.*

*Furthermore, subsequent to our initial FOIA request, Mr Coulson, then advisor to the Prime Minister, was forced to resign (following the expose published by our client in September related to this FOIA request) and the decision was later taken by the Second Respondent to re-institute criminal investigations against him and other NoW staff. Subsequent to the filing of our appeal, we have seen the arrests of Andy Coulson, Rebekah Brooks (nee Wade), ex-NoW assistant editor Ian Edmondson, ex-NoW chief reporter Neville Thurlbeck, senior ex-NoW journalist James Weatherup, freelance journalist Terenia Taras, ex-NoW managing editor Stuart Kuttner, ex-NoW royal editor Clive Goodman and Greg Miskiw, ex- NoW senior editor.*

*More recently, former MPS Chief, Sir Paul Stephenson, and Deputy Commissioner, John Yates, have resigned from their positions with the MPS over the phone-hacking scandal and the Independent Police Complaints Commission is investigating complaints about police handling of this matter and its relationships with the media.*

*It will not escape the attention of the Tribunal that a number of these names appeared in our client's FOIA request to the MPS and that all of these developments touch upon or raise squarely the subject matter of our respective FOIA requests.*

*In light of these developments, a decision was taken that the information requested by us is going to be disclosed through other public and judicial inquiries and, therefore, we did not think it reasonable to continue the appeal at expense to our client, the MPS and the Tribunal. This decision was taken notwithstanding what we believe to be the immense public interest in pursuing this appeal against the MPS with respect to both the phone hacking scandal itself but also as a point of principle to highlight the MPS's wholly inadequate approach to FOIA requests (a point noted by the ICO itself last year in its review of public authorities compliance with FOIA). We reiterate again that this was not a decision about the merits of our case, which we are confident we would win on appeal (and in any event, even if we were not successful, there would be no cost order made against us), but the result of a practical and pragmatic decision regarding the future availability of the information requested and the associated decision to therefore avoid further legal cost to all involved.*

*Cost awards by the Tribunal*

*This application is made pursuant to the relatively new Rules regime of the First-tier Tribunal (General Regulatory Chamber). In recent decisions considering the new Rule 10, the Tribunal has emphasised that cost awards are discretionary and exceptional. These cases have also established that the meaning of "unreasonable" in rule 10 is defined as being "not in accordance with reason, irrational" (as defined by the Oxford English Dictionary) as distinct from the precise administrative law definition of the word, connoted by *Wednesbury unreasonableness*" (see *Seevaratnam v Charity Commission for England and Wales* [2009] UKFTT 393, adopted in *Royal Mail* [17]-[19]). Unreasonableness "must depend on the facts of each case, there being no hard and fast principle applicable to every situation" (*European Environmental Controls Ltd v The Office of Fair Trading*, CCA/2009/0002).*

*The application to withdraw in this case was made under rule 17(1)(a) of the Rules by written notice of withdrawal, which permits such an application "at any time before a hearing". Our application was made by letter of 2 August 2011. By email of 3 August 2011, the Tribunal consented to the withdrawal under Rule 17(2) of the Rules. It ought to be noted that the hearing for this matter was not set down until 10-11 October 2011. The directions specify that witness statements were not due to be exchanged until 5 September, with skeletons to be exchanged on 3 October. Therefore the notification of our decision to withdraw came long before the hearing date and before any significant work will have been completed by any party to the proceedings.*

*This can be contrasted with the situation in *Royal Mail*, where the party against which the cost award was sought had withdrawn the day before*

*the hearing, after significant work had been completed and costs incurred. In that case, the stated reason for the withdrawal application was that the appellant had learned at a late stage of its preparations that a key part of the requested information had entered the public domain. As set out in Royal Mail (at [27]):*

*"If a last minute decision to withdraw an appeal were to be penalised in costs but if that party were to proceed to a full hearing it would bear no costs if unsuccessful, the Tribunal would clearly be sending out the wrong message to litigants. If an Appellant concludes, even at a late stage, that its appeal should be withdrawn, it must be preferable for an application for withdrawal to be made than for that matter to proceed to a hearing."*

*In that case, the Respondent argued that a cost award should have been made on the grounds of the delay in notifying the Tribunal and the Respondent of its decision. In that case there was a delay of a month between the disclosure of the information (5 June) and the withdrawal of the appeal (5 July), but the final decision to withdraw was actually made on 1 July. The Tribunal rejected the argument that the delay was unreasonable on the grounds that (at [21]):*

*"the disclosures did not cover all of the requested information so there needed to be a detailed consideration not only of the issue of withdrawal but also of whether to disclose the remainder of the information. ... . The Appellant submitted that it acted with as much speed as the situation allowed but that the communication of its position prior to a formal decision being taken would have prejudiced its case before the Tribunal in the event that the matter proceeded to a hearing."*

*The Tribunal was "mindful of the fact that the Appellant needed to deal with a complicated set of circumstances and to respond to a situation not of its own making" (at [26]) and therefore concluded it was not "unreasonable" to have taken time to carefully consider the disclosures, the relationship between the disclosures and the requested information subject to the appeal, and how notification of an intention to withdraw may have impacted on the subsequent appeal. The application for wasted costs was thus rejected.*

*The same considerations apply here. In our case, the decision to withdraw was taken after close consideration of unfolding developments in July which we now consider will lead to the information requested coming into the public domain (outlined in detail below) - developments which, on any view, were extraordinary and could not have been predicted. A detailed consideration was required of these events and how they impacted upon our request. The decision to withdraw has come in advance of the disclosure of information (on the basis of what we now predict will be disclosed by other means) and well before the hearing date. On the Royal Mail standard, this can hardly be said to be "unreasonable".*

*The Second Respondent nevertheless alleges that (1) a decision must have been taken in early July not to continue with the appeal and (2) it was "unreasonable" under Rule 10(1)b), in accordance with the definition set out above, for us not to have put the Second Respondent on notice of our intention to withdraw. This is based on pure conjecture: the Second Respondent has no reasonable basis to presume a decision had already been taken. The Second Respondent asserts this must have been the case because we had not complied with the 7 July directions deadline in providing the index to the open bundle.*

*We submit this position does not properly account for the particular facts of this case - a relevant consideration for the Tribunal in deciding whether to exercise its discretion, nor is it supported by the case law on costs set out above.*

Facts of this case

*The Tribunal will be familiar with the background to the FOIA request.*

*We wish to draw to the Tribunal's attention the developments that took place within the relevant period in which the Second Respondent alleges it was unreasonable for us not to have taken a decision on whether to withdraw (i.e. from 1 July to 2 August). As this list of developments indicates, there was a complicated series of events that had to be considered before our decision to withdraw could be taken in May and June, which escalated throughout July.*

*Lord Prescott, Mr Bryant and Mr Paddick won in their High Court bid to allow them to bring a judicial review claim against the over the handling of the phone-hacking investigation (Telegraph, 23 May 2011).*

*The Independent Police Complaints Commission ("IPCC") had made contact with the MPS to investigate claims of payments made to police officers in relation to the hacking scandal in which the MPS told the IPCC it was aware of certain conduct involving payments to officers (22 June 2011), but it was announced by the IPCC on 6 July 2011 that it would only be taken up as a complaint when individual officers were identified (6 July 2011): <http://www.ipcc.gov.uk/news/Pages/Met-Police-contact-with-the-IPCC-regarding-allegations-of-payments-to-officers.aspx>*

*Lawyer for the family of missing girl, Milly Dowler, reports her phone was hacked. Police later say they also contacted the parents of two 10-year-old girls killed in the town of Soham in 2002 (Reuters, 4 July 2011)*

*News International says new information has been given to police. The BBC says it related to emails appearing to show payments were made to police for information and were authorised by Andy Coulson, former editor of News of the World (Reuters, 5 July 2011)*

*Reports that the families of the 7/7 terror bombings victims, the parents of missing girl, Madelaine McCann, and family members of soldiers killed in Afghanistan were also hacked (Reuters, 6 July 2011).*

*News Corp announces it will close down the NoW, the most popular newspaper in Britain, in the wake of the phone-hacking scandal. The July 10 edition is the last (Reuters, 6 July 2011).*

*A public inquiry announced by Prime Minister David Cameron into the police investigation of the matter (Times, 7 July 2011) and subsequently announces that Lord Justice Leveson would be appointed to conduct the inquiry (Times, 13 July 2011).*

*The IPCC announced the London Commissioner would oversee the investigation into allegations that officers were paid by newspaper (IPCC, 7 July 2011): [http://www.ipcc.gov.uk/news/Pages/pr\\_070711\\_hacking.aspx](http://www.ipcc.gov.uk/news/Pages/pr_070711_hacking.aspx).*

*Andy Coulson is arrested and Clive Goodman is re-arrested (Reuters, 8 July 2011).*

*John Yates, assistant commissioner at London's Metropolitan Police, is criticised for deciding in 2009 not to reopen the earlier inquiry, tells the Home Affairs Committee he probably did only the minimum work required before deciding (Reuters, 12 July 2011).*

*Neil Wallis is arrested on 14 July (Times, 15 July 2011).*

*Rebecca Brooks, former NoW editor, resigns as chief editor of News International (Reuters, 15 July 2011).*

*Rebecca Brooks is arrested on 16 July (Times, 17 July 2011).*

*Sir Paul Stephenson, the Metropolitan Police Commissioner, announces his resignation (BBC, 17 July 2011).*

*John Yates, Assistant Commissioner, announces his resignation (Guardian, 18 July 2011).*

*Sean Hoare, former NoW journalist, and our client's main source in its expose revealing the extent of phone-hacking at NoW and raises questions about police handling of the matter, is found dead at his home (Reuters, 18 July 2011).*

*The ongoing Home Affairs Committee Inquiry into phone-hacking and police conduct of the hacking investigations was published (19 July 2011), which recommended certain further action and reforms of police: <http://www.parliament.uk/documents/commons-committees/home-affairs/CRCFinalReportEmbargoed.pdf>*

*Theresa May, Minister for Home Affairs, "announced a further three inquiries into the phone hacking allegations and police relations with the media. Elizabeth Filkin, former Parliamentary Commissioner for Standards, had provisionally agreed to examine the ethical considerations that should form the relationship between the Met and the media. The new inquiries are in addition to the slew of investigations already announced by the police" (Times, 19 July 2011).*

*Four senior police officers were referred to the IPCC for investigation by the Metropolitan Police Authority (MPA), including Sir Paul Stephenson, the Metropolitan Police Commissioner, John Yates, the former Assistant Commissioner, and retired police officers, Andy Hayman, the former Assistant Commissioner who writes for The Times, and Peter Clarke, the retired Deputy Assistant Commissioner. The MPA cited concerns about their handling of investigations into the alleged phone hacking scandal (Times, 19 July 2011).*

*Dick Fedorcio, MPS Public Affairs, referred to the Independent Police Complaints Commission over his relationship with hacking suspect Neil Wallis (Independent, 19 July 2011)*

*Announced that former NoW editor, Miskiwi, will return to the UK to meet with police over phone hacking (Guardian, 22 July 2011)*

*Tom Watson MP asks police to investigate the Murdochs (Reuters, 22 July 2011)*

*Sir Hugh Orde, the president of Britain's Association of Chief Police Officers, speaks out on phone hacking and calls for corrupt officers to be jailed (BBC and Guardian, 24 July 2011)*

*Details of Andy Hayman's expenses paid by of NoW and News International emerge (SMH, 25 July 2011)*

*Metropolitan Police Authority (MPA) questioned Acting Commissioner Tim Godwin on phone hacking (Independent, 28 July 2011)*

*MPS to release hospitality records in coming weeks (BBC, 28 July 2011)*

*Judge sets out phone hacking inquiry plan (BBC, 28 July 2011)*

*MPS accused of 'endemic corruption' over phone-hacking scandal (International Business Times, 1 August 2011)*

*Stuart Kuttner arrested by police (Guardian, 2 August 2011).*

*Fedorcio placed on leave pending outcome for IPCC investigation (Guardian, 10 August).*

*We draw the Tribunal's attention to this timeline of events prepared by Reuters on 10 August, which sets out in detail the raft of developments in this story in the past few months:  
<http://www.reuters.com/article/2011/08/10/newscorp-hacking-events-idUSL6E7IS1LS20110810>.*

*We also draw the Tribunal's attention to the numerous civil claims being brought against News International in which information from the police is being disclosed. By way of example, we refer in particular to the claim of Ms Hoppen in which the police disclosed information it had previously alleged did not exist (in that case handwritten notes relating to the hacking of claimant's phone). Counsel for Ms Hoppen noted that it was "regrettable, to put it mildly" that the police had twice denied that this material existed and that "[i]t could and should have been provided*

earlier," concluding that "[t]he simple and unavoidable fact is that [the MPS] misled Ms Hoppen" (Guardian, 17 February 2011). We note that the test case claim of Sienna Miller, which was only finally determined on 7 June 2011, has paved the way for the filing of many more civil claims in subsequent months, all of which have had to be considered.

It is clear that the wealth of developments through July and into early August required careful and detailed consideration before we could come to a decision as to whether or not to continue with the appeal. In these circumstances, we submit it was not unreasonable to withdraw our appeal when we did or in the manner we did.

#### Other factors

In addition to these factors relevant to the Tribunal's consideration of a costs award under Rule 10, we submit that the Tribunal ought to consider the broader context of this FOIA request and appeal and the Second Respondent's conduct throughout this process, which has caused inordinate delay and additional costs to our client.

The Second Respondent's approach to this request has been characterised by delay and obfuscation, with the MPS having shifted its position on the reasons it would not disclose the relevant information - ultimately hiding behind the cost limit after a delay of more than 8 months. The Tribunal will note from the Decision Notice of the Information Commissioner that the Second Respondent was found in breach of the Act for the delay in responding to our request (though no remedy was provided for this breach). The failure of the Second Respondent to properly advise on how to narrow the response to come under the cost limit and the extensive communication that resulted served only to compound the delay and the cost to our client.

Further, the responses during the course of our correspondence with the Second Respondent during the internal review process raise real questions about how the Second Respondent files and stores information - a fact reiterated in the civil claim brought by Ms Hoppen cited above.

#### Conclusion

It would be unjust and contrary to the overriding objectives of the FOIA scheme to require our client to pay costs in these circumstances.

We have withdrawn the appeal well before the hearing. As a result we have saved the Second Respondent a considerable amount of costs, as they will not have to prepare for or attend the hearing. If the hearing had gone ahead, it is highly unlikely that they would have recovered any of those costs, even if our appeal had been unsuccessful. From a costs point of view, as a result of our withdrawal the Second Respondent is in a better position than it would otherwise have been, even if it had ultimately succeeded. In those circumstances it is unfair, and disproportionate, for us to be penalised in costs as a result of the withdrawal.

*As set out in Royal Mail, making a costs order in these circumstances could have an undesirable effect, in deterring appellants from withdrawing an appeal prior to hearing, for fear of an adverse costs order as a result of withdrawal.*

*Our withdrawal on 2 August 2011 was not effected in an unreasonable matter. There were a wealth of developments in the relevant period complained of by the Second Respondent that required our careful consideration, an assessment which led to the very reasonable conclusion that the information requested by us is going to be disclosed through other public and judicial inquiries. The decision to withdraw at that time was inherently reasonable and avoids any further expense to our client, the Second Respondent and the Tribunal.*

*The Second Respondent's complaint appears to be that they were left uncertain as to whether we intended to go ahead with the appeal. If that was so, they should themselves have applied for an extension of time for submitting witness evidence, so that any uncertainty could be resolved before the Second Respondent did any substantial preparatory work.*

*It is inherently unlikely that the Second Respondent would have been doing a lot of work before receiving the open bundle. Furthermore, it is clear from the Second Respondent's own application, as well as from the developments outlined above, that the Second Respondent was being required to investigate the matters that were subject to our appeal internally in order to respond to the various legal actions and orders for disclosure being made against them.*

*For the reasons stated above we request that the Tribunal reject the Second Respondent's application for wasted costs and, in addition, invite the Second Respondent to reconsider its application.*

Further submissions

8. The second respondent replied briefly to the appellant's response, submitting that it did not address the real point, which was the failure to comply with directions and to communicate, when communication would have saved costs being expended unnecessarily. "The Appellant saw fit simply not to comply with an order without any attempt whatsoever to seek an extension, explain what was going on, apologise for the delay or even engage with the other side or the Tribunal. It is as if the order did not matter because there were other developments in the phone-hacking story." No explanation or excuse was provided for the failure to communicate, despite repeated chasers. Nor did the response deal with the application against the solicitors personally under rule 10(1)(a).
9. The second respondent further submitted that the appellant also failed to inform the other parties of the decision or intention to withdraw at the earliest time, and even in its response to the application failed to say clearly when the decision to withdraw was made.

10. In a rather more focused submission than previously, the appellant's solicitors denied both that there had been a failure to communicate and that the other parties were not informed at the earliest stage of the decision to withdraw. They stated that in each of the telephone conversations they were apologetic regarding the delay in complying with the Tribunal's direction concerning the index and regarding being unable to give a clearer indication of the position. They said they informed the second respondent, when contacted by telephone, that they were taking instructions from their client and that an answer would be forthcoming as soon as possible. They explained that their client had been considering unfolding developments, beyond its control, relevant to the appeal and to the requested information. The fact that the position was "considered several times" merely indicated that the matter was under continued consideration between client and solicitors in light of developments. When the final decision to withdraw was taken, it was communicated within 24 hours. They denied that there was any unreasonableness on their or their client's part such as would justify an order under either rule 10(1)(a) or rule 10(1)(b).
11. The appellant's solicitors also observed that significant costs to the Tribunal, the Information Commissioner and the second respondent had been saved by the decision to withdraw and that, if the hearing had proceeded, costs would not have been awarded whether the appeal was successful or not.

Analysis

12. I agree with the general approach taken by the Tribunal in *Royal Mail Group Ltd v Information Commissioner*, EA/2010/0005, 8 September 2010, and in particular the remarks made at paragraph 25:

" .... frequent concern has been expressed by my fellow Tribunal Judges that members of the public should not be deterred from bringing proceedings in Tribunals through fear of costs, especially as the costs-neutral environment of Tribunals is one of the things that differentiates them from the Courts, where costs generally follow the event. The Appellant also makes the point that a costs award in these proceedings might serve to discourage Appellants from withdrawing immediately prior to a hearing in future, so that unmeritorious appeals would be more likely to go to a full hearing and waste time and resources. I have been mindful of these arguments in exercising my discretion."

13. Where an appeal to the Tribunal is withdrawn, the fact of withdrawal does not of itself raise any presumption at all that costs should be awarded. For the purpose of rule 10(1)(b) what matters is not the fact of withdrawal, but whether the party against whom a costs application is made has acted unreasonably in bringing, defending or conducting the proceedings. This was emphasized by Mummery LJ in relation to the rather similar costs jurisdiction of the Employment Tribunal in *McPherson v BNP Paribas* [2004] EWCA Civ 569 at [28]-[30]:

[28] In my view, it would be legally erroneous if, acting on a misconceived analogy with the CPR, tribunals took the line that it was unreasonable conduct for employment tribunal claimants to withdraw claims and that they should accordingly be made liable to pay all the costs of the proceedings. It

would be unfortunate if claimants were deterred from dropping claims by the prospect of an order for costs on withdrawal, which might well not be made against them if they fought on to a full hearing and failed. As Miss McCafferty, appearing for Mr McPherson, pointed out, withdrawal could lead to a saving of costs. Also, as Thorpe LJ observed during argument, notice of withdrawal might in some cases be the dawn of sanity and the tribunal should not adopt a practice on costs, which would deter applicants from making sensible litigation decisions.

[29] On the other side, I agree with Mr Tatton-Brown, appearing for BNP Paribas, that tribunals should not follow a practice on costs, which might encourage speculative claims, by allowing applicants to start cases and to pursue them down to the last week or two before the hearing in the hope of receiving an offer to settle, and then, failing an offer, dropping the case without any risk of a costs sanction.

[30] The solution lies in the proper construction and sensible application of rule 14. The crucial question is whether, in all the circumstances of the case, the claimant withdrawing the claim has conducted the proceedings unreasonably. It is not whether the withdrawal of the claim is in itself unreasonable ...

14. In the present case it is not in contest that the withdrawal itself was reasonable. The proceedings would have been expensive both for the appellant as requester and for the Metropolitan Police as public authority, and it appeared that the requested information, which was the subject of the appeal, was likely to come into the public domain by other means.
15. Despite the authority's criticisms, I find nothing unreasonable in the timing of the withdrawal. On the material submitted to me, I find that the decision was made on or about 1 August, not 1 July as alleged by the authority. The situation was developing from day to day, and Mr Van Natta and his employers took advice. In my judgment they cannot be criticised for making the final decision to withdraw on the date on which they made it.
16. The appellant and his representatives are more open to criticism in relation to their failure to communicate. The date for providing the draft bundle index in compliance with the order of the Tribunal (7 July) passed without compliance, without any request for time to be extended, and without any explanation being provided. The chasing emails of 8, 13, 22 and 25 July were not responded to. No satisfactory reason has been put forward for these omissions. While I can well understand that the appellant's solicitors would not have wished to reveal the details of their legally privileged discussions with their client, they could without difficulty have explained promptly to the second respondent that their client was considering whether the information might become public by other means so as to make the appeal otiose, and could have asked the Tribunal for an extension of time for compliance with the procedural order concerning the bundle index. In my view their omission to take these steps was unreasonable conduct in relation to the proceedings within the meaning of rule 10(1)(b).

17. The position was to some extent ameliorated by the telephone conversations (which are not denied by the second respondent) in which a partial explanation was given, but the repeated chasers by telephone and email should not have been needed, and the directions order and the Tribunal's communication of 25 July should not have been ignored in the way that they were.
18. In these circumstances I consider that solid grounds exist for making an order under rule 10(1)(b) and the question is how I should exercise my discretion under that rule. In exercising that discretion I must take into account the circumstances of the case and all the considerations set out in rule 2 (the overriding objective to deal with cases fairly and justly).
19. It is relevant to note that a clearer and prompter explanation would have avoided the need for repeated chasers, but would not necessarily have enabled the second respondent to cease preparations. It might have been possible for arrangements to be made for the timetable leading to trial to be re-set. Subject to that possibility, until it was clear that the appeal was to be withdrawn, preparations would have needed to continue. It is unlikely that it would have been practicable to stop all preparations.
20. The second respondent claims the whole costs incurred from 1 July, in the sum of £4,689.50. There is no requirement in the rule that an order must be limited to those costs directly caused by the unreasonable conduct. Nevertheless, in the circumstances which I have outlined, it does not seem to me that it would be fair or just to hold the appellant responsible for the whole, or even the majority, of the costs incurred during the period of uncertainty. I consider that on the present facts the fair approach is to focus on the element of costs incurred by the second respondent which ought not to have been incurred and which the appellant ought to pay because of the unreasonable manner in which the matter was conducted as set out above. Having considered the details of the costs schedule, I consider that the fair and just sum to be awarded is £500. This represents the costs of the repeated chasers and a modest contribution towards work that could probably have been postponed if better information had been provided promptly.
21. For the reasons set out above I order that the appellant shall pay to the second respondent within 14 days from the date of this decision the sum of £500 in respect of costs.
22. I do not consider that in the circumstances of this case the application under rule 10(1)(a) adds anything material to the second respondent's application under rule 10(1)(b). The above order is made pursuant to rule 10(1)(b).

**Andrew Bartlett QC**

Tribunal Judge

Dated: 3 October 2011