

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 16 November 2009

**Public Authority:** Department for Transport  
**Address:** Zone 9/2 Southside  
105 Victoria Street  
London  
SW1E 6DT

### Summary

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The complainant requested information relating to the security screening of passengers and security staff at UK airports. The requested information is contained in three Directions issued to aerodrome managers pursuant to the Aviation Security Act 1982. The public authority withheld the requested information by virtue of the exemptions at sections 24, 31(1) (a), and (b) of the Act. The Commissioner finds that some information in the Directions was correctly withheld under the exemption at section 24 but has ordered the disclosure of the remaining information in the Directions as he is not persuaded that the relevant information was correctly withheld under the stated exemptions at sections 24 and 31(1)(a) and (b). The Commissioner therefore finds the public authority in breach of sections 1(1)(b) and 10(1) for failing to disclose the relevant information within 20 working days of the request.

### 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.

### The Request

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2. On 12 January 2007, the complainant wrote to the public authority requesting information regarding the '*security screening/searching*' of passengers prior to boarding commercial flights at any/all UK airports. The complainant requested;  
  
(i) '*a copy of all such directives*'.

3. The complainant then went on to request specific information as outlined below.

(ii) *exactly what directives are there regarding the removal and security scanning of passengers' shoes?*

(iii) *does your department insist on the segregation at 'central search' of all passengers flying on Israeli registered aircraft (e.g. those belonging to E1A1, Israil and Arkia) and does your department insist on all such passengers removing their shoes and having them scanned*

(iv) *if your department does have these requirements, I request a copy of all relevant publications issued by your office*

(v) *does your department insist that all airport staff going airside remove their shoes and have them security scanned?*

4. On 16 June 2007 the complainant made a further request which is also outlined below.

*'...is there a Directive (or any other type/form of instruction) that requires all passengers who have been selected to pass through a dedicated central search facility (e.g. E1A1 at London, Heathrow Terminal 1 or British Airways First class passengers at London, Heathrow Terminal 1(check in Zone R) to remove their shoes?'*

5. On 02 February 2007, the public authority responded to the requests made in January 2007. It withheld all of the information requested by virtue of the exemptions contained in sections 24 and 31(1) (a) and (b) of the Act.

6. On 05 February 2007, the complainant in addition to requesting a review of the public authority's decision in respect of his January 07 request made further requests which are not the subject of this investigation. Those requests led to further correspondence from the public authority to the complainant on 05 March and 03 April 2007.

7. It however completed its internal review in relation to the requests of January 2007 on 24 May 2007. The review only upheld the application of the exemption at section 24 to the requested information.

8. On 25 June 2007, the public authority responded to the requests of 16 June 2007. It acknowledged the existence of '*..Directions on the search regimes for shoes..'* but withheld copies of the Directions by virtue of the exemptions contained in sections 24 and 31(1) (a) and (b) of the Act.

9. On 26 June 2007, the complainant requested a review of the public authority's decision to withhold the Directions referred to in his letter of 16 June.

10. The public authority completed its review on 20 August 2007. It upheld the application of the exemptions at sections 24 and 31(1) (a) and (b) to the requested information.

## The Investigation

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### Scope of the case

11. On 28 August 2007, the complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant specifically asked the Commissioner to review the public authority's decision to withhold the requested information.
12. The Commissioner's investigation therefore set out to determine whether or not the information requested on 12 January and 16 June 2007 was correctly withheld by virtue of the exemptions at sections 24 or 31(1) (a) and (b) of the Act. Apart from the information contained in paragraphs 26 – 56 of one of the Directions (for reasons which are explained below), the investigation covered all of the withheld information contained in the three Directions identified by the public authority.

### Chronology

13. On 25 July 2008, the Commissioner wrote to the complainant outlining the scope of the investigation and inviting him to comment if he disagreed with any part of it. The complainant acknowledged receipt via a telephone conversation on 28 July 2008. He did not question the scope of the investigation but explained that part of the reason for his request was to make sure there was a justification for the level of searches he was subjected to at Heathrow airport.
14. On 31 July 2008, the Commissioner wrote to the public authority inviting its comments on the application of sections 24 and 31(1) (a) and (b). He also requested the public authority provide him with copies of the withheld information.
15. The public authority responded on 07 October 2008 detailing its arguments in support of the application of the above exemptions and also provided the Commissioner with copies of the requested information.
16. A number of further communications took place between the Commissioner and public authority between October 2008 and May 2009.

### Findings of fact

17. Under Part II of the Aviation Security Act 1982 which specifically covers the Protection of Aircraft, Aerodromes, and Air Navigation against acts of violence, the Secretary of State may issue a Direction in writing to the manager of any aerodrome in the United Kingdom to carry out searches as specified in the Direction by persons specified in the Direction.<sup>1</sup>

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<sup>1</sup> Section 13, Aviation Security Act 1982

## Analysis

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### Exemptions

#### Section 24

18. Under section 24(1) information may be withheld under the above exemption if it does not fall within section 23(1) and is required for the purpose of safeguarding national security. In broad terms, the exemption at section 23 protects information supplied by or relating to specified security bodies.
19. Apart from the exclusion of information already considered exempt under section 23(1), information considered exempt under section 24 must be '*required*' for the purpose of safeguarding national security.
20. In the Commissioner's view therefore, it is not sufficient for the information sought simply to relate to national security, there must be evidence of specific and real threats to national security before the exemption is engaged.
21. In *Secretary of State for the Home Department v Rehman* [2001] UKHL 47; [2003] 1 AC 153, Lord Hoffman described national security as; '*.....the security of the United Kingdom and its people.*' The Commissioner has adopted this definition in his analysis of the applicability of the exemption.
22. Unlike the exemption at section 23, a ministerial certificate would not serve as conclusive proof that section 24 was correctly engaged but could be provided to strengthen the arguments for the application of the exemption. In response to an enquiry from the Commissioner as to whether it would like to include a ministerial certificate in its submissions, the public authority explained that it did not consider a certificate was necessary in this case.
23. The public authority provided the Commissioner with copies of three Directions referred to throughout this Notice as Annexes A, B, and C.
24. The public authority explained that all the Directions referred to above were caught by requests i and iv of January 2007. In relation to the remainder of the requests, it explained that;
  - Paragraphs 11 and 13 of Annex B were caught by requests ii & v of January 2007.
  - Paragraphs 3, 9, 10, 14 and 16 of Annex C read together contain the information held in relation to request iii of January 2007.
  - Variation direction 5B) of Annex A in conjunction with paragraphs 10, 14, and 16 of Annex C was caught by the request of June 2007.
25. The public authority argued that disclosing the relevant information contained in the directions would '*fundamentally undermine the whole policy that reflects Part*

*II of the 1982 Act (Aviation Security Act)*'. It explained that the Secretary of State issues directions acting on advice from the Transport Security and Contingencies Directorate (TRANSEC) as the transport industries' security regulator. TRANSEC in turn relies on the intelligence provided by the Joint Terrorism Analysis Centre (JTAC) and the Security Service in respect of the international and domestic threat of terrorism to the aviation industry.

26. The public authority further explained that the Aviation Security Act empowers the Secretary of State to require the regulated transport industries to implement security measures designed to protect their infrastructure, hardware, staff and the general public from terrorist attacks. It argued that safeguarding the interests of the travelling public and UK aviation industry (aviation industry) against potential acts of terrorism and unlawful interference are matters integral to national security.
27. In terms of the specific requests (i.e. ii, iii & v), the public authority explained that aviation security is a combination of deterrence and detection, and revealing detailed information relating to search comb procedures including methodology other than to those who are legally required to act on its content would adversely affect the deterrence element needed not only as part of the overall security strategy but which is also useful in preventing extensive passenger delays and numerous flight cancellations.
28. Details of the public authority's further submissions which include specific reference to the search comb procedures are contained in the Confidential Annex to this Notice.

Was the information requested in January 2007 and June 2007 correctly withheld by virtue of the exemption at section 24 of the Act?

29. As noted above, section 24 applies to information *required* for safeguarding national security. In other words, the information is needed to counter a specific and real threat to national security. As already noted, the public authority explained that the directions were served pursuant to the Aviation Security Act and that directions served under that Act are generally pursuant to intelligence provided by JTAC and the Security Service to TRANSEC regarding the level and nature of terrorist threats to aviation security.
30. According to the public authority;  
  
*'On the basis of advice from JTAC and the Security Service, TRANSEC believes that the enhanced threat to UK aviation which became apparent in August 2006, remains very real and very serious. It is therefore imperative for the safety of passengers and all of those who work in the aviation industry that no threat items or prohibited articles are allowed to pass through the search combs and into the Restricted Zone of the airport.'*
31. To enhance his understanding of the potential threats, the Commissioner requested that a senior official with direct involvement in aviation security provide a statement which supports the implicit contention that based on advice received

from JTAC and the Security Service, disclosing all of the information in the directions would compromise national security.

32. The Commissioner was provided with a statement from the Head of Aviation Security which in his view did not specifically address his request above and merely reiterated the position explained in its letter of 12 November 2008.
33. According to the Head of Aviation Security, relevant intelligence material was provided on a continual basis to inform the overall threat picture and there were no individual material(s) which could be viewed in isolation and attributed to the formulation of a particular Direction.
34. The Commissioner therefore proceeded to consider whether the information in the withheld directions including those specific to requests ii, iii and v was correctly withheld by virtue of the exemption at section 24. The Commissioner also had to consider whether all of the information in the Directions provided was in fact caught by the complainant's request.
35. The complainant's request as already noted specifically refers to Directions regarding the security screening or searching of passengers about to board commercial flights, and by extension airport staff. After considering the Directions, the Commissioner is of the view that not all of the information in Annex C falls within the scope of the request. Specifically, paragraphs 26 – 56 of Annex C primarily relate to the security screening of cargo, courier material and mail. He has therefore not considered the information in paragraphs 26 - 56 of Annex C within the scope of his investigation.
36. A full summary of the Commissioner's decision can be found in Annex D to this Notice.

#### Annex B (requests ii & v of January 2007)

37. The Commissioner first considered the specific information withheld in relation to requests ii and v of January 2007. As noted above, this information is contained in paragraphs 11 and 13 of Annex B.
38. As already noted, details of the public authority's submissions are contained in the Confidential Annex to this Notice. The Commissioner however considers it sufficient to note that the paragraphs contain directions in relation to the methodology of the footwear searches for both passengers and airport staff.
39. The global terrorist threat to the aviation industry is well documented, and the heightened security at some UK airports illustrates the serious nature of these threats. In August 2006, the government responded to security intelligence about liquid explosives threat by increasing the number of materials prohibited on aircrafts, as well as the nature of the searches conducted on passengers at some airports leading to extensive delays and a number of cancellations. According to the public authority, these security measures were necessary at the time as it could not be satisfied that potential liquid explosives would otherwise have been detected.

40. The public authority did also explain that Directions are issued pursuant to the nature of the threats to the aviation industry at the time based on the intelligence provided by JTAC and the Security Service.
41. The Commissioner is satisfied that responding to requests ii and v would entail the disclosure of detailed information relating to the shoe searching regime for airline passengers including the nature of the searches as well as the methodology involved.
42. He is therefore persuaded that disclosing this information (i.e. paragraphs 11 and 13) would reveal information which could be of potential benefit to individuals' intent on unlawfully interfering with aviation in the United Kingdom. It is information which is required for the purpose of protecting passengers flying out of UK airports in light of the nature of the threats facing the aviation authority at the time of the request and indeed presently.

Request iii of January 2007 & request of 16 June 2007 (Annexes A & C)

43. Request iii specifically focuses on the segregation of, and footwear searches conducted on, Israel bound passengers. The June 2007 request on the other hand relates to information regarding whether '*all (segregated) passengers*' have to remove their shoes as part of the searches conducted.
44. In terms of request iii, the public authority argued that revealing whether or not all passengers travelling on Israel registered aircraft were segregated at central search would arm potential terrorists with information to enable them to plan a strategy that exploits the procedure in place. For instance, if it was the case that Israel bound passengers were not segregated at central search, and this was placed in the public domain, potential terrorists may seek ways to exploit any resulting weakness.
45. In response to a query from the Commissioner as to whether passengers in general knew before hand that they would be required to pass through a segregated channel before boarding their flight, the public authority confirmed that passengers on designated routes (for instance, Israel) would have been given prior warning.
46. The Commissioner however accepts there is a possibility that, if combined with other information in the public domain or obtained from reconnaissance operations, the disclosure of some of the information in the relevant Directions could be useful to a potential terrorist. .
47. He therefore finds that the relevant information as outlined in Annex D was correctly withheld by virtue of the exemption at section 24 of the Act.
48. In terms of footwear searches, the Commissioner notes (just as the complainant was informed by the public authority in its internal review of 24 May 2007) that Annex C, (specifically paragraphs 14 and 16) confirms that airport operators are authorised to conduct footwear searches on passengers required to pass through

segregated channels including those en route to Israel. However, in so far as the methodology of these searches are concerned, the Commissioner maintains the view that this information would be beneficial to those who threaten the security of the UK aviation industry (aviation industry) and is therefore exempt from disclosure by virtue of section 24 of the Act. He is not persuaded the public authority would be able to disclose the requested information without revealing detailed information regarding the process.

49. He therefore finds that the relevant information was correctly withheld under section 24 of the Act.

#### Requests i & iv (copies of the Directions)

50. The Commissioner next considered whether the remainder of the information contained in the Directions (Annexes A, B and C) was correctly withheld under section 24 of the Act.
51. As already noted, to meet the threshold for the application of section 24, the information in question should be required for the purpose of safeguarding national security. In the Commissioner's view, most of the remaining information could be interpreted as information which relates to national security by virtue of the climate (i.e. the threat of terrorist attacks on UK airlines) in which they were produced. The question however is whether or not disclosure would pose a specific and real threat to national security. This is therefore the test that the Commissioner has applied to the remainder of the information withheld under section 24.

#### Annex A

52. In relation to the remainder of the information the Commissioner has ordered to be disclosed from Annex A, he is not persuaded by the argument that disclosure would pose a threat to the aviation industry. In terms of the information he has ordered withheld, the Commissioner is of the view that it could be useful to a potential terrorist and therefore finds that section 24 was correctly engaged.

#### Annex B

53. For the same reasons as above, the Commissioner has ordered the disclosure of some information in Annex B and the remainder withheld by virtue of section 24 of the Act.
54. The Commissioner however notes in addition that, some of the information is already in the public domain in form of guidance to passengers on the public authority's website,<sup>2</sup> and part of it was provided to the complainant by the public authority in a letter dated 19 March 2008.

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<sup>2</sup> <http://www.dft.gov.uk/transportforyou/airtravel/airportsecurity/> (Last viewed on 31 March 2009)



## Annex C

55. For the same reasons as above, the Commissioner has ordered the disclosure of some information in Annex B and the remainder withheld by virtue of section 24 of the Act.

### .Public Interest Test

56. Section 24 is a qualified exemption and accordingly subject to a public interest test. Therefore, the Commissioner must consider whether in all the circumstances of this case, the public interest in maintaining the exemption in relation to the information caught by section 24 outweighs the public interest in disclosure.

### Public authority's arguments

57. According to the public authority, it took into account that disclosing the requested information could reassure the public that detailed measures are in place and are effective in making air travel as secure as possible, and consequently increasing public confidence in the UK aviation security regime.
58. Disclosure could also contribute to more informed public debate about wider aviation security policy and promote a spirit of openness and transparency.
59. However, in its view, to safeguard national security, it does not consider it in the public interest to reveal detailed information relating to search comb procedures. According to the public authority, disclosing this information would potentially undermine the effectiveness of UK airports' search combs which is the primary point for screening for weapons and other prohibited articles before entering the Restricted Zone.
60. It further argued that even the disclosure of limited quantities or certain types of information contained in the Directions could supplement publicly available information or information gained through reconnaissance to build a clearer picture.
61. Based on the possibility that those with harmful intent could gain valuable insights into the detailed operation of the UK aviation security capability, the public authority concluded that the public interest in maintaining the exemption had far more weight than the public interest in disclosure.

### Commissioner's assessment

62. According to the Information Tribunal (Tribunal) in *Guardian Newspapers Ltd and Heather Brooke v The Information Commissioner and BBC* (EA/2006/0011 and EA/2006/0013);

*'While the public interest considerations in the exemption from disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad-ranging and operate at different levels of abstraction from the subject matter of the exemption. Disclosure of information serves the general public*

*interest in the promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and the informed and meaningful participation by the public in the democratic process.'* (Paragraph 87).

63. In addition to the above general public interest factors in favour of disclosure as well as those highlighted by the public authority, the Commissioner considers there is also a public interest in ensuring that those entrusted with the responsibility of conducting air passenger searches are acting within the scope of their powers.
64. Disclosing the requested information could also contribute to the public debate on the necessity of some of the level of searches conducted on air passengers, shed more light on the rationale behind the segregation or otherwise of air passengers, and thereby enhance the accountability of the government for some of the decisions made in relation to these searches.
65. In considering the public authority's arguments against disclosure, the Commissioner took into account the information already disclosed to the complainant in relation to the subject of his request.
66. As part of its response to the complainant, the public authority explained that in authorising passenger searches, aerodrome managers were acting under the directions issued by the Secretary of State under the Aviation Security Act 1982. It informed the complainant that aerodrome managers were in accordance with the directions, responsible for engaging staff qualified to carry out airport security functions. To provide some reassurance to the complainant regarding the powers exercised by those conducting the searches, it further explained that the Directions also require passengers to be searched to a standard sufficiently reasonable to ensure that no prohibited articles are taken into the Restricted Zone.
67. To shed more light on the requirements of directions the public authority informed the complainant that they included screening of baggage and footwear, hand search, and scanning by archway metal detector or other approved equipment, and confirmed that the Directions also require staff employed or contracted to conduct searches to be searched before entering the Restricted Zone.
68. The Commissioner is of the view that where section 24 is engaged, then a disclosure in the public interest should also pose little or no risk to national security as there is an inherent public interest in protecting the lives and safety of UK citizens and residents, and it would be highly unlikely to find weightier arguments against this public interest.
69. As noted above, disclosing the information requested in relation to the footwear searching regime would effectively reveal details about the search procedures which could be potentially useful to individuals who intend to carry out terrorist acts against the UK through attacks on the aviation industry.

70. After considering the withheld information regarding footwear searches in the context of the current threat of terrorist attacks faced by the UK aviation industry, the Commissioner is persuaded that when the arguments for maintaining the exemption are weighed against those in favour of disclosure, the balance lies in favour of maintaining the exemption.
71. In the Commissioner's view, the withheld information relating to footwear searches not only relates to national security, it is also information which could be used to target the UK aviation industry. In a different climate, the withheld information could perhaps be described as merely relating to national security. However, the weight to attach to it has to be considered alongside the well documented threat not just to UK but also international aviation. The public interest must also therefore be weighed against that background.
72. In terms of the methodology of searches for segregated passengers, in addition to the reasons above, in the Commissioner's view, the fact that these routes are singled out is sufficient to demonstrate that they are considered to pose a greater threat by the relevant security agencies. Therefore, it would be in the public interest not to place the details of the search procedures in relation to passengers travelling on these designated routes in the public domain.
73. The Commissioner therefore finds that in all the circumstances of the case, the public interest in favour of maintaining the exemption outweighs the public interest in disclosure.

#### Sections 31 (1) (a) and (b)

74. The Commissioner next considered whether the Directions which he did not consider exempt by virtue of section 24 were correctly withheld under section 31(1) (a) and where applicable sub section (1)(b).
75. Information is exempt from disclosure under the above exemptions if its disclosure under the Act would, or would be likely to prejudice the prevention or detection of crime (sub section 1(a) ) or the apprehension or prosecution of offenders (sub section 1(b) ).
76. The public authority explained that Part II of the Aviation Security Act is fundamentally concerned with the protection of aircraft, airports, and air navigation installations against acts of violence. Under Article 10(2) of the Aviation Security Act, a variety of offences fall within the definition of violence. These include murder and attempted murder under the Offences Against the Person Act 1861, and offences under section 2 of the Explosives Substances Act 1883 which makes it an offence to cause an explosion likely to endanger life or property. The Commissioner notes that 'acts of violence' also include assault and criminal damage. According to the public authority, as by definition, the above 'acts of violence' constitute crimes, it considered the disclosure of the withheld information would therefore likely prejudice the activities referred to in section 31(1) (a) or (b).

## Section 31(1)

77. The Commissioner first considered whether disclosing the information not exempt by virtue of section 24 would be likely to prejudice the prevention or detection of crime.

## Prejudice Test

78. In the Commissioner's view, "Likely to prejudice" means that the possibility of prejudice should be real and significant, and certainly more than hypothetical or remote. In the case of *Hogan v Information Commissioner and Oxford City Council* (EA/2005/ 0026 & 0030), (Hogan) the Information Tribunal (Tribunal) noted that; the application of the prejudice test involved three steps. First, there is a need to identify the applicable interest(s) within the relevant exemption. Second, the nature of prejudice being claimed must be considered, and third, the likelihood of the harm occurring should also be considered. (See paragraphs 28 to 34).
79. The Commissioner was guided by the above comments in determining the likelihood of prejudice in this instance.

## Annex A

80. The Commissioner is not persuaded that the disclosure of the relevant information in the above Direction would be likely to prejudice the public authority's ability to prevent or detect the 'acts of violence' described in Article 10(2) of the Aviation Security Act.
81. The public authority did not provide any detailed submission in this respect although the Commissioner did request a detailed explanation from the public authority regarding the nature of the prejudice anticipated if the information contained in the Directions was disclosed. The Commissioner accepts it could be argued that by implication, disclosure would be likely to adversely affect the prevention of criminal acts against the aviation industry. However, the prejudicial effect anticipated has to be considered alongside specific information in the Directions rather than adopting a blanket approach. The Tribunal further commented in Hogan's case 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 the prejudice is, as Lord Falconer of Thornton has stated "real, actual or of substance"*' (Hansard HL VOL. 162, April 20, 2000, col. 827) ..' (See paragraph 30).
82. Nevertheless, the Commissioner's decision was strongly influenced by the nature of the withheld information. In the Commissioner's view, it is highly unlikely that the disclosure of this information could prejudice the prevention or detection of criminal acts against the aviation industry.
83. For the same reasons, the Commissioner finds that section 31(1)(b) is not engaged.

## Annex B

84. For the same reasons as above, and in addition to the fact that part of the relevant information was in the public domain at the time of the request, and part had been disclosed to the complainant, the Commissioner finds that sections 31(1) (a) and (b) are not engaged.

## Annex C

85. For the same reasons as above in relation to Annex A, the Commissioner finds that sections 31(1) (a) and (b) are not engaged in relation to the relevant information withheld from the above Direction.

## **Procedural Breaches**

86. A public authority is required by virtue of the provisions of sections 1(1)(b) and 10(1) of the Act to disclose the information requested by an applicant within 20 working days. A full text of both sections is available in the Legal Annex to this Notice.
87. In light of the Commissioner's decision, he finds the public authority in breach of sections 1(1)(b) and 10(1) for failing to disclose, at the time of the request, the information he has ordered to be disclosed following his investigation.

## **The Decision**

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88. A summary of the substantive part of the decision can be found in Annex D

## **Steps Required**

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89. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Disclose all of the information listed in Annex D he has specifically ordered to be disclosed or described as 'not engaged' by the exemptions at sections 24 or 31(1) (a) or (b).
90. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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91. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session

in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court

## Other matters

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92. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
93. The Commissioner would like to record his concerns in relation to the use of blanket exemptions in this case. The public authority should have considered the application or otherwise of the exemptions relied on to the information in each of the paragraphs in the Directions rather than simply applying the exemptions to all of the information contained therein. Whilst he recognises there could be legitimate concerns regarding the possibility of using relatively innocuous information in specific paragraphs to form an overall picture, the burden is on the public authority to demonstrate that this could be case by applying the relevant exemptions accordingly and providing the rationale for its position.
94. The Commissioner would also like to record his concerns regarding the length of time it took the public authority to complete its internal reviews. The public authority completed its review in relation to the requests of January 2007 on 24 May 2007 following a review request made on 05 February 2007. The review for the request of June 2007 was completed on 20 August 2007 following a review request made on 26 June 2007.
95. The Commissioner's position as explained in the 'Freedom of Information Good Practice Guidance No. 5' is that internal reviews should take no longer than 20 working days, and in exceptional circumstances which have been clearly explained to the complainant, the total time taken should not exceed 40 working days. The Commissioner took into account the fact the guidance was published on 22 February 2007 just after the internal review. . He would however like to record that he does not consider the public authority had any exceptional reasons for delaying the internal review. Although the delay does not constitute a breach of the Act, the Commissioner would like to make it clear that this does not accord with good practice. He therefore expects the public authority to be aware of his position as provided in the published guidance as his office will monitor the public authority's compliance or otherwise via future complaints made against it.

## Right of Appeal

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96. 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@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 served.

**Dated the 16th day of November 2009**

**Signed .....**

**Gerrard Tracey  
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

## **National Security**

**Section 24(1)** provides that –

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security.”

**Section 24(2)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.”

**Section 24(3)** provides that –

“A certificate signed by a Minister of the Crown certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of safeguarding national security shall, subject to section 60, be conclusive evidence of that fact.”

**Section 24(4)** provides that –

“A certificate under subsection (3) may identify the information to which it applies by means of a general description and may be expressed to have prospective effect.”

## **Law enforcement.**

**Section 31(1)** provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out

of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

ANNEX D**Annex A (31 August 2000)****Exemptions : sections 24 & 31(1)(a) or (b)**

Title and Preamble	Not engaged
Variation Directions 1 & 1(a)	Not engaged
Variation Directions 1(b), 5B & 1(c)	Engaged – section 24
Paragraphs 2 & 2(a)	Not Engaged
Paragraphs 2(b) & 2(c)	Engaged – section 24
Paragraph 3	Not Engaged

**Annex B (14 August 2006)****Exemptions (sections 24 & 31(1)(a) or (b))**

Preamble	Not engaged
Paragraphs 1 – 5 , & 15	Not engaged
Paragraph 6	Engaged - 24
Paragraph 7 - 1 <sup>st</sup> line	Not engaged
Paragraph 7 – 1 <sup>st</sup> bullet point	Disclose first nine words & redact remainder of information under section 24.
Paragraph 7 – 2 <sup>nd</sup> bullet point	Not engaged

**& NOTE**

Paragraph 8	Not engaged
Paragraphs 9 - 14	Engaged – section 24
Signatories name	Disclose (excluding signature)

**Annex C (March 2005)****Exemptions (sections 24 & 31(1)(a) or (b))**

Title and Introduction	Not engaged
Citation, Commencement, and Revocation	Not engaged
Paragraphs 3, 7, 18, & 19	Not engaged
Paragraph 17	Disclose all the information on first 3 lines and first 5 words on fourth line. Redact remainder of information under

	section 24.
Schedule 4(a), (b), (c), (f) & (g)	Not engaged
Schedule 4(d)	Disclose first 6 words. Redact remainder of information under section 24
Schedule 5	Not engaged
Paragraphs 4 , 5 , 6 , & 8 - 17	Engaged – section 24
Paragraphs 20 - 25	Engaged – section 24
Schedules 1, 2, 3, 4(e) & 6	Engaged – section 24

**Paragraphs 26 – 56 outside the scope of the requests**

Interpretation (Annex C )	Exemptions (sections 24 & 31(1)(a) or (b))
Paragraph 57	Not engaged
*Paragraphs 2, 4, 7, 8, 14, 15, 34, 37, 54, 60, & 61	Not engaged
Signatories name	Disclose (excluding signature)
Remainder of Information	Engaged – section 24

\* These are not numbered in the Direction and the above is the Commissioner's numbering which begins at 2 immediately after paragraph 57.

