

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 9 June 2011

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant requested information concerning security at court premises. The public authority refused the request, citing the exemption provided by section 31(1)(a) (prejudice to the prevention or detection of crime). Following the complaint to the Commissioner, the public authority also cited sections 31(1)(c) (prejudice to the administration of justice) and 38(1)(b) (endangerment to safety). The Commissioner finds that none of these exemptions are engaged and the public authority is required to disclose the information requested. He also finds that the public authority failed to comply with procedural requirements of the Act through its handling of the request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made the following information request on 15 July 2010:

"I hereby request, under the Freedom of Information Act 2000, a copy of that portion of the guidance document, which refers to the legality and operational application of the two 'posters'

[about knives in court] and the reasons/legal authority for doing so."

3. The response to this request was dated 4 August 2010. The request was refused, with the exemption provided by section 31(1)(a) (prejudice to the prevention or detection of crime) cited. The reasons why the exemption was believed to be engaged and why the balance of the public interest was believed to favour the maintenance of this exemption were dealt with jointly, rather than being set out separately. It was indicated that the information that fell within the scope of the request set out court security procedures and the public authority believed that the disclosure of this information could enable the circumvention of those procedures.
4. The complainant responded on the same date and requested that the public authority carry out an internal review. The public authority responded with the outcome of the internal review on 12 August 2010. The refusal of the request under section 31(1)(a) was upheld. Some explanation as to why the exemption was believed to be engaged was provided separately from the explanation of the balance of the public interest at this stage.

The Investigation

Scope of the case

5. The complainant contacted the Commissioner's office initially on 12 August 2010. The complainant at this stage, and in further correspondence, indicated that he required the requested information in relation to an upcoming trial.
6. Upon allocation of this complaint to a case officer, the complainant was contacted on 9 December 2010 to ascertain whether he wished to continue with this case, since the scheduled dates of the court action previously referred to had elapsed. The complainant responded to this on 9 December 2010 and confirmed that he did wish to continue with this case.

Chronology

7. The Commissioner contacted the public authority initially on 10 December 2010. The public authority was asked to respond with a copy of the information withheld from the complainant and with further explanations for the refusal of the request.

8. A copy of the withheld information was supplied to the Commissioner's office. The public authority responded with further explanation for the citing of section 31(1)(a) by letter dated 11 January 2011. The public authority also at this stage introduced sections 31(1)(c) (prejudice to the administration of justice) and 38(1)(b) (endangerment to safety) and explained why it believed that these exemptions were engaged.

Analysis

Exemptions

Section 31

9. The public authority has cited section 31(1)(a), which provides an exemption for information the disclosure of which would, or would be likely to, prejudice the prevention or detection of crime. This section is set out in full in the attached legal annex, as are all other sections of the Act referred to in this Notice.
10. Consideration of this exemption is a two-stage process; first, the exemption must be engaged as a result of prejudice relevant to the exemption being at least likely to occur. Secondly, this exemption is qualified by the public interest. This means that the information should be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
11. Covering first whether this exemption is engaged, the public authority has specified that it believes that prejudice would be likely to result, rather than would result. The test that the Commissioner applies when considering whether prejudice would be likely to result is that the likelihood of this must be real and significant, and certainly 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." (paragraph 15)
12. The first step in considering whether this exemption is engaged is to address whether the prejudice predicted by the public authority is relevant to the prevention and / or detection of crime, these being the matters mentioned in section 31(1)(a). The information in question consists of a document describing security arrangements at the entrances to court buildings. In summary, the argument of the public authority is that disclosure of this information would be likely to enable

the subversion of these security arrangements and that, for example, this could enable prohibited items such as knives to be carried into court buildings. The Commissioner accepts that this outcome of disclosure would be counter to the prevention and detection of crime and so this argument from the public authority is relevant to the prejudice described in section 31(1)(a).

13. Turning to whether the likelihood of this outcome meets the test of real and significant, the key issue here is the content of the information in question and what this suggests about the likelihood of prejudice. The public authority has also argued that the information in question could be combined with other information in the public domain and that this would result in the outcome predicted.
14. Considering, first, the information in question in isolation from any other information available in the public domain, the Commissioner notes that this content does set out specific security arrangements in place at the entry to court buildings. He accepts that any person unaware of these arrangements would be made aware of these through this information. However, the suggestion that prejudice to these arrangements would be a real and significant risk as a result of disclosure is weakened as a result of two factors.
15. First, security arrangements are to some degree predictable and familiar from other situations where security is a concern, for example from the experience of airport security. Given this, the view of the Commissioner is that any person seeking to subvert these security measures could seek to do so on the basis of what could reasonably be predicted about these and, as a result, the extent to which the risk of prejudice would be increased through disclosure is questionable.
16. Secondly, the withheld information consists largely of a recitation of the arrangements in place. If this information included, for example, content that identified weaknesses in these arrangements, it may have been more clear how prejudice would be likely to result, but no such content is included. Also notable is that court premises are public buildings so it is not necessarily the case that those who had experienced court security would be limited to those who had done so in relation to a proceeding that related to them in some way. This means it is questionable whether disclosure of the information in question would be the only, or first, means by which these security arrangements could, or would, be made public.
17. Given these factors, the Commissioner is not satisfied that the content of the information alone suggests that the likelihood of prejudice meets the test of real and significant. However, as noted above the public authority has also argued that the information in question could be

combined with other information about court security arrangements that is available in the public domain and that prejudice would be a likely outcome of disclosure as a result. The Commissioner has also considered, therefore, what relevant information is in the public domain and whether and how this could be combined with the information in question to render prejudice a likely outcome.

18. This argument from the public authority is significantly weakened by its failure to identify any of the publicly available information it is referring to, where this is available or how this could be combined with the information in question to produce the likelihood of prejudice. Brief research carried out on behalf of the Commissioner has failed to locate any information that was clearly of the type referred to by the public authority when advancing this argument. It should be noted at this point that, in the interests of progressing cases efficiently, a public authority will typically be given one opportunity to make representations to the Commissioner during his investigation of a complaint. Whether to revert to the public authority following initial representations is at the discretion of the Commissioner and public authorities should ensure that full arguments are advanced at the earliest opportunity.
19. In the absence of the public authority specifying which publicly available information it was referring to when making this argument, where this was available or how this could be combined with the information in question to produce prejudice, and given that it has not proved possible through research to locate publicly available information that would fit with this argument, the Commissioner does not accept that this argument suggests that the likelihood of prejudice meets the test of real and significant.
20. Having considered the arguments advanced by the public authority, the Commissioner is not satisfied that disclosure of the information in question would be likely to result in a real and significant risk of prejudice to the prevention and / or detection of crime. His conclusion is, therefore, that the exemption provided by section 31(1)(a) is not engaged. Given this conclusion, it is not necessary to also go on to consider the balance of the public interest.
21. The public authority has also cited section 31(1)(c), which provides an exemption for information the disclosure of which would, or would be likely to, prejudice the administration of justice. Similarly to above, considering whether this exemption is engaged is a two-stage process: first, the exemption must be engaged due to the likelihood of prejudice; secondly, the public interest in the maintenance of this exemption must outweigh the public interest in disclosure. The public authority has again specified that it believes that this prejudice *would be likely* to result,

meaning that the test here is the same as that set out above at paragraph 11; the likelihood of prejudice must be real and significant.

22. As to whether this exemption is engaged, the public authority has argued that disclosure would reduce the confidence of potential witnesses that they would be secure upon court premises and thus they would be less likely to be willing to act as witnesses. The Commissioner accepts that a general reduction of willingness to appear as a witness at a court hearing would prejudice the administration of justice and so agrees that this argument is relevant to the matter mentioned in section 31(1)(c).
23. Turning to the likelihood of this prejudice occurring as an outcome of disclosure, the public authority has advanced the same arguments in favour of this exemption as were advanced for section 31(1)(a); therefore, for the same reasons as set out above, the Commissioner finds that prejudice to the administration of justice is not a real and significant likelihood as an outcome of disclosure and, therefore, his conclusion is that the exemption provided by section 31(1)(c) is not engaged. In light of this conclusion, it has not been necessary to go on to consider the balance of the public interest.

Section 38

24. The public authority has cited the exemption provided by section 38(1)(b), which states that information the disclosure of which would, or would be likely to, endanger the safety of any individual is exempt. The process for analysing this exemption is the same as set out above in connection with sections 31(1)(a) and (c); this exemption must be engaged and the public interest must favour the maintenance of this exemption. If either of these conditions are not met, this exemption does not apply. The public authority has again specified *would be likely*, meaning that the likelihood of endangerment must meet the test of real and significant.
25. The argument of the public authority is that disclosure would be likely to reduce the security of court premises, thus endangering the safety of individuals upon those premises. The Commissioner accepts that this argument is relevant to section 38(1)(b).
26. The public authority has again advanced the same arguments for this exemption as were advanced in relation to section 31(1)(a). Therefore, the conclusion of the Commissioner here again follows the findings above; he does not accept that disclosure of this information would be likely to prejudice court security, so also does not accept that the endangerment to individuals predicted by the public authority would be likely to occur. The exemption provided by section 38(1)(b) is not,

therefore, engaged and it has not been necessary to go on to consider the balance of the public interest.

Procedural Requirements

Sections 1 and 10

27. In failing to disclose within 20 working days of receipt of the request information that the Commissioner has now concluded was not exempt by virtue of any of the exemptions cited, the public authority did not comply with the requirements of sections 1(1)(b) or 10(1).

Section 17

28. In failing to cite sections 31(1)(c) or 38(1)(b) within 20 working days of receipt of the request, or explain why these exemptions were believed to be engaged or why the balance of the public interest was believed to favour the maintenance of these exemptions, the public authority did not comply with the requirements of sections 17(1) or 17(3)(b).

The Decision

29. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it applied the exemptions provided by sections 31(1)(a), 31(1)(c) and 38(1)(b) incorrectly and, in so doing, breached the requirements of sections 1(1)(b) and 10(1). The public authority also breached the requirements of sections 17(1) and 17(3)(b) through the late citing of sections 31(1)(c) and 38(1)(b).

Steps Required

30. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- Disclose to the complainant the information falling within the scope of his request.

31. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

32. 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

33. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

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

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 9th day of June 2011

Signed

**Gerrard Tracey
Principal Policy Advisor
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 –

"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(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(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".

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."