

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 9 November 2009**

**Public Authority:** Chief Constable of South Yorkshire Police  
**Address:** South Yorkshire Police Headquarters  
Snig Hill  
Sheffield  
S3 8LY

### Summary

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The complainant made an eight part request for information about the National Firearms Licence Management System. The public authority stated that the majority of the information requested was not held and the Commissioner finds that the public authority complied with the requirement of section 1(1)(a) in relation to these parts of the request. In relation to the information that it confirmed was held, the public authority cited the exemptions provided by sections 31(1)(a) (prejudice to the prevention or detection of crime) and 43(2) (prejudice to commercial interests). The Commissioner finds that the exemption provided by section 31(1)(a) is engaged and that the public interest favours the maintenance of this exemption. However, the Commissioner also finds that the public authority failed to comply with the procedural requirements of sections 10(1), 17(1)(b) and 17(1)(c) through its handling 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. The complainant made the following information request on 19 February 2007:

*"I'd like the information you hold about the national gun licensing system and the information it processes on your behalf. Especially I'd like the information in:*

1. *Any policy you have about the national system,*

2. *Any national policy about its use,*
  3. *The Risk Management & Accreditation Documentation (HMG Infosec Standard No 2) for the system,*
  4. *The Security Operating Procedures (if not contained as part of 3 above),*
  5. *Any schematic (or similar information) demonstrating the access and dissemination restrictions, and*  
*If the national gun computer system does not have its own Risk Management & Accreditation Documentation,*
  6. *The overarching equivalent to which the Security Operating Procedures relate, plus*  
*If the national system is hosted by a central body (such as the Central Police Information Technology Organisation),*
  7. *Any record of authorisation for the body to act for you, and, lastly,*  
*If the processing is carried out by a data processor,*
  8. *The contract evidenced in writing required by the Data Protection Act.”*
3. The public authority responded to this on 20 March 2007. The request was refused, with section 31 cited as the basis for this. The public authority did not cite any subsection from section 31, although the wording of subsections 31(1)(a), (b) and (c) was referred to, and provided no adequate explanation as to why the information was believed to be exempt. The public authority did briefly address the balance of the public interest. Neither did the public authority specify to which of the requests the information it held conformed.
  4. Following a request for clarification from the complainant dated 21 March 2007, the public authority sent a further response on 26 March 2007. This stated that the majority of the information requested was not held.
  5. The complainant contacted the public authority on 21 March 2007 and asked that it carry out an internal review. The public authority responded with the outcome of the review on 13 July 2007 and confirmed that the initial refusal of the request was upheld. Again section 31 was referred to without any subsection being specified and without explanation given as to why this exemption was believed to be engaged. The internal review response also referred to the information in question as commercially sensitive, although the public authority did not at that stage cite section 43(2).

## The Investigation

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### Scope of the case

6. The complainant contacted the Commissioner initially on 28 August 2007. The complainant raised the issue both of the refusal to disclose the information requested and the poor handling of the request by the public authority, including that a response detailing what information falling within the scope of the request was held was not provided until after the refusal notice, and that there had been a delay in communicating the outcome of the internal review. The complainant also specified that she wished the Commissioner to consider both the citing of section

31 and whether the public authority was accurate in stating that the majority of the information requested was not held.

## Chronology

7. The Commissioner contacted the public authority initially on 2 February 2009. The background to this case was set out and the public authority was asked to clarify whether it held information falling within the scope of each of the eight requests. In relation to any part of the request where the stance of the public authority was that it held no information falling within the scope, the public authority was asked to detail the searches it had carried out to verify whether relevant information was held. It was also asked to clarify its application of section 31(1).
8. It was noted that, although the public authority had referred in its internal review to the commercial sensitivity of the information in question, it had not cited section 43(2) (commercial interests). The public authority was invited to clarify if it now wished to cite section 43(2). The public authority was also asked to provide a copy of the information withheld from the complainant.
9. The public authority responded to this on 31 March 2009 and provided the following clarification in relation to each request:
  1. No information held.
  2. No information held.
  - 3 and 4. There is a Risk Management and Accreditation Document (RMADS) relevant to the request and the part of this that the public authority has access to relates to the Security Operating Procedures.
  5. No information held.
  6. No information held.
  7. No information held.
  8. No information held.
10. On the issue of section 31(1), the public authority specified the subsections as being 31(1)(a) (prevention and detection of crime), 31(1)(b) (apprehension and prosecution of offenders), 31(1)(c) (administration of justice), 31(1)(g) / (2)(a) (ascertaining whether any person has failed to comply with the law), 31(2)(b) (ascertaining whether any person is responsible for any conduct which is improper) and 31(2)(c) (ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise).
11. The public authority also cited section 43(2), as it believed that the commercial interests of the company which provided the system could be prejudiced through disclosure of the information. The public authority also briefly addressed the balance of the public interest and provided a copy of the information in question to the Commissioner.

## Analysis

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### Procedural matters

#### Section 1

12. The stance of the public authority is that it holds no information falling within the scope of requests 1, 2, 5, 6, 7 and 8. The public authority has also stated that it holds only part of the information specified in request 3. The task for the Commissioner in relation to these requests is to consider whether the public authority is correct in stating that this information is not held.
13. In this case the standard of proof that the Commissioner has applied in determining whether the public authority does hold information falling within the scope of these requests is the civil standard of the balance of probabilities. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
14. Where the public authority has stated correctly that it does not hold information falling within the scope of a request, the Commissioner will conclude that the public authority has complied with the requirement of section 1(1)(a). This section of the Act is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice.
15. In connection with requests 1 and 2, the public authority has described the searches it undertook to locate relevant information. These included internal searches and contacting the then Police Information Technology Organisation and the Association of Chief Police Officers. On the basis of the descriptions provided by the public authority the Commissioner concludes on the balance of probabilities that information falling within the scope of these requests was not held at the time of the requests and that the public authority has complied with section 1(1)(a) in respect to these requests.
16. In request 3 the complainant specified the Risk Management and Accreditation Document. The stance of the public authority is that it holds only part of the information specified in this request in the form of the Security Operating Procedures, which also falls within the scope of request 4. In terms of whether the public authority is correct in stating that it holds no further information relevant to this request, the public authority has described the steps it undertook to locate further information falling within the scope of the request. These took the form of enquiries with the ACPO central referral unit, the ACPO lead for firearms licensing and the then Police Information Technology Organisation. The public authority also made internal enquiries as to whether it held the information requested. The Commissioner accepts this explanation from the public authority for why this information is not held and so finds that the public authority complied with section 1(1)(a) in relation to this request.

17. In relation to request 5, the public authority has stated that no schematic demonstrating access and dissemination restrictions exists as these restrictions are covered in the Security Operating Procedures. The Commissioner accepts this explanation as to why this information is not held and finds that the public authority has complied with the requirement of section 1(1)(a) in relation to this request.
18. In relation to request 6, the wording of this request makes clear that it applies only if no information falling within the scope of request 3 is held. As the public authority has confirmed that it does hold information falling within the scope of request 3, request 6 is resolved and the Commissioner has reached no section 1(1)(a) conclusion in relation to that request.
19. The public authority states that it holds no record of information falling within the scope of request 7. It has described the enquiries that it undertook in order to locate information falling within the scope of the request. These included enquiries with ACPO and the then Police Information Technology Organisation. The public authority also made internal enquiries with its Criminal Justice and Administration Department. The Commissioner accepts this explanation from the public authority for why this information is not held and so finds that the public authority complied with section 1(1)(a) in relation to this request.
20. In connection with request 8 the public authority has stated that no data processing contract exists as each police force remains responsible for its information held on this system. The Commissioner accepts this explanation from the public authority for why this information is not held and so finds that the public authority complied with section 1(1)(a) in relation to this request.

## **Section 10**

21. The public authority failed to confirm what information it held that fell within the scope of the complainant's requests until the complainant requested this clarification following the refusal notice. In failing to confirm what information it held within 20 working days of receipt of the request, the public authority did not comply with the requirement of section 10(1).

## **Section 17**

22. At neither the refusal notice nor internal review stage did the public authority cite the relevant subsections of section 31. In so doing the public authority failed to comply with the requirement of section 17(1)(b).
23. At neither the refusal notice nor internal review stage did the public authority provide an adequate explanation as to why any subsection of section 31 was engaged. In failing to provide such explanations, the public authority did not comply with the requirement of section 17(1)(c).

## Exemption

### Section 31

24. As noted above at paragraph 10, the public authority cited six subsections from section 31. From the explanations provided by the public authority to the Commissioner it appears that the substantive stance of the public authority was that the exemption provided by section 31(1)(a) was engaged. The explanations provided by the public authority in connection with the other subsections lacked any detail and, given this, it is unlikely that, were the Commissioner to give full consideration to the stance of the public authority in relation to these subsections, he would conclude that these exemptions are engaged. Given the absence of detailed explanation from the public authority in relation to any other exemption, the Commissioner has focussed on section 31(1)(a) and, since he has concluded that the exemption was justified, he has not found it necessary to reach a conclusion in respect of the remaining paragraphs of subsections 31(1) and (2).
25. Section 31(1)(a) provides an exemption where disclosure would, or would be likely to, prejudice the prevention and detection of crime. This exemption is also qualified by the public interest. This means that the information should be disclosed if the public interest favours this despite the prejudice that would, or would be likely to, result through disclosure.
26. The public authority has not specified whether its stance is that prejudice *would* result, or it is that prejudice *would be likely to* result. Where the public authority does not specify the level of prejudice, the Commissioner will consider the lower threshold; which is that prejudice would be likely to result. In order for the Commissioner to conclude that prejudice would be likely to result, the likelihood of prejudice must be real and significant and more than hypothetical or remote. This is in line with the approach taken by the Information Tribunal in the case *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) in which it stated:
- “the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.”* (para 15)
27. The stance of the public authority relies on the notion that disclosure would be likely to disrupt the operation of the firearms licensing system. This would, in turn, create a situation where the ability of the public authority to prevent or detect the crime of not having a firearms licence would be likely to be prejudiced.
28. The Commissioner has first verified whether it is a legal requirement to have a firearms licence. On this point, the Commissioner notes that the Home Office document *Firearms Law: Guidance to the Police 2002* states the following:

*“Under sections 1 and 2 of the [Firearms Act 1968], it is an offence for a person ‘to have in their possession or to purchase or acquire’ a firearm or ammunition to which section 1 applies or a shot gun without holding the appropriate certificate.”* (paragraph 5.2)



The Commissioner accepts this as verification that it is a legal requirement to have a firearms licence.

29. Turning to the issue of whether disclosure would be likely to result in prejudice to the functions described in section 31(1)(a) in respect of the information that falls within the scope of the third and fourth requests consists of a document setting out the security operating procedures for the National Firearms Licence Management System (NFLMS). The Commissioner notes that the content of the information in question does include details about the security operating procedures, including setting out which individuals have a privileged level of access to the system, details of password security and an indication of the types of security events it is anticipated may arise.
30. The Commissioner accepts that this level of detail could be exploited by an individual who wishes to disrupt the NFLMS. As to whether a disruption of the NFLMS would be likely to lead to prejudice to the prevention and detection of crime, a main purpose of the NFLMS appears to be that it enables the police to verify whether an individual has a firearms licence. It is reasonable to conclude, therefore, that disruption to the NFLMS would be likely to impact on the ability of the police to establish whether an individual had a firearms licence and, in turn, whether an offence related to not having a firearms licence had been committed.
31. The overall conclusion of the Commissioner is that disclosure would be likely to prejudice the prevention and detection of crime and that the exemption provided by section 31(1)(a) is, therefore, engaged. The basis for this conclusion is that holding a firearms licence is a legal requirement for a firearm owner, that the level of detail within the information in question suggests that this could assist those who seek to disrupt the NFLMS, and that this could prejudice the ability of the police to prevent and detect the crime of being in possession of a firearm without a licence.

### **The public interest**

32. In reaching a conclusion on the balance of the public interest in this case, the Commissioner has taken into account the public interest inherent in the exemption, that is the public interest in avoiding likely prejudice to the prevention or detection of crime, and the general public interest in the transparency and accountability of the public authority, as well as the specific circumstances and arguments that apply in relation to this case and the information in question. Although the Commissioner has reached the conclusion that prejudice to the prevention and detection of crime would be likely to result through disclosure, the information must still be disclosed unless the factors in favour of maintenance of the exemption outweigh those in favour of disclosure.
33. If the law surrounding ownership of firearms was the subject of sustained controversy and widespread debate, this would contribute a factor of significant weight in favour of disclosure. Whilst it could be argued that the information in question here, which relates to the administration of the law in this area rather than, for example, the merits of this law, would be sufficiently far removed from the focus of this debate that this factor would carry reduced weight, the existence

of this debate would suggest that a public interest exists in full disclosure of information about this issue.

34. However, the Commissioner has not located evidence of significant public debate around these issues. Whilst much of the coverage notes that the legal restrictions on firearms ownership within the UK are amongst the strictest in the world, it is also frequently noted that no sizeable lobby exists in favour of less restriction on firearms ownership and that this has the effect of there being no widespread debate about the law in this area. Controversy and debate about the issue to which the information in question relates is not, therefore, a factor in favour of disclosure that carries any significant weight.
35. In any case, the content of the information in question is relevant to the balance of the public interest. Where, for example, the content of the information revealed that a public authority was failing to take appropriate steps to discharge its responsibilities; this would contribute to the public interest in favour of disclosure.
36. In this case, having established that the issue of firearms licensing does not appear to be the subject of any widespread controversy or debate, the subject matter of this information is not a factor of significant weight in favour of disclosure. On the issue of what this information reveals about the steps taken by the public authority to discharge its responsibilities in this area, when requesting that the public authority carry out an internal review the complainant made the valid point that disclosure would reveal the steps taken to ensure the security of the NFLMS. The content of the information in question does indeed reveal the steps taken to ensure security and this is a valid factor in favour of disclosure.
37. The NFLMS contains the personal data of licensed firearms owners. The information in question details the measures in place to ensure the security of the information within the NFLMS, including personal data. It is in the public interest that appropriate steps can be taken to ensure the security of the personal data in this database. The intense media focus given to recent accidental disclosures of personal data by organisations in both the public and private sectors is of relevance here. Whilst media coverage of an issue is not necessarily an indication that it would be in the public interest to disclose information about that issue, in this case the Commissioner takes the level of interest in the issue of personal data losses as indicative of the legitimate public interest in this issue. That disclosure would add to public knowledge about the steps taken to ensure the security of the personal data held within the NFLMS is a valid public interest factor in favour of disclosure. The Commissioner affords this factor additional weight owing to the evidence of a legitimate public interest in the issue of security of personal data provided by the high levels of public concern about recent losses of personal data.
38. However, that there have recently been a number of accidental losses or disclosures of information held within databases and that there is a public interest in preventing future incidents of this kind can also be cited as an argument in favour of maintenance of the exemption. In concluding that the exemption is engaged, the Commissioner has accepted that disclosure would be likely to enable disruption of the NFLMS. Whilst that conclusion does not relate directly to



the possibility of a disclosure or loss of the personal data held within that database, it would be reasonable to argue that a disruption of that database could include a loss or disclosure of personal data amongst its results. If personal data was disclosed this could place individuals at the risk of being victims of crime. The Commissioner believes that this factor adds to the weight of the public interest inherent in the exemption.

39. As well as the general public interest in the transparency and accountability of the public authority, the Commissioner has recognised a valid public interest in favour of disclosure related to the content of the information in question, in that disclosure would add to public knowledge about the steps taken by the public authority to ensure the security of the information held within the NFLMS. The weight of this factor is enhanced by the fact that this information includes personal data.
40. As noted above, the Commissioner has found no evidence that the issue of legal restrictions on firearms ownership is the subject of significant public debate and therefore accords no significant weight to the public interest in favour of disclosure related to the subject matter of the information in question, whilst noting the weight to be given to the importance of transparency of the public authorities' activities in this area. The Commissioner finds that the public interest inherent in the exemption, particularly given that the security procedures detailed in the information relate to personal data, outweighs the public interest factors he has recognised in favour of disclosure. The conclusion of the Commissioner is, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure.

### **Section 43**

41. As the conclusion on section 31(1)(a) relates to the entirety of the information held by the public authority that falls within the scope of the complainant's request, it has not been necessary for the Commissioner to consider whether the exemption provided by section 43(2) is also engaged.

### **The Decision**

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42. In relation to requests 1, 2, 3, 5, 7 and 8, the Commissioner accepts the explanations provided by the public authority as to why information falling within the scope of these parts of the requests is not held and finds that the public authority complied with section 1(1)(a) in relation to these requests.
43. In relation to the information falling within the scope of requests 3 and 4 that the public authority identified it does hold, the Commissioner concludes that the exemption provided by section 31(1)(a) is engaged and that the public interest favours the maintenance of the exemption.
44. The Commissioner also finds that the public authority failed to comply with the requirements of sections 10(1), 17(1)(b) and 17(1)(c) as covered above at

paragraphs 21 to 23.

## Other matters

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47. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
49. As noted above at paragraph 10, the public authority cited six paragraphs of sections 31(1) and 31(2), but failed to provide detailed explanations in relation to the majority of these. The Commissioner would stress that public authorities should cite an exemption only where full consideration has been given to the reasoning for its engagement and, where appropriate, the public test.
50. The Commissioner's guidance on internal reviews states that these should take a maximum of 20 working days. Where there are exceptional circumstances, this period may be extended to 40 working days. In this case, despite there appearing to be no exceptional circumstances the public authority failed to respond within 20 working days. Neither did the public authority respond within 40 working days. The Commissioner would stress to the public authority that it should ensure that internal reviews are carried out promptly in future.
51. The Commissioner notes that the public authority referred to an internal review panel that meets periodically. If the approach of carrying out internal reviews by panel means that the public authority is regularly exceeding the 20 working day time period, it may be appropriate for the public authority to reconsider this approach.

## Failure to comply

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52. 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.

## Right of Appeal

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53. 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.

54. 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 9th day of November 2009**

**Signed .....**

**Steve Wood  
Assistant Commissioner**

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

## **Legal Annex**

### **Section 1**

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

### **Section 10**

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

### **Section 17**

Section 17(1) provides that -

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

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

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in

maintaining the exemption outweighs the public interest in disclosing the information.”

## Section 31

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.”

Section 31(2) provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their

- administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

### **Section 43**

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”