

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 31 March 2009

Public Authority: Manchester University
Address: Oxford Road
Manchester
M13 9PL

Summary

The complainant requested information held by several Universities, including Manchester University (the “public authority”) in relation to research it may have undertaken or be undertaking with primates. This included numbers and species of primates used in previous returns already provided to the Home Office along with a summary of any current research and the species being used.

The public authority cited that the information was exempt by virtue of the exemption at section 38 of the Freedom of Information Act 2000 (“the Act”) originally neither confirming nor denying that it held the information but later varying this and claiming it was held but exempt.

The Commissioner finds that the exemption is not engaged and the complaint is therefore upheld. He further finds that the public authority breached sections 1(1)(b), 10(1) and 17(1)(b).

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 Act. This Notice sets out his decision.

The Request

2. On 22 August 2006 the complainant wrote to the public authority and made the following request for information:-

“... under section 1 (1)(b) of the Freedom of Information Act 2000:

- 1. please explain how many primates were held under licences and certificates under the Animals (Scientific Procedures) Act 1986 by or at your university, as provided to the Home Office in the last two returns of annual statistics, breaking the figure down by species*
- 2. please provide a summary of the research primates are currently used for at the university, again by species*

We are contacting a number of universities in the UK in order [to] collate an accurate and up-to-date picture of primate experimentation at UK universities. Published work by researchers at your institution suggests that primates are being used there. We think it is in the public interest that more information is given about the nature of such use, so that a more complete picture can be obtained about overall primate use in the UK than is currently available.”

3. The public authority claimed to have replied to this on 19 September 2006 but this was not received by the complainant who chased a reply. This was acknowledged and a copy reply was sent on 18 October 2006.
4. On 12 December 2006 the complainant requested an internal review.
5. On 26 February 2007 the public authority responded to the request for an internal review. It varied its response changing from neither confirming nor denying that it held the information to confirming it was held. However, it maintained its earlier decision that the information was exempt under section 38.

The Investigation

Scope of the case

6. On 25 April 2007 the complainant wrote to the Commissioner about this and the other refusals it had received from other public authorities in respect of this request. (The Commissioner has dealt with each complaint under separate Decision Notices). It included a statement of complaint common to all the cases and a further complaint specific to this public authority.
7. In its submissions it set out the reasons why it considered the public authority had inappropriately relied upon section 38 as the basis for refusing the request.

8. The Commissioner notes that the original request was emailed by the complainant on 22 August 2006, which was later than the other requests. When it chased a reply from the public authority the complainant was advised that one had been posted on 19 September 2006. This unfortunately was not received and a duplicate was emailed by the public authority on 18 October 2006. As the complainant has not raised timeliness as an issue the Commissioner has not considered this further on this occasion.
9. The complainant's request was made on 22 August 2006 and therefore covers the Home Office returns for 2004 and 2005. It also requested a summary of research that primates were currently being used for, broken down by species. This therefore covers research being carried out on 22 August 2006.
10. The complainant has not asked for numbers of current primates being held for research. It has also not asked for details of the research that was undertaken using the primates in the two previous returns. The only common factor to both questions is the species in use.

Chronology

11. On 11 September 2007 the Commissioner wrote to the public authority to commence his investigation. He pointed out that the requests had been fully answered by other Universities, i.e. some did confirm that primates were in use and the nature of the research, yet it had cited that it believed it was exempt under section 38. He raised various issues and asked for a response within 20 working days.
12. At the same time, the Commissioner wrote to the complainant to advise that he was now investigating all six complaints.
13. Following a joint request from the six Universities against which complaints had been made, the Commissioner met with them on 18 October 2007 to discuss some of their concerns prior to them answering his initial questions.
14. The public authority sent in further arguments in respect of its continued reliance on section 38 on 2 November 2007.
15. On 12 March 2008 the Commissioner raised queries with the complainant regarding the date of the request and the response from the public authority as these differed to the other cases he was investigating. A response was provided on 31 March 2008.

16. During the course of this investigation the Commissioner also sought further information in respect of the other related cases he was considering which raised similar issues.
17. As part of his investigation the Commissioner conducted broad internet searches in order to identify what information was already in the public domain about work the public authority carries out using primates.

Background information

18. The Animals (Scientific Procedures) Act 1986 (ASPA) came into force on 1 January 1987 and made provision for the protection of animals used for experimental or other scientific purposes in the United Kingdom. ASPA regulates any experimental or other scientific procedure applied to a "protected animal" that may have the effect of causing that animal pain, suffering, distress or lasting harm.
19. ASPA requires that before any regulated procedure is carried out, it must be part of a programme specified in a project licence and carried out by a person holding an appropriate personal licence authority. In addition, work must normally be carried out at a designated scientific procedure establishment. The personal licence is issued to an individual who could be carrying out research at more than one establishment. The personal licence holder, not the institution, is responsible for submitting an annual return to the Home Office stating, amongst other things, the number of animals used in that year under the terms of their licence.
20. The Home Office publishes annual statistics of scientific procedures on living animals which are available on-line at <http://scienceandresearch.homeoffice.gov.uk/animal-research/publications-and-reference/statistics/?view=Standard>
These are compiled from yearly returns submitted by licence holders which is a necessary condition of being granted a licence under ASPA. A nil return is required if no work is undertaken.
21. All Universities have to report to the Home Office before 31 January each year. For example, in January 2008 the figures returned will be those for animals used in 2007 which will then be used to compile the report issued in July 2008. This request was made on 31 July 2006 and therefore covers the returns for 2004 and 2005.
22. The statistics subject to this request cover returns for 2004 and 2005 which were published in December 2005 and July 2006 respectively.

23. According to the published statistics, the total number of non-human primates used for licensed research in 2005 was 2472 macaques and 643 tamarins or marmosets. The figures for 2004 were 2045 and 747 respectively.
24. Whilst there is no legal obligation for licence holders to provide abstracts about their research the Government actively encourages their publication. As such, many are 'anonymously' published on the Home Office website at: <http://scienceandresearch.homeoffice.gov.uk/animal-research/publications-and-reference/001-abstracts/> The lists are not complete though there appears to be a high return from establishments. This scheme was fully implemented in January 2005.
25. After its completion, research of the type related to the request may be published and thereby made available to the general public. The published papers indicate the types of research undertaken, the types of animals used, the names of those involved, and sometimes the specific location of the research. Summaries of such research are readily available online via PubMed's website <http://ukpmc.ac.uk/>, which is a service that includes citations from biomedical articles; or the whole research paper can be purchased from the associated publisher (which is identified on this site).
26. There are previous published papers which reveal that primate research has been undertaken either at this establishment and/or by its academics. This includes some specifically referred to on its own website.
27. The complainant requested the same information from a number of universities. Nine of these complied with the request in full, either stating that they held the information and supplying it or, conversely, stating that they did not hold it. Originally six universities did not reply to the complainant's satisfaction and complaints were made to the Commissioner. During the course of his subsequent investigations one further university responded in full to the complainant and the complaint was therefore withdrawn. The other five complaints have all been dealt with by separate Decision Notices.
28. The Commissioner feels it is important to reiterate his stance of impartiality. He acknowledges that the use of animals in research is highly emotive and it is a matter that many members of the public have strong feelings on all sides of the argument.. However, it is not the Commissioner's role to take sides in this debate. Instead he has to consider each complaint in accordance with the requirements of the Act.

Analysis

Procedural Issues

Section 17 – refusal of request

29. Section 17(1) of the Act requires that, where a public authority is relying on a claim that an exemption in Part II of the Act is applicable to the information requested, it should in its refusal notice:-
- (a) state that fact,
 - (b) specify the exemption in question,
 - (c) state why the exemption applies.
30. In its original refusal notice the public authority stated that it was relying on sections 38(1)(a) and (b) and also that it would neither confirm nor deny that it held the information. It should therefore have correctly cited section 38(2). Following internal review it varied its position and confirmed that the information was held but that it still considered it to be exempt under section 38 although it did not cite the relevant sub-section. Both were therefore in breach of section 17(1)(b).
31. By not providing the requested information to the complainant within 20 working days of the request, the public authority breached section 10(1). By not providing it to the complainant by the time of the completion of the internal review, it breached section 1(1)(b).

Exemption

Section 38 – health & safety

32. Section 38 (1) provides that information is exempt information if its disclosure under this Act, would, or would be likely to (a) endanger the physical or mental health of any individual or (b) endanger the safety of any individual.
33. Although the public authority did not specify whether it was relying on the argument that disclosure of the information *would* have endangered the physical health, mental health or safety of any individual or whether disclosure *would have been likely* to endanger the physical health, mental health or safety of any individual, the Commissioner has noted that in the arguments it put to him the public authority has stated that harm *would* be caused in various circumstances.

34. In the case of *Hogan v Oxford City Council & The information Commissioner* [EA/2005/0026 & EA/2005/0030] the Tribunal found that the “prejudice test is not restricted to ‘would be likely to prejudice’. It provides an alternative limb of ‘would prejudice’. Clearly this second limb of the test places a much stronger evidential burden on the public authority to discharge.” The Tribunal additionally stated, at paragraph 30, that “An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is ... “real, actual or of substance”.” The Commissioner has viewed this as meaning that, for cases where “would prejudice” has been cited, whilst it would not be possible to prove that prejudice would occur beyond any doubt whatsoever, prejudice must be at least more probable than not.
35. In support of its contention that section 38 was engaged at the time of the request the public authority informed the complainant that it understood that published articles made public the fact that it undertook research involving primates and that it therefore found it could no longer rely on a neither confirm nor deny stance. It also advised that “*the information requested goes beyond that which could be gained from published papers and would provide an indication to anyone familiar with the university of the probable locations and, in some cases, staff associated with such research.*” It further commented that it did not believe that responses made by other universities had any bearing on its own position.
36. The public authority also made the following comments to the complainant in support of its use of section 38:

“Whilst The University of Manchester recognises that there is a legitimate public interest in this type of research, it feels that this is outweighed by the public interest in withholding this information.”

“There is a significant risk that revealing locations within the higher education sector where such research is carried out would lead to the risk of violent demonstrations at these locations and the targeting of individual members of staff for intimidation and threats, thus endangering their physical and mental health. The University feels that, in the public interest, it should be possible to undertake important and valuable research projects in this field without fear of intimidation or violence.”

“The University of Manchester believes the Statistics of Scientific Procedures on Living Animals produced annually by the Home Office suffice to enable public debate on this issue without the need for precise figures from individual establishments.”

37. The Commissioner notes the points made by the public authority and has considered very carefully the extent to which the disclosure of the information that was requested in this case would have led to an increase in the risk to the physical health, mental health or safety of any person.
38. The public authority's further arguments in respect of section 38 are summarised below. Most of these have been presented to the Commissioner during his investigation. These arguments, which have been italicised, were not separated by the public authority in respect of each of the two requests. However, for simplicity, the Commissioner has considered the application of the exemption to each request in turn.

Request 1 - Numbers and species of primates as provided to the Home Office in the last two returns of annual statistics

39. One of its original arguments to the complainant against disclosure was that: *"An indication of numbers [of primates] involved would allow activists to target those universities most involved in such research."* The Commissioner notes that the numbers requested are historical rather than current so the level of current involvement was not deducible. He further notes that the volume of published research would be just as likely to give an indication regarding the likely numbers that were in use at the time of the request and that this would therefore allow for the public authority to either become or remain a target for animal rights extremists ("AREs"). He also notes that the complainant only approached those universities where it believed that such research was on-going at the time of its request and it had been correct in its assumption in this particular case. The Commissioner does not therefore accept that the provision of historical data would result in the public authority becoming a more likely target than it already was.
40. The public authority has also advised that it does not agree with the complainant's view that published research already goes beyond what has been requested. It has argued that: *"the request was for animals held under licence rather than animals used"* and that *"[t]he former figure could not be extrapolated from the articles published"*. This argument has been arrived at as published articles may not accurately reflect the numbers of animals which have been previously submitted for the Home Office returns, for example if research was not submitted for publication.
41. The Commissioner agrees with the comments from both parties in that published research, which was available at the time of the request, provides much more detail about numbers of primates than has been requested and that accurate numbers cannot be deduced from what is available. Additionally, the public authority itself has also contended that published research cannot be precisely identified as having taken place at

- a particular institution. The Commissioner does not therefore accept that the provision of numbers (and species) in isolation allows for any accurate match to published research to be made. The Commissioner also accepts that some primate research may never be published. In light of this the Commissioner cannot see why there is likely to be any additional harm in providing the requested information.
42. The public authority has also stated that: *“Over recent years it has been a common tactic of animal rights campaigners to concentrate on particular targets rather than dissipate their energies across a whole spectrum of campaigns. This is demonstrated in the Higher Education sector where Oxford University, and before them Cambridge University have been particular targets and have received a lot of attention whilst other institutions, including Manchester, have largely been left alone. We believe that the information requested in this instance would allow the [complainant] to draw up a “league table” of universities by numbers of animals, and to check already known information against the summaries provided to identify gaps in their knowledge. Far from being a “crude assessment” of numbers we feel that this would be very valuable information for a movement considering where to focus its energies for a new campaign.”*
43. The Commissioner recognises that it is possible that some sort of historical league table might be compiled as a result of information disclosed in response to this and related requests. But, even if the publication of such a table were to increase the risks of some sort of extremist action directed against institutions at the top or bottom, the line of causation would be too long to conclude that disclosure of the disputed information would be likely to endanger any individual. In reaching such a view, the Commissioner has noted that the complainant did not request numbers of primates involved in current studies only the species concerned and the types of research being undertaken
44. The public authority has also stated that: *“It is clear from recent demonstrations outside other universities that this group are searching for a new campaign focus, and we feel that the information requested will be of use to them for this purpose. They may, for example, feel that a university with a smaller number of animals in use would provide an easier target and more likely potential victory than Oxford.”* The Commissioner has not been provided with evidence to support the statement that *“it is clear”* that a new campaign focus is being sought so he cannot place too much reliance on this statement. However, he does note that the statement above includes the assertion that AREs may focus on *‘a university with a smaller number of animals in use’* whereas in its earlier response to the complainant the public authority has conversely stated that: *“An indication of numbers involved would allow activists to target*

- those universities most involved in such research.*” These two statements would appear to contradict each other as either those universities with larger numbers of primates or those with smaller numbers are both considered as likely targets. In any event, current numbers are not asked for so it would not be possible to ascertain how many primates are currently in use by the public authority only that some are, which has already been confirmed. The provision of historical figures may allude to the current numbers but this would be no more conclusive than looking at volumes of published research and guessing the potential current figures.
45. The Commissioner accepts the public authority’s comment that: *“If a university is targeted by the animal rights movement for particular attention it is fairly clear that there is an increased and sometimes new health and safety risk to staff and students.”* However, he does not find that it has provided sufficient evidence to support its contention that disclosure of the information requested would provide such a catalyst. He also accepts that the websites of animal rights groups provide a picture of their views about animal experiments and some of the lengths they will go to to stop such research. However, he does not accept that the provision of historical information will add to the inherent risks associated with this type of work.
46. The Commissioner also notes that the public authority is concerned that releasing the information requested would isolate the institutions concerned and raise the level of risk that they face. However, he is not persuaded by this argument as he believes that if they are likely to suffer isolation this would result from their confirmation of the fact that they carry out experiments on primates, which would also be apparent from published reports. Disclosure of the numbers and species involved would not be likely to have any further impact.
47. For the reasons given above, the Commissioner does not find that the exemption at section 38 is engaged in respect of the first part of the request.

Request 2 - Summaries of current research using primates, by species

48. The public authority has provided several arguments (italicised in the following paragraphs) to the Commissioner in respect of this part of the request which the Commissioner has gone on to consider below.
49. The complainant has argued that the public authority was already publishing information at the time of its request which contained considerably more detail than what it had requested, As a counter to this the public authority has stated to the Commissioner that it has identified and reviewed articles on <http://ukpmc.ac.uk/> (see paragraph 25 above)

- which it believes would fit the complainant's criteria. It has then concluded that, of those identified, the majority are actually written with collaborators from other universities and / or collaborators from industry; that its staff are identified by address in the majority of cases; and that, in a number of the papers, the research was actually undertaken elsewhere than on its premises. Whilst the public authority has therefore pointed out that published research may appear to have been undertaken either by its academics or at its premises when in fact this has not been the case, the Commissioner does not consider these observations to be a counter argument to demonstrate any endangerment to health and safety. Whilst he accepts that the complainant's assumptions about research may or may not have been incorrect, there has not been any denial of such research taking place. Therefore, whilst the Commissioner notes the public authorities comments he does not consider that they demonstrate any health and safety concerns.
50. The public authority has also stated that: *"Despite all the material apparently already in the public domain an "accurate and up to date" picture is obviously not available to the [complainant], hence their request. It is believed that if such a picture were collated by the [complainant] it would be published and used for targeting purposes by both themselves and less legitimate campaigning bodies."* The Commissioner notes that whilst the first part of the request was for historical numbers and species this part of the request was only for areas of research and the species used. Information released in respect of this part of the request could therefore contribute to an *accurate and up to date* picture of primate research but only insofar as the limits of the request, i.e. the types of research being undertaken and the species in use. The public authority has already confirmed that it undertakes primate research and this would therefore already contribute some considerable way to an up to date picture. The Commissioner also notes that the relevant research is likely to be published after completion.
51. The public authority itself accepts that previously published papers reveal that primate research has been undertaken either at this establishment or by its academics. The Commissioner believes that this would therefore identify the public authority as a possible 'target' for activists. Previously released research, which is obviously much more detailed than the information that has been requested, has therefore been regarded an acceptable risk. Health and safety has not been deemed to override the importance of promulgating the research.
52. The public authority also put to the Commissioner that: *"Whilst it is true that the level of detail in such summaries would be lesser than some material already in the public domain, the latter does not necessarily provide full coverage of activities undertaken. We believe that the*

- provision of summaries of information would enable the [complainant] and other interested groups to compare what they have been able to glean from published information with summaries provided under Fol as a checking mechanism for research projects or interests of which they were previously unaware.”*
53. The Commissioner again notes that this statement does not demonstrate a risk of any harm in releasing the information, only a perceived use of the information. He also notes that information which was already in the public domain at the time of the request goes into considerably more detail than what would be required in a summary and he does not therefore accept that a summary would provide any fuller coverage of activities undertaken. He also does not agree that a summary would provide a *‘checking mechanism for research projects or interests of which they were previously unaware’* as abstracts about the majority of research projects, which are often very detailed, are voluntarily provided to the Home Office and the Commissioner has no reason to believe that this public authority is any less likely to provide an abstract than any other institution.
54. The public authority has also included that it: *“... feels that the information requested will enable the [complainant] to build up a more accurate picture of research using primates in the higher education sector, the stated aim of the request. We feel that this will enable better targeting of animal rights campaigns with attendant increased and new health and safety prejudice to members of staff and students at those universities targeted.”*
55. The Commissioner accepts that release of the requested information would enable the complainant to *‘build up a more accurate picture of research using primates in the higher education sector’*. He also believes that it could already do so to some extent based on information already provided as part of its original requests, namely it is aware which of those establishments approached undertake primate research. In some cases it has already been provided with full disclosure of the information sought which would add to this overall picture. However, the Commissioner does not accept that the provision of the remaining information requested would add to any existing risk in respect of the public authority being targeted by AREs. The public authority has confirmed it undertakes such research which the Commissioner believes would identify it as a potential target. He is not convinced that the public authority is more likely to be targeted as a result of disclosing the requested information.
56. The public authority raised other arguments particularly in respect of the value of the information and its lack of benefit to furthering public debate. It also advised that it believed that information which has already been placed in the public domain by the Home Office sufficiently meets the needs for information on primate research. However, the Commissioner

notes that whilst such comments can be beneficial when considering the public interest for or against disclosure, they are not relevant when considering the likelihood of endangerment to the health and safety of any individual. He has not therefore considered such arguments.

57. The Commissioner is additionally of the view that information in the public domain may be relevant as an indication that no harm has occurred as a result of it being widely known. In this particular request he also accepts this to be the case.
58. Therefore, for these reasons and also those set out in the paragraphs above, the Commissioner finds that in the specific circumstances of this case, and with considerable weight placed on the information already in the public domain, the exemption is not engaged.

The Decision

59. The Commissioner's decision is that the public authority has not dealt with the request for information in accordance with the Act in that:
60. The public authority failed to satisfy the requirements of sections 17(1)(b) in that it failed to correctly cite which sub-section of section 38 it was relying on.
61. The public authority inappropriately withheld the requested information under section 38(1). In doing so it also breached sections 1(1)(b) and 10(1).

Steps Required

62. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act.
63. The requested information should be released to the complainant.
64. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

65. The Commissioner would like to acknowledge help he has been given by the Animals Scientific Procedures Division of the Home Office. Staff gave helpful advice which has assisted in compiling this Notice.

Right of Appeal

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 31st day of March 2009

Signed (on behalf of the Commissioner and with his authority)

.....

**Peter Bloomfield
Senior Corporate Governance Manager**

**For and on behalf of
Richard Thomas
Information Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

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(1) provides that –

...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 11 provides that –

(1) Where, on making a request for information, the applicant expresses a preference for communication by any one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,

the public authority shall so far as reasonably practicable give effect to that preference.

Section 17 provides that:

(1) A public authority which ... 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 38 provides that:

(1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).