

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 12 June 2007

Public Authority: Home Office
Address: 4th Floor
Seacole Building
2 Marsham Street
London
SW1P 4DF

Summary

The Complainant requested copies of five project licence applications as detailed in the abstracts published on the Home Office web site. The Home Office refused to disclose the licences in full citing exemptions under sections 21 'Information accessible by other means', 38 'Health and Safety', 40 'Personal Information', 41 'Information Provided in Confidence', 43 'Commercial Interests' and 44 'Prohibitions on disclosure'. The Commissioner investigated and found that section 44 had been correctly applied. As section 44 is an absolute exemption and applies to all the information covered by the complainants request the Commissioner has not investigated the application of the other exemptions. The Commissioner's decision is that the information is exempt from disclosure and he requires no steps to be taken by the public authority.

The Commissioner's Role

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.

The Request

2. The complainant has advised that on the 12 January 2005 he requested that the Home Office disclose to him the following information:

"..the actual information contained in each of the following licences (using the title given to the abstract)

- *Wound Healing*
- *Relief from chronic pain by use of antidepressants*

- *Studying disorders of balance*
- *Metabolism and excretion studies for new candidate drugs*
- *Genetically modified animals and Respiratory diseases.*

We are content that the information should be in anonymised form if you believe that the exemptions in section 38(1) of the FOI Act applies.”

3. The Home Office issued a refusal notice on the 15 March 2005 confirming that it held information relevant to the request and providing some further details from the relevant licences. The Home Office stated it was withholding the remainder of the information in the licences as it considered the following exemptions applied: section 40 'Personal Information', section 21 'Information accessible by other means', section 38 'Health and Safety', section 43 'Commercial Interests', section 41 'Information Provided in confidence' and section 44 'Prohibitions on disclosure'.
4. The complainant requested an internal review of the decision on the 24 March 2005 asking the Home Office to reconsider its application of all the exemptions applied.
5. On the 10 August 2005 the Home Office communicated the outcome of the internal review to the complainant. The review upheld the original decision to withhold the information under the six exemptions.

The Investigation

Scope of the case

6. On 6 September 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the application of the exemptions and the time taken to complete the initial refusal and the internal review.
7. The Commissioner set out to investigate the application of the exemptions and to consider whether the refusal notice was in accordance with part 1 of the Act. The Commissioner did not investigate the length of time taken to complete the internal review as it is not appropriate within a section 50 decision notice.

Chronology

8. On the 21 December 2006 the Commissioner began his investigation by contacting the Home Office to request further information regarding the application of each exemption and for copies of the five licences.

On the 10 January 2007 the Commissioner wrote again to the Home Office for clarification as to which functions under the Animal Scientific Procedures Act (ASPA) the information contained in the licences was obtained under. The Home Office provided a substantive reply to the Commissioner on the 21 February

2007. The Home Office provided a detailed explanation regarding its justification for applying each of the exemptions.

9. On the 26 February 2007 the Commissioner contacted the Home Office again to clarify whether section 44 had been applied to the licences as whole and asked further questions regarding the application of section 38.
10. The Home Office responded on the 12 March 2007 confirming that sections 44 and 41 applied to the licences in their entirety and giving further information in relation to section 38.

Findings of fact

11. The information being withheld consists of five project licence applications obtained by the Home Office under section 5 of the Animal (Scientific Procedures) Act 1986 (ASPA).
12. The information disclosed to the complainant consisted of generalised, factual information relating to each project as outlined in the abstracts and additional factual information. The additional factual information was not considered by the Home Office to be confidential as it is general in nature and limited to certain facts such as duration of the licence and the permissible purposes of the licence; as such it was not considered to be exempt from disclosure.
13. Following this disclosure, the complainant requested the five additional conditions referred to in the project entitled 'wound healing'. In response to this request, the Home Office sought consent from the licensee to release the additional conditions. The licensee consented to the release of four out of the five additional conditions.
14. The prohibition on disclosure being applied to licences is section 24 of ASPA 'protection of confidential information'.

Analysis

Procedural matters: Section 17 – Refusal Notice

15. Where a public authority refuses a request, section 17 of the Act provides that a public authority, must, within the time for complying with section 1 give the applicant a notice which states that fact; specifies the exemption in question and states why the exemption applies. Section 10 of the Act requires a public authority to respond to any information requests no later than the twentieth working day from receipt of the request.
16. The Home Office have confirmed that they received the request on the 17 January 2005 but did not provide a refusal notice to the complainant until the 12 March 2005, outside the twenty working days. In responding to the complainant on the 12 March 2005 the Home Office gave no reason for the delay.

17. The Commissioner therefore finds that the request was not dealt with in accordance with section 17 of the Act.

Section 44 – Prohibitions on disclosure

18. Section 44 of the Act provides that information is exempt information if its disclosure by the public authority holding it is prohibited under any enactment.
19. The Home Office have stated that project licences are obtained under section 5 of ASPA, which outlines the Home Office's responsibilities for granting licences. The Home Office stated that the information contained within the project licences is provided by the applicants in confidence and is therefore prohibited from disclosure under section 24 of ASPA.
20. Section 24 of ASPA provides that a person is guilty of an offence, if otherwise than for the purposes of discharging his functions under this Act, he discloses any information obtained by him in the exercise of his functions and which he knows or has reasonable grounds for believing to have been given in confidence.
21. For section 24 of ASPA to apply to the information in question the public authority must be satisfied of three things: that the disclosure is not being made to discharge a function of ASPA; that the information to be disclosed was obtained by it in exercise of its functions and that the authority knows or has reasonable grounds for believing it to have been provided in confidence.
22. In the course of the investigation the Commissioner established that disclosure under the Freedom of Information Act would not constitute a disclosure under a function of ASPA and that the information was obtained under section 5 of ASPA.
23. To satisfy the third condition of the prohibition the Commissioner considered whether the Home Office knew or had reasonable grounds for believing the information to have been provided in confidence. The Commissioner is mindful of the note to licensees and the paragraph within the licence itself which highlights to applicants the implications of the Freedom of Information Act. The note states that information within the application which is not exempt from disclosure has to be provided to enquirers on request but that several exemptions may apply, it highlights the probability that section 24 of ASPA may prohibit disclosure and ends by stating that much of the information provided in a project licence application but not in the abstract is likely to fall within the exemptions.
24. The Commissioner also considered the abstract section of the licence application form which asks the applicant to provide a two page summary of the project and outlines the information it expects this to include, it also asks the applicant to avoid using confidential material in the abstract. The licence application also asks the applicant to sign a declaration agreeing for the abstract to be published on the Home Office web site.
25. In light of this the Commissioner considers that the Home Office has reasonable grounds for believing that the information contained in the licence, not already

published in the abstract, will have been provided by the applicant with an expectation of confidentiality. The licence applications suggest to the applicant that anything not contained within the abstract will remain confidential and whilst the note to licensees informs licensees of the possibility of disclosure this is qualified by the Home Office's reference to exemptions which would probably apply if a request were made.

26. The Commissioner's decision is that section 44 is engaged in respect of the five project licences. Section 44 is an absolute exemption and is therefore not subject to the public interest test.
27. As all the information requested is covered by section 44 of the Act and the Commissioner has found section 44 is engaged, there is no need to investigate the other exemptions applied. The Commissioner decision is therefore that the information is exempt from disclosure by virtue of section 44.

The Decision

28. 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:
 - i. The application of section 44 to the information requested
29. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - i. The issue of a refusal notice under section 17 of the Act as the Home Office failed to issue a notice within 20 working days.

Steps Required

30. The Commissioner requires no steps to be taken.

Other matters

31. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
 - i. The time taken to complete the internal review was in excess of 20 working days. The Commissioner has recently issued guidance which advises that the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of request for the review. The Commissioner recognises that in certain circumstances more time may be required when for instance the public interest test needs

to be applied but that in no case should the total time taken exceed 40 working days.

Right of Appeal

32. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 12th day of June 2007

Signed

**Jane Durkin
Assistant Commissioner**

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

General Right of Access

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 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny

Time for Compliance

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 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Prohibitions on disclosure.

Section 44(1) provides that –

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

Section 44(2) provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”

Animals (Scientific Procedures) Act 1986

24. (1) A person is guilty of an offence if otherwise than for the purpose of discharging his functions under this Act he discloses any information which has been obtained by him in the exercise of those functions and which he knows or has reasonable grounds for believing to have been given in confidence.

(2) A person guilty of an offence under this Section shall be liable-

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both.